

FREEDOM OF EXPRESSION IN THE MUSIC INDUSTRY: DO THE
LIMITATIONS MAKE IT NON -EXISTENT?

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DECLARATION

I, MACHARIA MERCY GATHONI, do hereby declare that this research is my original work and that to the best of my belief; it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:



Date:

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed: *Cecil Abungu*

ABSTRACT

The music industry is one of the most dominant industries with a lot of individuals involved. The freedom of expression is fundamental to the proper and effectively. Musicians have used their platforms and crafts to speak on political and social injustices in the country. Most of them have found themselves in the wrath of the law for releasing political oriented songs. This paper intends to investigate the relevance of freedom in the industry. It will also look at the limitations of politically oriented free expression. It will look into the umbrella of legislation and institutional framework accorded to the musicians for protection and the law as the basis of the suits against musicians. I will examine the laws and institutions available and check if they are sufficient. I will also check the constitutionality of the laws that are used to charge these people. Among my findings the major one was that there was no specific legislation or institution that protects the musicians against arrest because of politically oriented free expression. I recommend a revision of the legislation to offer more protection to the musicians.

LIST OF ABBREVIATIONS

COK Constitution of Kenya

MCSK Music Copyright Society Kenya

UNESCO United Nations Educational Scientific and Cultural organization

LIST OF CASES

Timothy Njoya and 6 others v the Attorney General and 4 Others, Nairobi High Court Miscellaneous Civil Application Number 82 [2004] eKLR.

Marbury v Madison (1803), The Supreme Court of the United States.
Jacqueline Out v Attorney General and another 2016 eKLR.

LIST OF LEGAL INSTRUMENTS

Constitution of Kenya, (2010)

Copyright Act, 2001

National Cohesion and Integration Act.

CHAPTER 1.0; INTRODUCTION

SECTION 1.1. BACKGROUND:

The music industry has become one of the most sought-after industries in Kenya. The music industry consists of individuals and organizations that venture into writing songs and musical compositions, creating and selling music as an income generating venture.¹ It has attracted most Kenyans because it is considered one of the most successful industries in terms of income generation thus many have opted to venture into the industry.² This industry is based on expression of ideas or expression of what an individual feels and to create content. It is said to be an actualization of the freedom of expression enshrined in article 33 of the Kenyan Constitution 2010. It states that every person has the right to freedom of expression, which includes the freedom to seek, receive or impart information or ideas, freedom of artistic creativity and academic freedom and freedom of scientific research.³ Freedom of expression is the ability to accommodate a minority view which in most cases does not conform with the views of the majority. However, despite being one of the industries regulated by the law, it is one of the industries that many have found themselves in the wrath of the law because suits are often filed against them

There is a relationship between music and politics. Sometimes it is harmoniously and other times it is not as much as seen in campaigns and political protests. Stakeholders in the music industry have turned to their crafts whenever they are confronted with social and political injustices.⁴ It is hard to separate music and politics as they complement each other. The turmoil comes in when some politician or public figure alleges that they have been personally targeted, and the content may affect their publicity. This is so as because politics is based on the court of public opinion.⁵

¹ Demiril Nihan Irhan, Relationship between Arts and Politics, Science Direct, 2012.

² <https://definitions.uslegal.com/e/entertainment-industry/> on August 2020.

³ Article 33, Constitution of Kenya (2010).

⁴ <https://liveforlivemusic.com/features/the-intertwined-relationship-between-music-and-politics/> on August 2020.

⁵ Mc Camon Christopher, *Domination*, Stanford Encyclopedia of Philosophy, 2018.

There have been countless headlines in the Newspapers of individuals in the music industry who have been arrested because of kind of content they create and it was considered inappropriate especially by politicians or fellow people in the industry.

Musicians have been arrested for what was termed as releasing inciting music. For example, sometime in April 2020, a rapper, Jim Nyamwaka Nyakundi, was arrested for publishing what was termed a criticism of the Kisii governor Ongwae accused the leadership of engaging in corruption and stalling development projects in the county.⁶ In December 2019, Kennedy Ombima, popularly known as King Kaka released a song, *Wajinga Nyinyi*, that not only sought to speak the truth but also described the degraded state of the nation. Since it was mainly an eye opener to how the politicians have continued to exploit the citizens for their personal gain. This brought these musicians a lot of trouble because of the allegations of incitement.⁷ Kikuyu artists, Muigai wa Njoroge alongside the late John Ng`angà alias John De Mathew, were summoned by the National Cohesion and Integration Commission over their controversial lyrics. They were charged under Section 13 (1) (a) of the National Cohesion and Integration Act on hate speech and inciting statements. The artists through their controversial lyrics alluded that the poor people were being oppressed by those in power.⁸ This has been the case, where politicians sue anyone who makes a criticism about them. The political scene in Kenya is very chaotic and not ideal since it is no longer about the people but about the personal gains of the people in power.⁹ People from the music industry have chosen to use their platform to call out the politicians and to create awareness and use their voice to represent most of the citizens who feel the same way. ¹⁰This is supposed to be a practice of the freedom of expression and not a limitation when a politician feels called out or criticized in any way. It is not only the musicians that have been affected but

⁶ <https://www.kenyans.co.ke/news/52562-musician-arrested-after-criticising-governor-viral-song-video> on August 2020.

⁷ <https://www.kenyans.co.ke/news/52562-musician-arrested-after-criticising-governor-viral-song-video> on August 2020.

⁸<https://www.standardmedia.co.ke/kenya/article/2001376011/kikuyu-artist-muigai-wa-njoroge-summoned-over-controversial-lyrics> on August 2020.

⁹ <https://www.standardmedia.co.ke/kenya/article/2001376011/kikuyu-artist-muigai-wa-njoroge-summoned-over-controversial-lyrics> on August 2020.

¹⁰ Demiril Nihan Irhan, Relationship between Arts and Politics, Science Direct, 2012.

also bloggers and journalists who have found themselves in the same problem of unsafety due to the art they have published. Bloggers who often do commentaries on the state of the nation in their social media platforms have often been summoned by the Director of Public Prosecution to answer to some allegations that have been made by the affected parties. There has been an often back and forth wrangle between these people and the politicians, it has become more of a hearsay situation. Politicians depend on the court of public opinion which is often dependent on what the influencers of the society say about that. The music industry in the 21st century has one of the most influences on people.¹¹ They act as eye openers to situations; they often change the perspective of their audience. Election years have been the most stressful for musicians who create content that is politically oriented because of the effort of the government and politicians to silence the bad publicity. They have used the threat of filing a suit of defamation to silence them. The politicians feel as if this is a threat to them when people in this industry put content out that is termed criticism which is often a limitation to the freedom of expression, which makes it hard for the people in that field to do their work. It has made the field be more of “As long as I am quiet, I am safe” which is exactly what the field is not supposed to be about, it is supposed to be about expressing yourself.

SECTION 1.2. STATEMENT OF THE PROBLEM

The music industry should be a safe space where people are protected by the freedom of expression. The ideal situation would be one where people in the music industry are in a position to freely express themselves with their crafts without the fear of not being safe or facing the wrath of law. This however has not been the case in Kenya, as many musicians have been in trouble for content that they put out that was considered a criticism or one that negatively affects the government or politicians as individuals. It has been more of an as long as I am quiet, I am in a safe situation which is opposed to everything the industry stands for. The people in the music industry have been dealing with one situation after the other that has in turn affected the way they operate. They have not been in a position to practice their craft by channeling their creativity freely. My aim is to find a way to offer more protection to musicians who make music

¹¹ Villar Sanchez, Blog influence and political activism: An emerging and integrative model *Influencia*, Science Direct, 2017.

that is politically oriented so that they may freely express themselves using their crafts without feeling oppressed or insecure in any way. My goal is to make the actualization of the freedom of speech and expression instilled and help people appreciate the importance of freedom. This will help make the music industry a safe haven for people to express themselves and communicate when they feel something is not being done right.

SECTION 1.3. JUSTIFICATION OF THE STUDY

The study will help find a way to instill the protection of the freedom of expression as prescribed in article 33 of the constitution 2010. It will also help find a way to put the theory, the legal part, and actualize it and make it practical to protect the industry which will in turn help the growth of the industry. It will help show the law makers the need for more legal protection for the people in the music industry through the policies.

SECTION 1.4. AIMS AND OBJECTIVES OF THE STUDY:

1. To investigate the relevance of freedom to the idea of expression.
2. To investigate the limitation of politically oriented free expression.
3. To investigate the legal and institutional framework governing politically oriented free expression by artists.
4. To investigate the constitutionality of the law used to charge these artists.

SECTION 1.5. RESEARCH QUESTIONS:

1. What is the relevance of the aspect of freedom to the idea of expression?
2. What are the limitations of politically oriented free expression?
3. What is the legal framework governing politically oriented free expression?
4. What is the institutional framework governing politically oriented free expression?
5. Is the law used by the state unconstitutional?
6. What are the recommendations to make the music industry a safe haven?

SECTION 1.6. HYPOTHESIS:

1. The aspect of freedom is relevant to the idea of expression.

2. There is a limitation to politically oriented free expression.
3. There is a legal and institutional framework governing artist.
4. The laws used to charge the artists are unconstitutional.

SECTION 1.7. THEORETICAL FRAMEWORK:

John Stuart Mill defines freedom of speech as the limits that must be set on society powers over individuals.¹² During his era, political thinkers were concerned with how much control the authority has on the people, however, Mill believed that for a state to succeed, individuals must have liberty. He was basically concerned with providing a limitation to the control of the government to individuals and advocates for flourishing individuals with freedom. He talks about this market of ideas that helps to promote knowledge and truth by subjecting all ideas to the challenge of public examination and debate.

Freedom is associated with having free will and being without undue constraints or enslavement.¹³ There are 3 conceptions of freedom; negative, positive, and republican. Negative freedom is associated with the lack of interference with one's actions. Positive freedom is associated with having a set of opportunities accessible. Republican freedom is associated with the aspect of non-domination.¹⁴ Domination is a kind of unconstrained, unjust imbalance of power that enables agents or systems to control other agents or the conditions of their actions. Domination is the kind of power over other people, your subordinates.¹⁵ Pettit gives an illustration that masters usually have all but complete control over how their slaves will act or over the conditions, in which they act, dominate. The master has the capacity to control you; it is up to them to decide when to use their power.¹⁶

Philip Pettit gives an illustration of the master slave relationship. He says that the master does not interfere with the slave or control them if he never issues orders that interfere with the slaves,

¹² Mill, J.S., *On Liberty*, Hackett Publishing, Indianapolis, 1978, 9.

¹³<https://www.sigtheatre.org/signature-in-the-schools-the-spoken-word-educational-resources/defining-freedom/> in September 2020.

¹⁴ Mc Camon Christopher, *Domination*, Stanford Encyclopedia of Philosophy, 2018.

¹⁵ Mc Camon Christopher, *Domination*, Stanford Encyclopedia of Philosophy, 2018.

¹⁶ Anderson Elizabeth, *Freedom and Equality*, The oxford handbook of freedom, 2018, 10.

but the slave still remains unfree.¹⁷ Isaiah Berlin claims that liberals tend to regard freedom is the absence of interference rather than the absence of domination which prompts the need to differentiate domination and interference.¹⁸ Pettit says that when the dominator can exercise this capacity at will, it denotes the aspect of freedom. Pettit stresses that the difference between negative and republican freedom is the case where a dominator could but chooses not to interfere with subordinates. He argues that such vulnerability to interference can make subordinates, submissive and afraid to express themselves.¹⁹ The music industry is the slave in the master slave analogy and the government is the master. The music industry is an exercise of freedom of expression.

SECTION 1.8. LITERATURE REVIEW:

Mill said that this marketplace for ideas helps to promote knowledge and truth by subjecting all ideas to a court of public opinion.²⁰ In his work, *Of the Liberty of Thought and Discussion*, Mill argues that no opinion should be silenced for whatever reason even if it is wrong.²¹ His theory is; however, criticized by Himmelfarb who argued that Mills theory seems to have two views, the libertarian and authoritarian. She claimed that Mill seemed to have given society a large positive role.²²

¹⁷ Pettit Philip, *on the people's term; a republican theory and model of democracy*, Cambridge University Press, 2012, 24.

¹⁸ <https://www.sigtheatre.org/signature-in-the-schools-the-spoken-word-educational-resources/defining-freedom/> on August 2020.

¹⁹ Pettit Philip, *on the people's term; a republican theory and model of democracy*, Cambridge University Press, 2012, 87.

²⁰ Kurer O, John Stuart Mill on Government Intervention, *History of Political Thought*, 1989, 457-<https://www.jstor.org/stable/44797145?read-now=1&seq=1> on August 2020.

²¹ <http://bostonreview.net/politics-philosophy-religion/jason-stanley-what-mill-got-wrong-about-freedom-of-speech> on August 2020.

²² G. Himmerlfarb, *on liberty and liberalism, the case of John Stuart mill*, (New York) 1974, 20.

John C, Merrill states that creative freedom is essential in maintaining authenticity in the industry which is what the industry should be based on. This freedom will ensure that the musicians feel safe as they put out content through their crafts even when it is politically oriented.²³

Article 33 of the constitution of Kenya provides for the freedom of expression which includes freedom to seek, receive or impart information or ideas, freedom of artistic creativity, academic freedom and freedom of scientific research. The state is restricted from exercising any sort of control on the works of the musicians.²⁴

Jeremy Bentham in his work argued that liberty of the music industry has its faults but the evil which may result from it is not compared to the evil of limitation and censorship.²⁵

Dworkins relates the freedom of expression to freedom of human beings to develop in society. He says that liberty helps the autonomy of the individual and the individual can freely engage in activities that will help build themselves to prosper and flourish. It helps them know that they could use their craft to disseminate information without fear of being targeted by the audience who may feel attacked personally.²⁶

Bernard Williams in his work argues that the limitation to free expression creates a barrier over the truth and thus the authenticity of the information becomes questionable. He says that limitation of the freedom of speech creates a society based on biased information that hides what is really happening on the ground and then the society continues deteriorating and suffering with political and social injustices.²⁷

Karl Max believed in the equality of all individuals, but this equality would be regulated by the government. He was not solely for the idea of the segregation of the music industry with the government; he believed that the government should have some sort of control by regulating. He argued that advocating for freedom one must consider the immaturity of human beings in the

²³ Merrill C., Gade P., Blevens F., *Twilight of Press Freedom: The Rise of People's Journalism*, Routledge, 2001.

²⁴ Article 33, Constitution of Kenya (2010).

²⁵ <https://iep.utm.edu/bentham/> on August 2020.

²⁶ Dworkin Ronald, *Taking rights seriously*, 1978,272.

²⁷ Williams Bernard, *In the Beginning was the deed*, Princeton University Press, 2005.

kind of content they put out.²⁸ However, Marx also was also for the idea that censorship helps the powerful oppress the powerless. Communist theory seemed to be conflicted; they were for the idea of freedom when it is to their advantage.²⁹

According to M Franklin, contemporary restrictions on freedom of the people in the music industry include the protection of the reputation of others through the law of defamation, protection of privacy, protection of creative activity, protection of the political process, protection of state secrets and preserving state security, protecting public welfare and protecting the marketplace.³⁰

William Blackstone argued that liberty cannot be absolute; there is a need for limitations and regulation. He believed that as much as freedom of the media is acknowledged so is the need for limitations which were deemed significant. He argued that in no way was freedom violated where the wrath of the law took control in an instance where there was criminal offence such as treason and libel.³¹

According to Philip Pettit, using his analogy of master and slave relationship, he criticizes the liberal concept of liberty where no one interferes with the slaves, but the slave still remains not absolutely free. He talks of republican freedom as where a dominator could but chooses not to interfere with subordinates.³² Isaiah Berlin claims that liberals tend to regard freedom as the absence of interference rather than the absence of domination.³³

Article 24 of the constitution states that freedom can be limited by the law when that limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality

²⁸ <https://plato.stanford.edu/entries/marx/> on August 2020.

²⁹ Praveen Karthik, What are the Four Theories of the Press 2015-<http://www.preservearticles.com/what-are-the-form-or-theories-of-the-press.html> on August 2020.

³⁰ Franklin M, *The First Amendment and the Fourth Estate*, Foundation Press, New York, 1981.

³¹ Blackstone W, *Commentaries on the Laws of England Volume IV (1765-69)* at 151-2. Quoted in Franklin M, *The First Amendment and the Fourth Estate*, Foundation Press, New York, 1981, 10.

³² Pettit Philip, *on the people's term; a republican theory and model of democracy*, Cambridge University Press, 2012.

³³ <https://aeon.co/essays/what-can-isaiah-berlin-tell-us-about-political-freedom-today> on August 2020.

and freedom. Other factors to be considered when limiting a right include the nature of the freedom, the importance of the purpose of the limitation, the nature and extent of the limitation, the need to ensure the enjoyment of rights by any individual does not limit the rights of other as well as whether there is a less restrictive way of achieving this purpose.³⁴

Article 33 of the constitution provides for limitations of the freedom of expression. The right to freedom of expression does not extend to propaganda for war incitement to violence hate speech or advocacy of hatred.³⁵In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others. There is a need to limit freedom to ensure all individuals enjoy their rights. The main limitation of all rights and freedom is all individuals need to enjoy their rights but respect the rights of the other³⁶

SECTION 1.9. RESEARCH METHODOLOGY:

This research will use qualitative research. Primary sources entailing current media legislations, case law and constitutional provisions will be analyzed. Secondary resources such as reports and articles will be used. The Internet will also be a major source of information, as various online resources such as LexisNexis and Jstor will be utilized

SECTION 1.10. LIMITATIONS OF THE STUDY:

This study will be limited by the already misused defense of defamation that has always been used while filing for suits of this caliber. It will be difficult because of the already set precedent

SECTION 1.11. CHAPTER BREAKDOWN:

CHAPTER 1; Background and introduction- This chapter will provide a basis of this paper and show why this paper is essential and what led to it being a research question

³⁴ Article 24, Constitution of Kenya (2010).

³⁵ Article 33 (2), Constitution of Kenya (2010).

³⁶ Article 33 (3) Constitution of Kenya (2010).

CHAPTER 2; Theoretical framework- This chapter will provide the theoretical and philosophical framework connection.

CHAPTER 3; Legal and institutional framework- This chapter will look into what the constitution and other legislation provide on politically oriented freedom of expression and the institutional framework and the cases that have set precedent.

CHAPTER 4; Test of constitutionality- This chapter will look into the constitutionality of the law the state has been using as the basis of their suits against these musicians and provide recommendations.

Chapter 5; Conclusion

CHAPTER 2.0; FREEDOM

SECTION 2.1 INTRODUCTION

Freedom is associated with having the free will and being without undue or unjust constraints or enslavement and is an idea closely related to the concept of freedom.³⁷ Free will is the ability to choose between two different things and not being determined by the outcome. A person is said to have free will if he or she can choose their cause of action. Comarc Burke claims that most people would say that freedom is the power to do what you like; he argues that this is a superficial idea of freedom. He argues that freedom is something much more important than that. He claims that freedom is the power to be fully oneself, to realize one's potential is a human being.³⁸

Kant argues that an average person assumes that when presented with alternative choices, they would have the freedom to choose one over the other on the basis of individual desires. This is what Kant called the Libertarian idea of freedom. Kant, however, believed that choosing what you want isn't freedom.³⁹

Mill talks of the harm principle and the offense principle. The harm principle states that the actions of an individual should only be limited if it causes harm to another individual.⁴⁰ It informs the concept of citizens can enjoy their rights and freedoms as long as they do not infringe on the rights of another individual. The harm principle appeared to be tough and the offense principle was proposed to diffuse the harm principle. The offensive principle, proposers argued that it is less complicated to sue someone because of an offensive comment because harm is an ambiguous one to be determined.⁴¹

There are 3 concepts of freedom, negative, positive and republican. Negative freedom is associated with the lack of interference with one's actions. Positive freedom is associated with

³⁷ Waddell Laura, Ekstrom, *Free Will; a Philosophical Study*, HarperCollins Publisher, 1999.

³⁸ Burke Cormac, *Conscience and Freedom*, Sinag Tala, 1992, 5.

³⁹ John Locke, *Two Treatises of Government*, London: Dent, 1986. First published 1690, 23.

⁴⁰ Mill, J.S., *On Liberty*, Hackett Publishing, Indianapolis, 1978, 10.

⁴¹ Guyer, P, *Freedom; Will, autonomy*, Acumen publishing, 2020, 102.

having a rich set of opportunities accessible. Republican freedom is associated with the aspect of non-domination by another person.⁴²

SECTION 2.2 POSITIVE AND NEGATIVE FREEDOM

Isaiah Berlin based his work on two concepts of freedom: negative and positive freedom. He termed negative freedom is freedom of interference in personal matters which implies the circumscription of state power within a strong legal framework. Negative liberty is the absence of obstacles, barriers or constraints. One has negative liberty to the extent that actions are available to one in this negative sense. Positive liberty is the possibility of acting in such a way as to take control of one's life and realize one's fundamental purposes.⁴³

Positive liberty on the other hand is freedom to realize some greater good. It is a question of being able to take advantage of the opportunity by being in control of your life. Positive freedom is a matter of someone having the capacity to take the option as well as have available opportunities: whereas, according to a concept of negative freedom, the opportunities that one has alone determine the extent of my freedom. Negative freedom is limited when you restrict the number of choices or the type of choices one can make about another's life. The extent of an individual's negative freedom is determined by how many possible choices are open to them, or, to use one of Berlin's metaphors, how many doors are unlocked. It is also determined by the types of choices that are available.⁴⁴ This is how Berlin puts it: *The extent of a man's negative liberty is, as it were, a function of what doors, and how many are open to him; upon what prospects they open; and how open they are.*⁴⁵

⁴² Broad, C. D., *Determinism, Indeterminism, and Libertarianism*, Routledge, 1952.

⁴³ Berlin Isaiah, *Two concepts of Liberty*, Straus and Girous, New York, 202.

⁴⁴ Berlin Isaiah, *Two concepts of Liberty*, Straus and Girous, New York, 202.

⁴⁵ <https://plato.stanford.edu/entries/liberty-positive-negative/> on November 2020.

SECTION 2.3 REPUBLICAN FREEDOM

The republican theory of freedom is based on the idea of non-domination. Republican freedom requires the absence of domination. Republican freedom is associated with the aspect of non-domination by another person who is of greater power.⁴⁶

Domination is a kind of power that is usually social power over subordinates. Masters usually have all but complete control over how their slaves will act or over how their slaves will act. It is up to the masters to choose when to use their power. They have the ability to use their power. Domination is a kind of unconstrained unjust imbalance of power that enables agents or systems to control other agents or the conditions of their actions. The power that the dominator can exercise this capacity at will limits or rather alters the aspects of freedom.⁴⁷ Domination is what the agents or the authorities are in a position to do or have the capacity to do rather than what agents actually do. The potential interference in domination reduces freedom.

The republican concept of liberty defines freedom as a sort of structural independence when one is not subject to the uncontrolled power of a master.⁴⁸ Pettit claims that a person or group enjoys freedom to the extent that no other person or group has “the capacity to interfere in their affairs on an arbitrary basis”.⁴⁹ Philip Petit claims that the master does not interfere with you or control you if he does not issue orders that interfere with you but he retains the power to do so this means that the slaves still remain unfree. He also stresses that the difference between negative and republican freedom is the case where the dominator could but chooses not to interfere with subordinates. He argues that such vulnerability to interfere can make subordinates submissive and afraid to express themselves.⁵⁰ Berlin claims that people tend to regard freedom as the

⁴⁶ Finch, Alicia, *the Mind Argument and Libertarianism*, 1998, 515.

⁴⁷ Mc.Camon Christopher, “Domination”, the Stanford Encyclopedia of Philosophy, 2018, 56.

⁴⁸ Forst, Rainer, *Republican Democracy; Liberty, Law and Politics*, Edinburgh University Press, 2013.

⁴⁹ Petit Philip, *On the People's term, a republican theory and model of democracy*, Cambridge University Press, 2012.

⁵⁰ Petit Philip, *On the people's term; a republican theory and model of democracy*, Cambridge University Press, 2012, 34.

absence of interference from others, he claims that freedom is not the absence of interference rather it is the absence of domination.

SECTION 2.4 FREEDOM AS NON-INTERFERENCE

The republican freedom is mostly explained in relation to freedom as non-interference.⁵¹ Berlin argues that freedom should be understood as the space which a person or group is left to do what he or she is able to do or be without interference by other persons.⁵² The question of the meaning and relevance of interference arises. Interference is referred to intervention in a situation without invitation or necessity. It is also related to obstructing or getting in the way of something. It can also be described as to intentionally frustrate a choice in some reasonable direct manner.⁵³ One example of interference might be deceiving someone with the aim of influencing their choice and deliberately undermining a choice by depriving someone of resources needed to carry it out.

It is said that it is not free if something or someone makes another person do something under duress. By virtue of this view a society that claims to have freedom ought to provide a wide scope of individual choices unhindered by any obstruction.⁵⁴ However, according to Berlin, freedom is non-interference and is also often referred to as negative freedom on the grounds that it characterizes freedom as the negation or absence of a hindrance.⁵⁵

It is also said that it is not free if someone has the uncontrolled ability to intentionally frustrate what another is doing. What, however, is the difference between domination and interference? Interference is an action whereas domination is the ability to act.⁵⁶ Domination is the exercise of power or influence over someone or something or a state of being so controlled. Domination

⁵¹ Lovett Frank. "Non-Domination", Oxford Handbook of Freedom, 2016, 16.

⁵² Berlin Isaiah, *Two concepts of Liberty*, Straus and Girous, New York, 188.

⁵³ <https://www.merriam-webster.com/dictionary/interfere%20with> on November 2020.

⁵⁴ Lovett Frank. "Non-Domination", Oxford Handbook of Freedom, 2016, 16.

⁵⁵ Berlin Isaiah, *Two concepts of Liberty*, Straus and Girous, New York, 17.

⁵⁶ Brennan Jason, "Democracy and freedom", Oxford Handbook of freedom, 2018, 3.

refers not to actual interference but rather the ability to interfere when that ability is not suitably controlled.⁵⁷

SECTION 2.5 FREEDOM IS NON-DOMINATION

Domination refers not to any actual interference but rather to the ability to interfere when that ability is not suitably controlled.⁵⁸ Berlin claims that liberals tend to regard freedom as the absence of interference from others.⁵⁹ Pettit maintains that this liberal conception of liberty or freedom cannot properly explain what is wrong with the master slave relationship because no one interferes with the slave but still the slave remains unfree. He argues what is problematic about the master slave relationship is not merely that the master might be cruel to the slave; it is that while the master does not interfere with the slave or control them, he retains the ability to do so at any point. A person is free only when one is not subject to the will of another. One is not free in some choice so long as others have the uncontrolled ability to frustrate that choice, one is subject to domination.⁶⁰

In non-domination theory, the aspect of the limitation of control is important. There is the procedural control which is the ability to frustrate the choices of another will be suitably controlled provided it is reliably constrained by effective rules and procedures.⁶¹ There is also the democratic control which is the ability to frustrate the choices of another will be suitably controlled provided it is governed by the directed.⁶²

Philip Pettit uses the analogy of the master and slave relationship; he says that no one interferes with the slave, but the slave still remains unfree because of the ability that the master holds to

⁵⁷ <https://dictionary.cambridge.org/dictionary/english/domination> on November 2020.

⁵⁸ <https://dictionary.cambridge.org/dictionary/english/domination> on November 2020.

⁵⁹ Pettit Philip, *On the People's term, a republican theory and model of democracy*, Cambridge University Press, 2012.

⁶⁰ Pettit Philip, *On the People's term, a republican theory and model of democracy*, Cambridge University Press, 2012, 67.

⁶¹ Lovett Frank. Non-Domination, *Oxford Handbook of Freedom*, 2016, 16.

⁶² Brennan Jason, 'Democracy and freedom', *Oxford Handbook of freedom*, 2018.3.

interfere. ⁶³The possibility or rather the ability to interfere with the dominator could interfere denotes the concept of freedom completely. Freedom is where a dominator could but chooses not to interfere with the subordinates. The concept of non-domination is very important when it comes to the practice of freedom because domination is by itself a limit when it comes to the practice of freedom. ⁶⁴

SECTION 2.6; CONCLUSION

Music is an exercise of the freedom of expression as provided in article 33 of the constitution. ⁶⁵ But the idea that as soon as the musicians craft leans or becomes politically oriented and somehow interferes with one political personality, then that becomes a basis of the limitation of your freedom. Therefore, freedom is really important in this case.

⁶³ Mc.Camon Christopher, "Domination", the Stanford Encyclopedia of Philosophy, 2018.

⁶⁴ Blackstone W, Commentaries on the Laws of England Volume IV (1765-69) at 151-2. Quoted in Franklin M, The First Amendment and the Fourth Estate, Foundation Press, New York, 1981, 10.

⁶⁵ Article 33, Constitution of Kenya, (2010).

CHAPTER 3.0; LEGAL AND INSTITUTIONAL FRAMEWORK

SECTION 3.1 INTRODUCTION

The music industry is diverse and large; it comprises creators, arrangers, producers, performers just to name but a few. As an African society, the functions, roles and uses of music retain a very vital significance.⁶⁶ In the 1970`s, the music industry in Kenya gained a global position in the market.⁶⁷ Having gained a part in the global market, the stakes were high as the image of the country was dependent on the quality of the product, the music. There were insufficient policies to govern the industry, it lacked an umbrella body to govern and oversee its affairs. Over the years the music industry has grown to be one of the most consumed and income generating activities vital to the economy. ⁶⁸With the growth, there arises the need for policy makers to establish a proper and stable legal framework for the music industry to ensure prosperity and growth. There has been a significant improvement in the legal and institutional framework over the years with the enactment of the National music policy as discussed below. This chapter aims to discuss the legal and institutional framework in the music industry and their relevance to the topic in discussion.

SECTION 3.2 LEGAL FRAMEWORK

SECTION 3.2.1 THE CONSTITUTION OF KENYA

The constitution makes a strong case for the protection and promotion of music as a form of cultural expression as well as a property whose owner must be protected from unlawful deprivation. The Bill of rights provides for these rights. It supports the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as

⁶⁶ National music Policy, Ministry of Sports, Culture and the arts, 2015.5.

⁶⁷ <https://www.the-star.co.ke/news/2019-08-14-why-mcsk-paid-kenyan-artistes-sh2500-as-royalties/> on December 2020.

⁶⁸ Otieno Linda, ` Reform of legislation on collective management organisations in Kenya; A study on the MCSK, `Published LLB Thesis, Strathmore University, Nairobi 2016, 19.

the foundation of freedom, justice and peace. It promotes social progress and better the standards for all.⁶⁹

Article 2 (5) of the constitution provides that the general principles of international law shall apply in Kenya. The argument of the place of international law and the applicability of a monist or dualist state is diverse as it is dependent on different schools of legal philosophy. Dualism states that international law is binding municipally if the state through a deliberate process allows it while monism states that a rule of international law becomes of national law without the need for express adoption.⁷⁰The implication of article 2 (6), that any treaty or convention ratified by Kenya shall form part of the law. This is important to note considering the provisions of the conventions on music rights. This means that any international in relation to the matter in contention shall be enacted as law in Kenya.⁷¹

Article 11 of the constitution recognizes culture is the foundation of the nation and a cumulative civilization of the Kenyan people and nation. Clause 2 requires the state to among other things; promote all forms of national and cultural expression through literature, the art traditional celebrations science, communication, information, mass media publications libraries and other cultural heritage. Clause 3 enjoins parliament to enact legislation to ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage.⁷²

Article 33 calls on the state to promote all terms of creatives. It provides that every person has the right to freedom of expression and artistic creativity. However, it also provides for the limitations of freedom of expression if it does not extend to propaganda for war, incitement to violence, hate speech and advocacy of hatred.⁷³

Article 44 provides for the protection of language and culture and states that every person has the right to participate in the cultural or linguistic community and has the right with other members

⁶⁹ Chapter 4, Constitution of Kenya (2010).

⁷⁰ Mutero Louisa, 'Online Piracy of music in Kenya; An analysis of the legal and regulatory framework and enforcement mechanisms,' Published LLB Thesis, Strathmore University, Nairobi, 2016, 34.

⁷¹ Article 2 (5), Constitution of Kenya (2010).

⁷² Article 11, Constitution of Kenya (2010).

⁷³ Article 33, Constitution of Kenya (2010).

of that community to enjoy the person's culture and to form and join and maintain cultural and linguistic associations and other organs and the civil societies.⁷⁴

Article 60 defines property is including any vested or contingent right to or interest in or arising from intellectual property.⁷⁵

SECTION 3.2.2. COPYRIGHT ACT

It aims to protect musical rights and to ensure that the rightful people benefit from it. Section 22(1) of the Copyright Act provides for work eligible for protection under the Act. This includes literary works, musical works, artistic works, audio visual works, sound recordings, performances, and broadcasts. The Act grants both economic and moral rights. The rights of authors, performers, publishers, broadcasters and many others whose livelihoods depend upon recognition of rights in intellectual property.⁷⁶The protection of music as a property to the musicians is very important to determine the protection musicians should be granted because of their craft.

SECTION 3.2.3. NATIONAL COHESION AND INTEGRATION ACT

It is an act of Parliament which aims to encourage national cohesion and integration by prohibiting discrimination on ethnic grounds; to provide for the establishment, powers and functions of the National Cohesion and Integration Commission, and for connected purposes. This act helps curb inter-ethnic conflicts and also the spread of hate speech that may affect the peace of the country. This act was established in 2008 after the post-election violence in 2007. It was key to note that music was one of the major channels in which hate speech was spread that led to the post-election violence hence the importance of this act to regulate the content musicians release.⁷⁷

SECTION 3.2.4. INTERNATIONAL SCENE

⁷⁴ Article 44, Constitution of Kenya (2010).

⁷⁵ Article 60, Constitution of Kenya (2010).

⁷⁶ Section 22(1), Copyright Act (Act No. 130 of 2001).

⁷⁷ www.cohesion.or.ke on December 2020.

Article 2(6) of the Constitution of Kenya acknowledges International law.⁷⁸ Article 27 of the Universal Declaration of Human Rights provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic production. The Berne Convention 1886-Concerning the creation of an international union for the protection of literary and artistic works.⁷⁹ These are associated with the protection of music as copyright.

SECTION 3.3. INSTITUTIONAL FRAMEWORK.

SECTION 3.3.1. UNESCO

The United Nations Educational Scientific and Cultural Organizations provide direction and policy statements under the convention for the safeguarding of the Intangible Cultural Heritage.⁸⁰ The convention calls on state parties to adopt a general policy aimed at promoting the function of the intangible cultural heritage in society and to integrate the safeguarding of such heritage into planning and programming.⁸¹ The declaration emphasizes the need to safeguard meaningful measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion enhancement, transmission, particularly through formal and non-formal education. It calls on states parties to take the appropriate legal, scientific, technical, administrative and financial measures necessary for protection of the music heritage.⁸²

⁷⁸ Article 2 (5), Constitution of Kenya (2010).

⁷⁹ Otieno Linda, `Reform of legislation on collective management organisations in Kenya, ‘published LLB Thesis, Strathmore University, Nairobi, 2016, 45.

⁸⁰ <https://en.unesco.org/> on November 2020.

⁸¹ National music policy, Ministry of sport, culture and the arts, 2015, 15.

⁸² Mutero Louisa, `Online Piracy of music in Kenya; An analysis of the legal and regulatory framework and enforcement mechanisms, ‘Published LLB Thesis, Strathmore University, Nairobi, 2016, 34.

SECTION 3.3.2 KENYA COPYRIGHT BOARD

The Kenya Copyright Board (KECOBO) is a State Corporation under the Office of the Attorney General & the Department of Justice.⁸³ It was established by section 3 of the Copyright Act 2001 and mandated with the administration and enforcement of copyright and related rights. The Board is responsible for organizing legislation on copyright and related rights; conducting training programmes on copyright and related rights; enlightening and informing the public on matters related to copyright; licensing and supervising the activities of collective management societies; and maintaining an effective databank on authors and their works. Music is categorized as one of the works that are eligible for copyright protection under the act.⁸⁴

SECTION 3.3.3 MUSIC COPYRIGHT SOCIETY OF KENYA

MCSK was established and registered in 1986 under the companies act. The MCSK is licensed and registered by the Kenya Copyright Board. It was a non-profit organization responsible for collecting royalties in public performance and broadcasting on behalf of its members and to distribute the same to its members based on the professional rules of Copyright Collective Management Organization.⁸⁵

It is responsible for collecting licensing fees and distributing royalties to musicians. However, the MCSK has certain inadequacies that have made it fail in its role. Kenyan musicians have over the years held protests over being underpaid by the MCSK. Kenyan musicians have expressed dismay for years on the manner in which MCSK operates. Numerous artists such as Ringtone" have complained through protests that MCSK pays them meagre royalties; that the society does not pay them what they deserve.⁸⁶

⁸³ Rutenburg Isaac, Ouma, Marisela and Munyi, *Intellectual Property Law in Kenya*, Kluwer law International, 2019, 56.

⁸⁴ Section 3, Copyright Act (Act No. 130 of 2001).

⁸⁵ Mutero Louisa, 'Online Piracy of music in Kenya; An analysis of the legal and regulatory framework as well as enforcement mechanisms,' Published LLB Thesis, Strathmore University, Nairobi, 2016, 55.

⁸⁶ <https://www.the-star.co.ke/news/2019-08-14-why-mcsk-paid-kenyan-artistes-sh2500-as-royalties/> on December 2020.

SECTION 3.3.4. NATIONAL COHESION AND INTEGRATION COMMISSION

The NCIC is a government agency which was created by the National Cohesion and Integration Act, (no 12 of 2008). Its intended purpose is to address and reduce inter-ethnic conflicts by curbing things like the spread of hate speech. Its function is primarily preventing discrimination on the basis of race and ethnicity by advocating for cohesiveness among the diverse groups in the country.⁸⁷

SECTION 3.3.5 NATIONAL MUSIC BOARD

The Government through legislation established a body corporate that is in charge of the music industry development and coordination. This board is called the National Music Board. The Board will among other things be responsible for implementing the Music policies established by providing policy advice to the government by practicing skilled advocacy, expert policy formation and research in support of music including funding, legislation and regulation, offering support, where necessary, to bodies initiating and supporting research on the music heritage of Kenya. And in consultation with the music stakeholders, develop a code of ethics for music that shall set out the basic principles of professional practice in the music industry.⁸⁸

SECTION 3.3.6. NATIONAL MUSIC TRIBUNAL

This body will be responsible for dispute resolution in the Music Industry. The Functions of the Music Tribunal shall receive complaints from actors in the Music Industry, compile all complaints received, convening arbitration meetings of affected parties, use the best means to resolve the disputes and later inform the public on the resolutions they have reached. In any industry, especially one that is competitive is this one; it is inevitable to have conflicts within the industry or with other stakeholders. That is why it is important to have this tribunal.⁸⁹

⁸⁷ Section 2, National Cohesion and Integration Act (Act No. 2 of 2008).

⁸⁸ National Music Policy, Republic of Kenya, Ministry of sports, culture and the arts, 2015

⁸⁹ National Music Policy, Republic of Kenya, Ministry of sports, culture and the art, 2015.

SECTION 3.7 CONCLUSION

It is key to note that the legal and institutional framework that governs the music industry are mostly associated with copyright protection and fight against the infringement. Most of the legal and institutional framework is associated with the protection of music as a property and ways to ensure that the parties benefit from their craft but there is none to protect their freedom and to ensure they are safe despite what route their craft may take. However, there is inadequacy when it comes to protection of their freedom of expression in their crafts. There is a need to expand the framework to protect them so as to curb insecurity when musicians are politically oriented in their craft.

CHAPTER 4.0; TEST OF CONSTITUTIONALITY

SECTION 4.1. INTRODUCTION

As earlier discussed, the music industry is governed under the umbrella of various legal and institutional frameworks which include the constitution of Kenya. The music industry is an exercise of the freedom of expressions provided for in article 33 of the constitution of Kenya.⁹⁰ However, the absoluteness of the enjoyment of the right has been in contention because it has become one of those industries that many have found themselves in the wrath of the law because of their craft. This has become evident when the craft of the musicians have a political orientation. Several musicians have been arrested for what was termed is releasing inciting music or one that destroys the public face of a politician. There are several limitations to the exercise of the freedom of expression that in turn make the freedom sort of nonexistence. Section 13 (1) (a) of the National Cohesion and integration act on hate speech and inciting statements together with defamation have become the basis of all suits against musicians who have been arrested.⁹¹ This chapter seeks to evaluate the constitutionality of these laws keeping in mind that the constitution is the supreme law of the land.

SECTION 4.2. SUPREMACY OF THE CONSTITUTION

The constitution has several principles, but the arguably most important one is the supremacy of the constitution. This means that the constitution is the supreme law of the land and therefore it is the most important piece of law in the legal system and ranks above all other legislations, customs and principles. Where a conflict arises between the constitution and any other legislation the provisions of the constitution will reign.⁹²

Article 2 of the constitution stipulates that the constitution is the supreme law of the republic and binds all persons and state organs.⁹³ It also states the validity or legality of this constitution is not subject to challenge by or before any court or any other state organs In the *Njoya Case*, Ringera J

⁹⁰ Article 33, Constitution of Kenya (2010).

⁹¹ Section 13, National Cohesion and integration Act (Act No. 12 of 2008).

⁹² Mbondenyei K and Ambani O, *The New Constitutional Law of Kenya; Principles, Government and Human rights principles*, Law Africa Publishing Ltd, Nairobi, 2012,63.

⁹³ Article 2, Constitution of Kenya (2010).

attempted some constitutional amendments and fell short of declaring them invalid. It also states that any law that is inconsistent with the constitution is void.⁹⁴The judicature act also emphasizes on the supremacy of the constitution by acknowledging that there are many sources of law but are all subordinate to what the constitution states.⁹⁵The supremacy of the constitution traces its origin to the case of Marbury v Madison where the Supreme Court stated that the constitution is supreme and triumphs in case of any other law contention. It is important to insist on the supremacy of the constitution as we aim to put the law used to charge the musicians into the test of constitutionality.⁹⁶

SECTION 4.3. INTERPRETATION OF THE CONSTITUTION

In tackling this chapter of the test of constitutionality of the law used, the broad interpretation of the constitution will be used. The liberal approach of interpretation will be taken. In the case of Timothy Njoya v Attorney General, the court held that the constitution is not similar to an act of parliament that being said it should be given a broad and liberal approach of interpretation.⁹⁷

SECTION 4.4. THE CONSTITUTIONALITY OF THE CLAIM OF DEFAMATION AND HATE SPEECH IS THE BASIS OF SUITS

The basis of the suits against musicians whose art is politically oriented and targets a particular political personality is the claim of defamation and section 13 of the National Cohesion and integration Act on hate speech and incitement.⁹⁸The question that arises is whether or not these bases; defamation and hate speech, are a ground on which a constitutional limitation on the rights of freedom of expression and do they infringe on the right of freedom of expression is guaranteed in the constitution. The decision in the coalition for reforms of democracy vs the republic stated that limitations to freedom of expression must be on grounds permitted under

⁹⁴ Timothy Njoya and 6 others v the Attorney General and 4 Others, Nairobi High Court Miscellaneous Civil Application Number 82 [2004] eKLR.

⁹⁵Section 2, Judicature Act, (Act No. 8 of 1873).

⁹⁶ Marbury v Madison (1803), The Supreme Court of the United States.

⁹⁷ Timothy Njoya and 6 others v the Attorney General and 4 Others, Nairobi High Court Miscellaneous Civil Application Number 82 [2004] eKLR.

⁹⁸ Section 13, National Cohesion and Integration Act (Act No. 2 of 2008).

article 33 (2) and that the state has a duty to demonstrate that the limitation is justifiable and that the freedom of expression is not a right to be interfered with lightly.⁹⁹As earlier discussed, freedom of expression should be free from any domination by another party, the government, republican freedom, it to be actualized and beneficial to the people. Article 24 of the constitution of Kenya 2010 outlines the grounds for justifiable limitations of the rights.¹⁰⁰

The right to inhibit freedom of expression conferred by article 33 is basic and vital for the sustenance of parliamentary democracy which is the basic structure of the constitution. These basis of the suits infringe upon the freedom of expression of the musicians which makes it unconstitutional.¹⁰¹

The reasonable restrictions are those which are meant to prevent the expression of a thought which is intrinsically dangerous to public interest and would not include anything else. Article 33 is intended to safeguard the interest of the states and the general public and not an individual and defamation is against an individual which makes it unconstitutional. It is not reasonably justifiable in a democratic society.¹⁰²

In the international scene, the United Nations commission on human rights noted that one of the sanctions of the hate speech laws and defamation law is sanction. The commission says,“*Detention is a sanction for the peaceful expression of opinion is one of the most reprehensible practices employed to silence people and accordingly constitutes a serious violation of human rights.*” This is against the bill of rights in the constitution which makes it unconstitutional.¹⁰³

Music plays a vital role in disseminating information and addressing injustices especially political one's with the aim of protecting the rights and interests of ordinary citizens. It is hard to do this without defaming one person especially for those that are politically oriented to a particular political or public figure. The aftermath effect of the offence is silence and thus

⁹⁹ Article 33, Constitution of Kenya (2010).

¹⁰⁰ Article 24, Constitution of Kenya (2010).

¹⁰¹ Jacqueline Out v Attorney General and another 2016 eKLR.

¹⁰² Article 33, Constitution of Kenya (2010).

¹⁰³ <https://www.un.org/en/universal-declaration-human-rights/> on December 2020.

affecting the free flow of information in the public which is in turn a breach of their freedom to information as prescribed in article 35 of the constitution.¹⁰⁴

SECTION 4.5 CONCLUSION

Based on the discussion in this chapter it is safe to say that these laws used by the state to prosecute the musicians are unconstitutional and go against the constitution of Kenya provisions. Owing to the supremacy of the constitution any law that goes against the constitution should be invalid. The many limitations of the freedom of expression make it close to a non-existent concept. There is need to provide more protection to the musicians in the exercise of their freedom of expression.

¹⁰⁴ Article 35, Constitution of Kenya (2010).

CHAPTER 5.0; RECOMMENDATIONS AND CONCLUSION

SECTION 5.1. FINDINGS

SECTION 5.1.1 RELEVANCE OF THE ASPECT OF FREEDOM TO EXPRESSION

Freedom is very important when it comes to expression. It is basically the basis of expression. This is because freedom is concerned with having free will without undue constraints and that is how freedom should be without constraints. Freedom is also related to the aspect of domination and non-domination; this means that there is no unjust imbalance of power that gives some agent the power to control the other person. The music industry is one that is fully reliant to the exercise of the freedom of expression meaning that the musicians are in a position to express them freely using their craft even when they want to address political injustices. This makes freedom essential is when the aspect of freedom is denoted then the point of expression if it is restricted.

SECTION 5.1.2 LIMITATIONS OF THE FREEDOM OF EXPRESSION

There are limitations to the freedom of expression when it comes to the music industry. One of them is on the basis of Section 13 of the national Cohesion and integration act on hate speech and incitement. The problem however comes to what fits the classification of hate speech or incitement when it comes to craft that addresses the political injustices in the country. Another one that is used is the defamation act. Defamation is a limitation to your freedom of expression, but the problem comes when for example a song is released that targets a politician and destroys their image in the court of public opinion, and that is termed is defamation whereas the point was to address a political injustice. This limitation makes the exercise of freedom in a way only in theory and not in a practical sense.

SECTION 5.1.3. LEGAL AND INSTITUTIONAL FRAMEWORK

There are several legal and institutional frameworks that have been put in place to govern the music industry. However, they are not sufficient. Most of them are related to the protection of intellectual property rights and few or rather none on the protection of the freedom of expression of the artists which makes it very difficult for the musicians to feel safe as they express themselves using their craft. This brings the need to expand the frameworks and accord musicians more protection.

SECTION 5.1.4. CONSTITUTIONALITY

These laws used to charge the musicians who are arrested because of releasing politically oriented songs that rub a politician or an arm of government wrongly are an infringement of the provisions of the constitution on freedom of expression; therefore, they fail the test of constitutionality.

SECTION 5.2. CONCLUSION

This study has explored the importance of the aspect of freedom and the legal framework that govern the music industry. The study aimed to find out whether there is sufficient legal and institutional framework to govern the music industry. The study found out that there is legislation and several institutions that govern the music industry however most of them are copyright oriented and there is none that explicitly protect their freedom of expression.

SECTION 5.3. RECOMMENDATIONS

In order to ensure that the music industry is sufficiently protected to ensure that the parties of that industry are in a position to prosper in their various crafts I suggest the following recommendations.

1. Draft and enact sufficient legislation that protects and governs the music industry owing to the fact that it is one of the most successful industries that contribute to the economy.
2. There should be more focused interactions with the industry players to help the legislators to try and understand the industry as a whole to ensure they know what they

need. This will help in drafting of better legislation and policies that will serve the industry

3. For the institutions that are already there, work towards making them serves the musicians better. For example, the MCSK which has been the basis of many complaints because the musicians are not getting their royalties. This could be done by having an effective management and representation from the musicians.
4. Politics and music are inseparable; I suggest that the musicians are offered more protection in instances where their craft is politically oriented. They should be protected because they use their voices on behalf of the citizens to address political injustices.
5. I suggest a review of the defamation act to clearly indicate what falls in the category of defaming someone when addressing political injustices.
6. The review of the National Cohesion and integration act on the provisions of hate speech.

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LEGISLATION

1. Article 33, Constitution of Kenya (2010).
2. Article 24, Constitution of Kenya (2010).
3. Article 11, Constitution of Kenya (2010).
4. Article 44, Constitution of Kenya (2010).
5. Article 35, Constitution of Kenya (2010).
6. Chapter 4, Constitution of Kenya (2010).
7. Section 3, Copyright Act (Act No. 130 of 2001).
8. Section 22(1), Copyright Act (Act No. 130 of 2001).
9. Section 2, Judicature Act, (Act No. 8 of 1873).