



SOUTH AFRICA – FRANCE CO-PRODUCTIONS STUDY IN THE SCOPE OF THE CO-PRODUCTION TREATY

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ABBREVIATIONS

ATFT	African Film and TV Transformation organisation
CNC	Centre National du Cinéma et de l'Image Animée (France)
CSA	Conseil Supérieur de l'Audiovisuel (France)
DTI	Department of Trade and Industry (South Africa)
DTT	Digital Terrestrial Television
EAVE	European Audio-visual Entrepreneurs (Europe)
FESPACO	Festival Panafricain de Ouagadougou (Burkina Faso)
IDC	Industrial Development Corporation (South Africa)
IFF	International Film Festival
IPO	Independent Producers Organisation (South Africa)
NA	Not applicable
NC	Not communicated
NEF	National Empowerment Fund (South Africa)
NFVF	National Film and Video Foundation (South Africa)
OMC	Organisation Mondiale du Commerce
SOFICA	Sociétés pour le financement de l'industrie cinématographique et audiovisuelle
TNT	Télévision Numérique Terrestre
USD	US Dollars
UNESCO	United Nations Educational, Scientific and Cultural Organization
VOD	Video On Demand
WTO	World Trade Organization
ZAR	South African Rand

DEFINITIONS

- **« Official » and « Non official » co-productions**

Two or more companies reach an agreement to produce a film or audio-visual work together, pooling resources, talent and funds. Informal co-productions can be negotiated between any types of companies. As a result, copyrights are shared between parties; usually the above-mentioned rights are shared equally with regard to the respective financing input.

A formal or “**official**” **co-production** complies with the terms and conditions of a bilateral agreement, which has been ratified by the governments of two countries. It is to be approved by the relevant authority in both countries and to receive “dual nationality” to allow the project to access financing and advantages in both countries.

An “**unofficial**” **co-production** can be established if it is achieved without subscribing to the rules of the bilateral co-production treaty (or multilateral in the case of the European convention).

- ***Agrément (approval of the investments and approval of production)***

Stemming from the French system, the approval of a project/film (of its investments and later of its production), obtained from the CNC, grants it “French nationality” and thus its admission to the advantages of the various existing supports.

On the one hand, the approval of the investments (*agrément des investissements*), is compulsory or optional according to the nature of the financing.

On the other hand, the approval of production (*agrément de production*) is compulsory for all the official co-productions and intervenes after the movie has been delivered. The Approval Commission (*commission d’agrément*) assesses the applications for approval by verifying that the conditions of production are in accordance with the rules. In our case, the rules of the co-production agreement come “to soften” the rules of the national approval, by allowing for example the talents and foreign technicians to be counted as national.

- ***Advanced and Final Ruling***

Stemming from the South African system, the advanced and final ruling are respectively very similar to the *agrément des investissements* and to the *agrément de production*. Here also, obtaining these agreements allows the project, then the finalized movie, to achieve “South African nationality” and so to be also admitted to the advantages of the various existing supports.

PRESENTATION OF THE STUDY

Contextual elements

With the intention of strengthening their cooperation in the field of cinema, France and South Africa signed, on May 16th, 2010, an agreement for film co-production. According to the introduction, the objective of this agreement is "to develop and to facilitate the co-production of films likely to be of benefit to the cinematographic industries of both countries and to the development of their cultural and economic exchanges".

The co-production treaty (also called "co-production agreement") between France and South Africa applies only to feature films. It does not concern the audio-visual works produced for television. Competent authorities for the implementation of this agreement are, on the French side, the National Center for Cinema (CNC) and, for South Africa, the National Film and Video Foundation (NFVF).

A workshop for French-South African co-productions was organized in July, 2012, within the framework of the Durban International Film Festival. A meeting on this theme was also organized in 2013 on the Pavillon Cinemas du Monde during the Cannes film festival. To date, 4 films have been coproduced within the framework of the agreement and a 5th is in the process of production. Other films have been coproduced since 2010 without benefiting from the approvals and advantages of the agreement.

Five years after the signing of the agreement, it seemed useful to assess its application and the co-productions realized between France and South Africa. The idea of a study to evaluate the co-productions between both countries was proposed by the French Embassy in South Africa (which commissioned this study, co-financed by the NFVF), within the framework of a meeting between the CNC and the NFVF during the Cannes film festival 2015. It has been achieved under the supervision of Frédéric Chambon, regional Media and Film attaché for the French Embassy in Johannesburg.

This study is also in the context of the current discussions about a new agreement for cultural cooperation between France and South Africa, which aims in particular at strengthening collaboration and investments between both countries in the field of cultural and creative industries, including the cinema industry through the co-production treaty.

Objectives

The objective of the study is to supply a document of evaluation, analysis and recommendation on the implementation of the co-production agreement between France and South Africa based on a detailed analyse of the official co-productions achieved.

The idea is to allow competent authorities (CNC, NFVF) to have a thorough and objective knowledge of the realities of implementation of the agreement and the difficulties met; to improve the mechanisms and the practices implemented by the concerned professionals, the involved partners and the competent authorities in both countries.

NB: the opinions expressed in this document are the ones of the author and do not reflect in anyway the study commissioners opinion or point of view.

Methodology

This study was realized in France (Paris) and South Africa (Johannesburg, Pretoria, Cape Town) over a period of 20 working days between November and December 2015. For that purpose, were interviewed numerous producers, representatives of regulatory authorities and principal investors in each country.

Furthermore, several documents and additional sources were consulted for more information concerning the context and the results of this agreement. The list of the consulted people and documents is in an appendix to this study.

To be noted that the access to the agreement applications in France and South Africa were not accessible (only contracts are made public). This study was subsequently not able to analyse in detail the financing as well as the precise repartition of the creative, financial or technical elements between the partners of each country.

About the author

Born in 1974 in England, **Lucas Rosant** now lives and works in Paris. After graduating from a French Business School he was soon involved in short film production and sales with the New York University (NYU – Tisch School of the Art). He then worked for the organisation and programming of several International Film Festivals, among others *La Quinzaine des Réalistes* (Directors' Fortnight, Cannes), *Marrakech International Film Festival* (Morocco), *Premiers Plans d'Angers* (France), *Paris Cinema International Film Festival*. He also created and headed for 7 years the Paris Project, the co-production and development platform of Paris Cinema.

In parallel, he has been for many years or is still consulting and matchmaking for different co-production forums and festival markets such as Crossroads - Thessaloniki International Film Festival (Greece), Dubai Film Connection - Dubai International Film Festival (UAE), Open Doors – Locarno International Film Festival (Switzerland), Producers Network – Cannes Film Market (France), Produire au Sud - 3 Continents Film Festival (Nantes, France), HAF (Hong Kong Film Financing Forum), Durban Filmart (South-Africa), Berlinale Co-production Market (Germany), the Cinemart (Rotterdam Film Festival) and Venice Film Market.

He also joined the EAVE network in 2010, the reading committee of the Hubert Bals Film Fund in 2011 and was appointed senior expert for the Euromed Audio-visual III. He carried out a diagnosis and strategic development plan for the FESPACO (Festival Panafricain de Ouagadougou) and MICA (African Film Market) commissioned by the European Union in 2013; as well as a collection and an analysis of data on the status of artists in ACP countries (Africa, Caribbean, the Pacific) for the program ACP-Cultures+ (supported by the European Commission).

Lucas Rosant recently created his own production and consulting company Melia Films which co-produced *The Dream of Shahrazad* (François Verster, South Africa, 2014, Best South African Documentary – Durban IFF 2015), *Remote Control* (Byamba Sakhya, Mongolia, associated producer).

ANNEXES

- Sources - Bibliography
- List of professionals and structures consulted
- List of French and South African co-production agreements
- Co-production Treaty between the Republics of South Africa and France

1. PRESENTATION OF THE CO-PRODUCTION AGREEMENT

This first part of the report presents the important points of the South Africa - France co-production treaty as well as their advantages and inconveniences in the context of this study and its objectives. In a second part it draws a general portrait of the co-production in both countries for a better understanding of the situation, its stakes and characteristics.

1.1 The Co-production Treaty, its context and specificities

The Co-production Treaty was signed in 2010¹, the process of negotiation was launched at the request of South Africa, which had at that time a will to develop international co-productions to support its national industry. The frame of the legal text is based on a standard pattern that France has with other extra-European countries. This treaty is very similar with the one signed by France with China the same year. It applies exclusively to feature films for the cinema.

1.2 Main rules of the Treaty²

Article 4.1. Recognition of national films and entitlement to benefits

Subject to the approval of both competent authorities, a film co-produced in compliance with this agreement shall be deemed to be a national film in the territory of the parties and shall be fully entitled to all the benefits which are or may be accorded to films by each of the parties under the domestic law in force in their respective countries.

NB: The joint approval by competent authorities must be obtained before the beginning of the shooting.

Article 6. The Co-producer's Status

The Competent Authorities ensure that:

1. *The French co-producer fulfils all conditions relating to status, which has to be fulfilled in order for the production to be eligible as a French film.*

NB: It concerns here the obtaining of the investments approval (agrément des investissements) before shooting, then the approval of production (agrément de production³), which gives the final status of French Film.

For more information: www.cnc.fr

The system is, in France, a point system (every French creative, financial and technical element is then taken into account), following the European scale as reference. The latter requires the cumulating of 14 points out of 18. Thanks to the treaty, the South African elements are accepted as European elements and subsequently as French. The exact table of these points is available on the web site of the CNC, which allows the producers to simulate the possible results of the decision in a very precise way.

2. *The South African co-producer fulfils all the conditions relating to status, which would be required to be fulfilled, if that producer was the only producer in order for the production to be eligible as a South African Film.*

NB: Here as well, the definitions of advanced and final ruling are in the introduction of this study. The request for advanced ruling must be made at least 30 days before the shooting,

1 Such an agreement can only be signed if both countries have also ratified the Unesco's Convention on Diversity, support their industry and if the audio-visual sector has not been liberalized

2 The integral text of the Treaty is presented in annex of this study

3 Definition of these terms to be found in introduction of this study

and its approval is mandatory for the obtaining of the 35 % tax rebate with the DTI. The application is then assessed by a committee (of which the list is not public) according to the general aspect of the project following a list of various elements: structure of the scenario, economic viability, commercial potential, profile of the applicants, empowerment of previously disadvantaged crews, etc. (More info on www.nfvf.co.za).

In reality, there is a lack of clarity concerning the precise criteria attributing South African nationality to a feature film. There is no precise document on this subject available on the website of the NFVF or upon request, which generates a certain degree of uncertainty that could be perceived as problematic by the professional interviewed.

If we refer to the criteria of the DTI, the feature film must be shot in South Africa (the NFVF evokes 50 to 75% and 2 weeks minimum), the language has to be one of the country, the majority of the members of the team have to be of South African nationality (and not simple residents). The producer, the scriptwriter and director have to be of South African nationality (exceptions are possible according to the creative elements of the project). Finally, the copyrights have to be the sole property of a South African company.

Thanks to the application of the co-production treaty, the French elements become South African on principle. However the lack of clarity and transparency in regard to the South African nationality of the film is to be insisted upon and could eventually discourage potential foreign partners from coproducing with South Africa (or from complying to the Treaty); the obtaining of the advanced and final ruling being thus perceived as random or unpredictable.

Article 8. Participation

1. *Persons participating in a co-production film shall be nationals of the Republic of South Africa or the French Republic, or nationals of a member State of the European Union or a European Economic Area State, and where there is a third party co-producer, nationals of the third co-producer's country*
2. *Subject to the approval of the competent authorities, in exceptional circumstances and by mutual agreement, restricted numbers of performers and/or technical personnel from other countries may be engaged*

NB: These derogations are generally granted if a fundamental element of the film is neither French, nor South African (such as the example of a foreign character). Such dispensations are sometimes also granted concerning shooting locations outside both countries, for similar reasons.

Article 9. Contributions

1. *Each co-producer shall contribute to the budget of the co-production film, between twenty per-cent (20 %) and eighty per-cent (80%) towards the production costs of the co-production film.*

NB: This is a very important principle of the treaty defining the minimum required as a financial participation from each party to the total budget. The respective Tax Credit and Tax Rebate of France and South Africa are included in the financial contributions of each company.

2. *In principle, the technical and artistic contribution of the producer of each Party shall be reasonably proportional to each co-producer's financial contribution, except in the event of an exemption granted by the Competent Authorities of both Parties in exceptional circumstances.*

NB: The collaboration between the Parties can on no account be exclusively financial and

consequently has to include artistic and technical collaboration between countries, which is also one of the founding ideas of the treaty. In fact, each party has to commit technicians and/or national talents for the shooting and/or the post-production as well as sharing the assembly line of the film. As a result, most of the time, the post-production is generally taken care of by the country where the film was not shot. In certain cases, the split of this assembly line can be more complicated.

Article 16. Ownership

1. *Each co-producer shall jointly hold the tangible and intangible rights of the film.*

NB: The practice is usually that each party is a joint holder of these rights at the level of its financial contribution, each generally keeping the whole of these rights for its own territory/country. The application of the co-production treaty enables to bend the DTI rule requesting the copyrights to be entirely own in South Africa (the French elements becoming South African). Nonetheless, this co-ownership of copyrights has caused problems in the past (Cf.: Section of this study presenting the film *Accident*).

Article 17. Training and cooperation

1. *The Competent Authorities of the two countries shall be particularly concerned with the training for jobs in the film industry. They shall consult each other with a view to considering jointly the steps to be taken to facilitate the initial training of film professionals and their continuous professional development. They shall encourage the conclusion of agreements or conventions between schools or bodies providing initial training or continuous professional development enabling, in particular, the movements of their students.*
2. *The Competent Authorities of the Parties shall examine specific ways of encouraging the reciprocal distribution and promotion of the films of each Party.*
3. *They acknowledge the need to promote cultural diversity facilitating the recognition of the reciprocal filmmaking in particular through film education programs or participating in film festivals.*

NB: If no formal arrangement has specifically been taken for that purpose, there is nevertheless a dynamic of cooperation between France and South Africa in the film domain incepted in particular by the department of cooperation of the French embassy and the French Institute of South Africa (IFAS), in connection with institutions like the NFVF and South African professional partners: programming of films within the framework of the cultural crossed seasons between France and South Africa 2012-2013, cooperation with AFDA cinema school, support to South African talents and capacity building initiatives through local platforms (DFM Durban), etc.

Furthermore, the upcoming agreement of cultural cooperation under discussion between France and South Africa mentions specifically the Cinema sector as a full component of their cooperation in the field of cultural and creative industries, referring in that matter to the coproduction treaty.

In the article 18, the agreement also requires the regular meeting between the regulatory authorities of both countries (NFVF and CNC), which has never taken place officially. Meetings are nonetheless regularly happening between the CNC and the NFVF, the latest was during Cannes IFF 2015. The same article 18 also includes the idea of reciprocity in the near future, with the principle of a film for a film (being understood as an initiative film from each country), which is still not the case, the five official co-productions to this day being of French initiative.

1.3 Financial support accessible through the agreement

1.3.1 France

This document summarizes the various sources of financing and the aid mechanisms available in France for the French contribution to co-production of feature-length films.

Public Aids

Automatic financial backing:

- to the production (CNC);
- to the distribution (CNC).

Selective financial backing for production:

- advance on earnings (CNC);
- direct support (Aide aux Cinémas du Monde - CNC);
- regional production support (Regional film commissions);

Selective financial backing for production for distribution (CNC)

Private financing

- Investment by television broadcasters:
 1. as co-producers;
 2. pre-buying licensing fees;
- Investment by SOFICA (Equity funds);
- Minimum guaranteed in advance payment (cinema, video or abroad).

1.3.2 South Africa

The South African government has set up the following financial schemes to support the development, production and marketing of feature films and audio-visual works:

- South African Film and Television Production and Co-production incentive is a production incentive in the form of cash rebate accessible to South African productions and official co-productions⁴;
- The Export Marketing and Investment Assistance (EMIA) Scheme is administered by the Department of Trade and Industry. The scheme is primarily aimed at developing an export market by assisting South African producers and directors to access foreign markets;
- The NFVF financially support in the development, productions, marketing and distribution of features, shorts, documentaries and animations;
- The Industrial Development Corporation (IDC) of South Africa grants loans and can take up to 49% equity participation in films that are commercially viable;
- South African Revenue Service administers a tax allowance that benefits individuals who invest and have ownership in films (also called *Section 12*).

⁴ The rebate is then 35 % on the total eligible South African spending for a film having obtained Advanced Ruling, instead of 20 % for a foreign shoot.

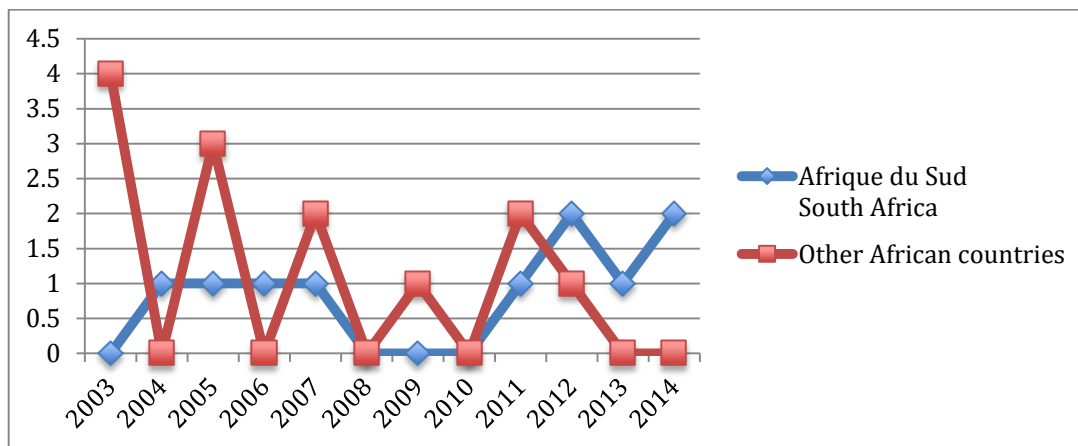
1.4 General context of the co-production's situation in France

France is a country of co-production. In 2014, of the 258 films “approved” as French, 106 were the object of an official co-production with 34 different partners. The country has signed to this day 56 co-production agreements besides the European convention. The effective application of each is quite random, many have never been used, and others were mainly ratified for political reasons. In the other hand, some of the treaties (as with Germany or Belgium) are particularly used, mainly due to the high proximity of their respective industries as well as their geographical vicinity.

Since 2003, around 110 to 120 official co-productions are made per year in France; as shown by the table below, the sub-Saharan Africa region is not the most active region in terms of official co-productions with France.

Number of official co-productions of France with sub-Saharan Africa⁵

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	TOTAL
Afrique du Sud South Africa	0	1	1	1	1	0	0	0	1	2	1	2	10
Burkina Faso	2	0	2	0	1	0	0	0	0	1	0	0	6
Guinée Guinea	0	0	0	0	0	0	0	0	0	0	0	0	0
Sénégal Senegal	1	0	1	0	1	0	0	0	2	0	0	0	5
Cameroun Cameroon	1	0	0	0	0	0	1	0	0	0	0	0	2



It can be seen from the table that the relation with South Africa is much more regular and stable than with the rest of sub-Saharan Africa, even though the latter has historical relationships with France. To be noted also that the number of co-productions with South Africa widely exceeded those with the whole of sub-Saharan Africa following the application of the treaty in 2010.

⁵ Source: CNC

1.5 General context of the co-production's situation in South Africa

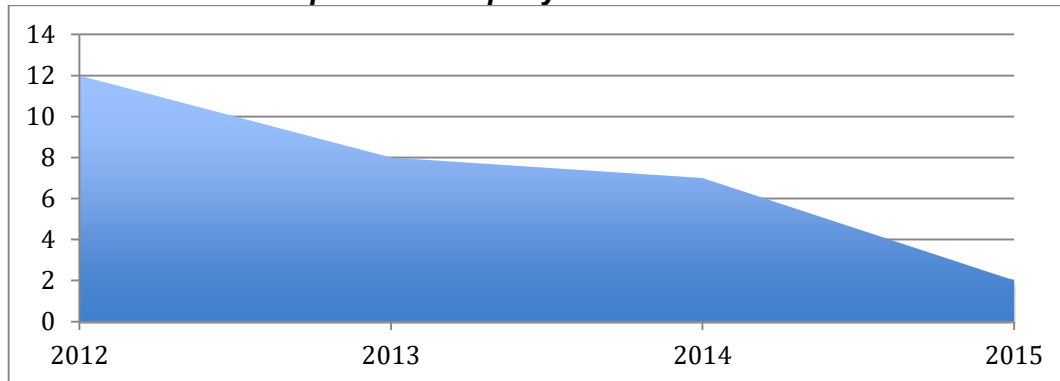
South Africa is more a country of production services than feature films co-production in term of international collaboration⁶. The country having signed only 9 co-production treaties but hosts around 110 to 140 international shootings per year, among which important Hollywood productions. The magnificence of the landscapes, the flora and fauna, just as much as the high level of technological equipment and the experience of the local teams can explain this significant number of international shootings in this country. This is on top of the attractive DTI's tax incentive scheme.

Even if lower than in the case of a co-production, the South African tax incentive also applies for international production servicing (20% of eligible expenses). The great numbers of these international productions and the amount of tax rebates used by Hollywood productions in particular have exceeded the forecasts of the DTI. As a result, end of 2015, the DTI has already committed its allowed budget before the end of the 3 years of its program. In light of this situation, the next 3 years program, its new set of rules and its new amounts are currently in negotiation within the government.

As mentioned, the level of co-production is rather low in the country, with 12 official co-productions in 2012, 8 in 2013, 7 in 2014 for only two applications for advanced ruling in 2015. There is a drastic and alarming reduction in the number of official co-productions with South Africa, which generates not only a loss of creative control, but also a loss in terms of copyright ownership (and of future income).

In terms of co-production, South African's historic partner seems to be Germany, with 4 movies (cinema and/or television) in 2014, 3 in 2013 and 8 in 2012. However, the number of co-productions with Germany is also decreasing drastically.

Number of official co-productions per year ⁷



As mentioned by the NFVF in its latest report, there is therefore a real necessity and urgency for the competent authorities to redress the situation and curb the downsizing of co-productions. Some solutions seem necessary in regard to the evaluation of the treaty and are mentioned in this report (Cf.: Part 3).

⁶ Only a dozen of South African companies have achieved a co-production (even non-official) the past 5 years

⁷ Source: NFVF

1.6 Remarks

The stakes of the co-production treaty are obviously not the same for both countries and their respective industry. As shown by the brief portrait of the co-production situation in both countries, the impact of this agreement, its importance and its potential for expansion is not the same for each side. It is indeed "drowned" among 56 other treaties on the French side, among which some with countries having stronger industrial relationships with France in terms of cinema than South Africa might have. On the South African side, less seasoned to the co-productions and having only 9 agreements, this treaty can be used to access new territories and financing for films towards Europe and Africa, and also to reverse the trend between executive production and co-production.

With regard to the first results obtained by the treaty- detailed in the second part of the study, these can be considered as being very promising, opinion shared by both the NFVF and the CNC. This study takes as established the usefulness of this agreement, the necessity for further development and the shared willingness of the different parties to advance in this direction, which is also illustrated by the positive replies and feedback from interviews.

Nevertheless, the choice by the delegate producer to decide for an official co-production, and therefore to respect the additional rules of the treaty, will depend on intrinsic and creative elements of the project (the treaty cannot be applied to all projects and films) just as much as on the balance between the advantages and obstacles forecasted. As a result, if the incentive measures remain attractive enough, they can urge the French producer to relocate the shooting or a part of the assembly line in South Africa, and then enter an official co-production, as it has been shown by the past official co-productions described in the following part of the study.

2. RESULTS OBTAINED AND PRESENTATION OF THE FILMS COPRODUCED BETWEEN SOUTH AFRICA AND FRANCE SINCE 2010

2.1 Results obtained general comments

Since 2010, four films have been officially coproduced within the framework of the treaty binding the two countries and one is currently in production. *Layla Fourie*, also considered a South Africa – France official co-production has not been coproduced within the treaty here depicted; the French partner came on-board as a minority partner and could obtain the agrément de production thanks to the treaty between South Africa and Germany (South African elements becoming German, thus European) in addition to the European Convention (qualifying the European elements as French). This co-production is therefore not taken into account in the list of co-productions achieved in the frame of the co-production treaty between South Africa and France.

It should be noted that additional feature films were also coproduced “un-officially” during the same period, such as *Endless River* by Oliver Hermanus (which is also presented in the second part of this study), or *The Dream of Shahrazade*⁸, a creative documentary by François Verster. For the moment, no application for advanced ruling or agrément des investissements within the framework of this agreement is in the process of examination within the CNC or the NFVF.

In regard of the geographical and linguistic distance between both countries, this collaboration has been qualified as “dynamic” by the French side (CNC), and “having exceeded the forecasts” on the South African side (NFVF). On the French side, it is indeed the agreement that works best for France in sub-Saharan Africa (including French speaking countries), and shows more results than the one signed with South Korea years ago. On the South African side, the agreement is seen as a way to access to certain French speaking countries in Africa, which have also signed an agreement with France, by operating a three partners coproduction (a desire expressed by the representatives of the NFVF). These elements can only encourage both parties to develop this already fertile relationship.

Before 2010 and the signature of the treaty between France and South Africa, 4 co-productions have obtained the national status of the films being reached through an agreement with a third country (mainly Germany or England), with France or/and South Africa usually as a minority partner.

Since 2010, the 5 official co-productions are of French initiative (in spite of the fact that the financing can be mainly South African in some cases as with *Skoonheid* and *Accident*). This could be explained by the low rate of project development in South Africa able to lead to international co-productions⁹.

The particular economic situation of the South African film industry does not allow the generation of enough financing to cover this activity:

- Little to no public financing available for development;
- No obligation, or practice of investment from national broadcasters;

⁸ Awarded Best South African Documentary at the latest Durban IFF

⁹ Fact that can be measured by the expenses and the human resources invested; quite low in South Africa, from the own confession of South African producers and representatives of the IPO

- Few copyrights and little income generated nationally from the international shootings by limiting the practice to production services.
All these elements do not allow national production companies to generate sufficient finance to cash flow the long period of script development.

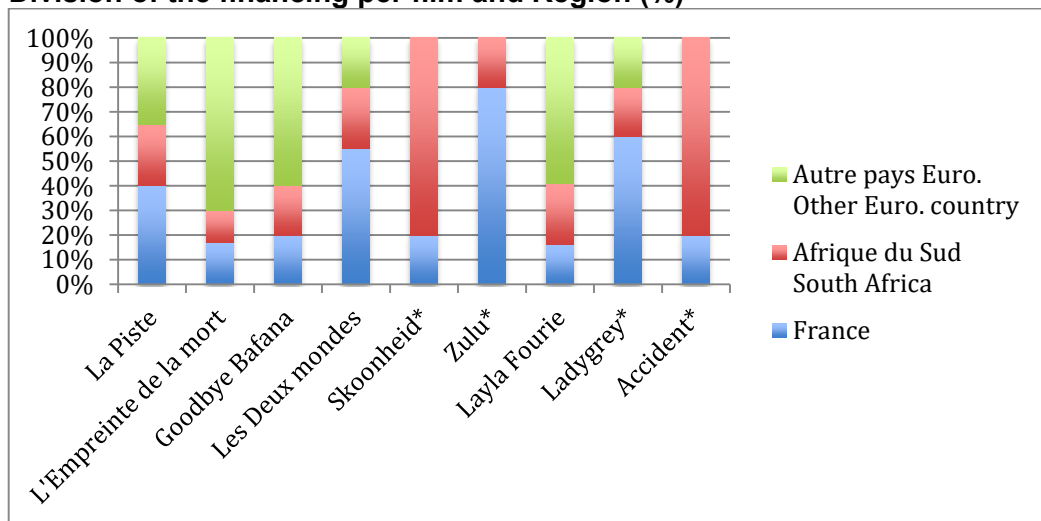
Below the global division of the financing between partners/countries:

		Division of the financing ¹⁰ (%)		
	Title	France	South Africa	Other Euro. Country
2004	La Piste	40	25**	35
2005	L'Empreinte de la mort	17	13	70
2006	Goodbye Bafana	20	20	60
2007	Les Deux mondes	55	25	20
2011	Skoonheid*	20	80	0
2012	Zulu*	80	20	0
2012	Layla Fourie	16	25	59
2014	Ladygrey*	60	20	20
2014	Accident*	40	60	0
Post-prod	Lionhood*	N/A	N/A	N/A

* Official co-production between France & South Africa

** Namibia included

Division of the financing per film and Region (%)



NB: *Layla Fourie* was able to obtain the French approval thanks to the co-production agreement between South Africa and Germany in addition to the European convention (the South African elements become German, thus European). Such a financing structure would not have been possible within the treaty with France as the French partner has less than 20% of the financing.

If more than three partners have co-production treaties with each of their respective country, the division of the financing raised from each international partner will then decide which treaty to be applied; the result of each treaty being quite similar (access to the different nationalities and related advantages).

¹⁰ Source : CNC

2.2 Description of the films coproduced within the Co-production Treaty

5 films have officially been coproduced (including one currently in production) in the frame of the co-production treaty ratified by both countries in 2010: *Skoonheid* (2011), *Zulu* (2013), *Lady Grey* (2015), *Accident* (in post-production) and *Lionhood* (in production).

Once again, we were not able to access the financing information of the coproduced films. The display below of these co-productions is thus based on the information collected during the interviews and from official publications.

2.2.1 Skoonheid

France / South Africa, 2011, Afrikaans – English

Director:	Oliver Hermanus
French partner:	Swift Productions (Didier Costet)
South African partner:	Moonlighting Films (Dylan Voogt)
Budget:	NC
Financing partners:	NC
Financing:	20% (France) / 80% (SA)
Shooting location:	South Africa (Cape Town, Western Cape)

Synopsis

Portrait of a closeted gay husband/father living a life of quiet middle-aged desperation who becomes fixated on a friend's handsome collegiate son, leading to an incident.

Comments

Skoonheid (Beauty) was released in South Africa on August 5th, 2011 and in France on October 12th of the same year. It is the first official co-production between the two countries and the first in Afrikaans presented at the Cannes film festival; it will also be nominated at the Oscars to represent South Africa. The film will afterward be sold (by MK2 International) on different important territories such as the United States, Germany and Great Britain.

The film (shot in South Africa) was co-written by Oliver Hermanus (South African) and Didier Costet (French); the post-production was made in France. These French elements, to which were added the delegate production company and some technicians, allowed the film to pass the test of the European convention and thus to obtain the French approval, despite the fact that the film is not a work in the French language. On the South African side, the shooting location, the speaking of an official language, the nationality of the director and co-writer as well as the other elements (technicians, main actors) gave it the right to obtain South African nationality.

Here the treaty was not a strong element to determine the choice of South Africa for the shooting; it is mainly the story and its context that motivated this choice. The signing of the agreement however influenced the structuring of the partnership and the contract between both companies; the application of the co-production agreement being then important to reach the best financial rebate from the DTI thanks to the South African nationality of the film.

The work is a French initiative despite appearances. The delegated company is Swift Productions, the French partner, which invested its own funds for the French part of the financing (20 % of the budget) by financing the development and the post-production. The South African company (Moonlighting Films) joined during the pre-production of the film and then managed the financing on the South African side as well as the shooting. The film was completed (from the writing to the delivery) within two years, a rather outstanding time schedule in view of the usual duration from development to production (from 3 to 8 years).

Both participating companies (Swift Productions and Moonlighting Films) were already experienced in terms of international co-productions (Swift had already coproduced 4 films with the Philippines, Moonlighting was able to work on big international productions such as *Mad Max*), but for each of them it was a first official co-production. Moonlighting was able to repeat the experience with *Lady Grey*. On the French side, it was decided not to go for an official co-production for the second collaboration between Swift Productions and Oliver Hermanus on *Endless River* (Venice 2015). The film thus has the South African nationality (final ruling), but the French approval could not be obtained.

The following arguments were put forward by Swift Productions to explain this decision not to comply with the treaty for *Endless River*:

- **Increase of manufacturing costs**

Besides the inherent, but marginal expenses, inferred by a co-production (translations of documents, communication expenses, etc.), the application of the various rules of each country (agrément and final ruling) activates other obligations, which can have a much greater incidence on the budget and financing:

- The obligation to respect the collective agreement for the French technicians and talents. To these salaries (much higher than those in South Africa, which created imbalance and tensions within the team) are added the travel expenses (transport, hotel, per-diem);
- The obligation to relocate the post-production in France (or Europe) when the shooting took place in South Africa, and vice versa (in order to be able to obtain on each side enough technical and creative elements, which will enable the film to access national support systems) will also add extra cost for two main reasons: the fact that the services of French laboratories and technicians are more expensive than those in South Africa, in addition to the fact that the French tax credit cannot be applied if only the post-production is done in the country (the spending level not being sufficient). As a result, carrying out the post-production in France increases the budget because of the higher rates, and the film cannot take advantage of either the South African or French incentives on the expenses in post-production.

- **Administrative weight and constraints**

The administrative process to obtain approvals from both countries can be perceived as extremely long, pointlessly time-consuming and sometimes complicated. Numerous documents are requested on top of the usual documents for a simple registration of the film to the various bodies to obtain a visa of exploitation.

The fact that documents must be passed on in different languages and formats is also time-consuming. Finally, the delays to obtain the agrément and/or the final ruling were described on each side as being extremely long and often delayed. This situation has

often generated cash flow issues as the obtaining of this certificate usually activates the first instalment from financial partners.

The decision to comply with an official co-production will therefore be a balance between the perceived inconveniences and advantages. For some films where the economy and commercial potential are fragile (despite their artistic value, many films receiving awards at important festivals do not find national distributors) the administrative constraints and budgetary weight are not necessarily compatible with the necessities of flexibility and the lack of accessible financing.

It should be emphasized that, regrettably, there is no measure or incentive to foster the repetition of a successful collaboration. The application of the agreement thus limits itself to the achievement of a unique project/movie (prototype), rather than to the development of a more structural and sustainable collaboration between both countries.

2.2.2 *Zulu* (City of Violence)

France / South Africa, 2013, Afrikaans –English

Director:	Jérôme Salle
French partner:	Eskwad (Richard Grandpierre)
South African partner:	Lobster Films (Eric Vidart-Loeb)
Budget:	16 millions USD
Financing partners:	NC
Financing:	80% (France) / 20% (SA)
Shooting location:	South Africa (Cape Town, Western Cape)

Synopsis

Policemen Ali Sokhela and Brian Epkeen investigate the brutal murder of a young white woman, apparently provoked by the availability of a new illegal drug and somehow connected to the disappearance of black street children.

Comments

Having been presented at the Cannes film festival for the closing night in 2013, *Zulu* occupied the fifth rank at the French box-office with 137.545 entries the week of its release. After seven weeks, *Zulu* finished its exploitation with 279 056 entries. On the international scene, the film brought in recipes of 2.621.496 \$. In South Africa, the film was only able to make 11.634 entrances¹¹.

The scenario is an adaptation of the eponym book *Zulu* by Caryl Férey (French) with a co-writer who is also French (Julien Rappeneau); the story (and the shooting) takes place in South Africa. The casting is mainly South African with the exception of the two main actors (Americans, Orlando Bloom and Forest Whitaker). This dispensation has certainly been authorized by article 8.2 of the agreement (which has not been confirmed by the producers).

The composer, the director of photography, the editing and the special effects are also French elements. On the other hand, the costume departments, set design, the largest part of the actors and the shooting locations are South African.

¹¹ Source : Unifrance

In terms of financing, it seems that the contribution on the South African side limits itself to the financial discount of the DTI (35 % of the South African expenses). This information is unconfirmed, not having been able to obtain access to the approval applications and to meet with the producers of the movie.

It may be imagined that without the agreement, the collaboration would have been limited to production services on the South African side. Here, the application of the treaty has allowed for more South African financing (35 % instead of 20% of the spending) but also the co-ownership of the copyrights (which was a success internationally) between both countries and other advantages as the reinforcement of skills and knowledge of the respective technical teams through a high profile international collaboration.

2.2.3 Lady Grey

France / South Africa / Belgium, 2015, Sotho – French – English	
Director:	Alain Choquart
French partner:	Le Bureau (Bertrand Faivre)
South African partner:	Moonlighting Films (Theresa Ryan)
Budget:	3 million Euros
Financing partners:	NC
Financing:	60% (France) / 20% (SA) / 20% (Belgium)
Shooting location:	Eastern Cape (Drakensberg)

Synopsis

Adaptation of La Dernière neige and Une rivière verte et silencieuse by Hubert Mingarelli.

Comments

The movie is a French initiative; the choice of the author-director (French) to work with South Africa was due to elements intrinsic to the story (context, landscapes, languages, characters). The casting is very international (Scandinavia, France, Great Britain, South Africa) with French as the majority language (51 %) as well as English and Sotho. The director of photography is South African, as is a large part of the technical team; whereas Belgian technicians and laboratories carried out the post-production.

It is in fact a tripartite official co-production using three treaties simultaneously (France-South Africa, France-Belgium and the European Convention) to allow the triple nationality of the film and therefore access to the financing of three countries (mainly the Tax Shelter in Belgium). A financial, legal and administrative construction that was rather complex also juggling equally with public money (Advance on Receipts, DTI) and private (pre-buys), as well as the Tax Shelter. Such a financial arrangement demands very special expertise and experience, in addition to a wide network in order to be able to react fast and preserve certain flexibility in the face of administrative rigors generated by such a co-production and its constraints (in particular those of spending, repartition of responsibilities, etc.).

The partners other than French are at a minimum 20 % to respect the requirements from both bilateral agreements with Belgium and South Africa; the Belgian elements are considered as French then South African, and the South African elements become French then Belgian (European) by the principles of the diverse treaties applied.

This construction gave access to the Belgium Tax Shelter (for the post-production) and to the financial rebate in South African for the shooting and other national spending. However the film had regrettably no possibility of being eligible for the Tax Credit in France (which justified the relocation of the post-production in Belgium), the minimum amount of the national expenses not being sufficient. Also, all the heads of departments would have had to be French nationals in addition to 5 mandatory days of shooting in France. These last two requests being extremely difficult to achieve if one wants to respect all the rules of an official co-production, even in the case of only a bipartite agreement.

To be also noted that the French producer of Lady Grey met his future South African partner during the co-production workshop organized during the Durban IFF in 2013. This workshop started with a presentation by the team of *Skoonheid*, which was participating to share experiences. This fact highlights the role of the professional networks as well as the organization of targeted professional events.

The shooting and the relationship between partners involved in Lady Grey went extremely well according to the feedback from each party, having both expressed their strong desire to renew the experience and to quickly find access to projects being able to be coproduced.

Finally, the film was released in France but was regrettably not a big success (the film stayed 2 weeks in the theatres for 1.261 tickets sold in Paris and suburbs¹²). To this day, it has still not found a distributor for South Africa.

2.2.4 Accident

France / South Africa, (post-production-2016), English

Director:	Dan Tondowski
French partner:	Superbe Films (Guillaume Benski)
South African partner:	Forefront Media Group (Ryan Haidarian)
Budget:	3 millions USD
Financing partners:	IDC, DTI, NEF, Cofilisirs
Financing:	20% (France) / 80% (SA)
Shooting location:	South Africa (Cape Town)

Synopsis

A group of teenagers suffer a terrible accident during a joy ride and get trapped at the bottom of a ravine.

Comments

The film is there too a French initiative, in spite of the final financing (80 % for South Africa). The film has been developed by Superbe Films before Forefront Films intervened at the time of the financing. It should be noted that both producers had known each other for a long time, and when the film was looking for a partner to contribute to the financing and shooting (the story could have easily been relocated elsewhere), this long-time relationship was finally able to bear fruit.

¹² Source : Film Français

The decision to shoot in South Africa was made by the delegate producer based on the landscapes required and on the additional funding available through the coproduction treaty. The film was financed on the French side thanks to pre-buys and the intervention of Cofiloisir. On the South African side, all the institutional financings could be raised. *Accident* is indeed the only one of the 5 films having benefited from the support of the IDC.

Accident has been the first co-production supported by the IDC, which created some administrative misunderstandings and delays, in particular because of their request to pledge all the copyrights in South Africa (which was rendered impossible by the treaty itself, but also incompatible with the requirements of the French financiers). The NFVF seems not to have intervened to solve this situation and the production had to use the services of a specialized lawyer to reach a compromise with the IDC.

The film also suffered several administrative delays from both authorities concerning the approvals, waiting for more than 4 months for each of them. The shooting was also complicated following the application of the collective agreement for the French technicians, creating differences of working duration and numerous subsequent organizational complications.

2.2.5 *Lionhood* (L'Enfant et le lion blanc)

France / South Africa, in production

Director:	Jacques Perrin
French partner:	Galatée Films (Christophe Barratier)
South African partner:	Film Afrika (Rudi van As)
Budget:	8,7 million d'Euros
Financing partners:	NC
Financing:	NC
Shooting location:	South Africa

Synopsis

NC

Comments

The shooting of the film extends over 3 years (from early 2015 to the end of 2017) as the story follows a child and a lion cub growing up together. Only South Africa could gather all the particular conditions necessary for this shooting, the child and the lion having to interact daily during the three years surrounded by experienced wranglers and film crews.

Naturally, the film has not yet received the *agrément de production* and final ruling (the shooting not yet being finished), but has already obtained the *agrément des investissements* and advanced ruling. The 35 % discount with the DTI was complicated to set up because of the specific arrangements of the shooting. The issues articulated around both the eligible expenses (its shooting having unusual expenses for a film due to its particular set-up) and especially in regard to the duration of the shooting. Indeed, the rules of the DTI stipulate that the film must be shot during a window of two years, which is impossible in this case. From then on, expenses of the third and last year risk not to be taken into account for the final amount of the rebate. A dispensation to this rule is currently being examined.

Concerning the financing, Studio Canal, Canal Plus and other private investors play a part in France. As for South Africa, there is only the contribution of the DTI up to now. The production having preferred not to approach the IDC, in particular because of the obligation to have a completion bond (more details on the next part of the report) but also because the production felt that the IDC administrative process was too complicated and not transparent enough.

Film Afrika joined the project one and a half year before the first day of shooting; the decision to shoot in South Africa was then confirmed. The post-production will be done in France and partially in Germany (Pandora Films is also a co-producer). The treaty between France and Germany was not used here as the German partner came in after the shooting started, they will nonetheless join the pool of the official co-producers later thanks to the application of the European Convention.

2.3 Remarks

In comparison to some other existing agreements that have hardly been used, the South Africa – French one has already been able to prove its utility by reaching the cruising speed of one film a year. There is also an expressed desire of the parties to accelerate this rhythm, which could seem practicable. More details of the recommendations in the final chapter of this report.

Also, despite the artistic or economic differences between all the 5 films, which do not allow direct comparisons, a pattern clearly emerges:

- Films are of French initiative;
- All the shootings happened in South Africa;
- The post-production was done in Europe.

This situation could indicate that the films would have been made independently of the signature of the treaty (which was also underlined by the producers at the time of the interviews). The main motivation is clearly financial with the 35% rebate of the DTI instead of the 20 % for production services.

Finally, it is necessary to emphasize again the numerous problems and administrative delays encountered in obtaining approval from both countries. It may be assumed that this is due to the fact that they were the first official co-productions, and the first time experience of co-production for certain partners (such as the IDC). One can only imagine such problems will diminish with time and experience.

3. EVALUATION OF THE CO-PRODUCTION TREATY AND ITS IMPLEMENTATION

It emerges from the application of the agreement and the co-productions achieved since 2010 a globally satisfactory assessment. The rhythm of a film a year highlights the efficiency of the treaty, contrary to others signed by France or South Africa. As previously mentioned, it is largely understandable by the particularly attractive tax incentive system on the South African side. Another attractive reason for the dynamics of co-production is the reciprocal access to the French / European markets on one side and South African's on the other one; the latter also being a gateway to the rest of the continent.

However, to reach the rhythm of 3 co-productions a year as wished by the NFVF, it will be necessary to solve a number of legal and administrative issues constituting an obstacle to the future expansion of co-productions between both countries or could even appear to be dissuasive.

3.1 Positive aspects: attractive supporting systems and two dynamic markets

3.1.1 Attractive supporting systems

As previously mentioned, the 5 official co-productions are all French initiative, and the main factor of choice in the decision to achieve an official co-production (and abide to its specific rules) was the access to additional financial support in South Africa through the DTI tax incentive system. On top of the potential support of the IDC, which has only been used for one co-production (in the case of *Accident*).

The DTI is therefore the cornerstone of the co-production system with South Africa, being the main motivational factor for the foreign partners to coproduce with the country. The financial rebate granted during production services is 20 % and rises to 35 % of the eligible South African expenses for a national work or an official co-production. From then on, if the whole shooting is done in South Africa, the financial contribution of the DTI can be enough to cover the 20% minimum required in terms of the financing by the treaty for the South African partner.

The incitation to coproduce is reciprocal in principle. Even if the situation has not happened yet (the 5 co-productions being of French initiative), the South African projects searching for French partners and funds do have access to the French private and public funding available (and described in the first part of this document). If the rules of the co-production treaty are respected, it would subsequently enable higher budgets than usually practiced in South Africa, while still controlling a certain level of the creative elements.

In the case of a South African initiative, the implementation well upstream of a co-production, at a development stage, could allow for more artistically ambitious productions as well for the South African partner. In particular by giving access to French funds for the development through the public coins collected by the French partner (through selective or automatic support funds within the CNC, etc.). In such a case, it would fill partially the lack of available funds for development in South Africa.

3.1.2 Favourable dynamics of market

As the brief display below of the situation in France (and Europe) and South Africa in terms of market tends to demonstrate, these two countries are complementary to each other and enjoy a reciprocal potential of structural collaboration and of outlets for their productions.

3.1.2.1 Access to the French and European territory

For South Africa, co-productions provide direct access to two markets with great potential: France and Europe. Indeed, an official co-production is considered a French movie, which will subsequently be considered European and will then benefit from support for the distribution within other European countries and outside.

Moreover, France and some of these European countries have a significant market share for "World Cinema" (non-European films, nor Americans)¹³.

Below a display of the market shares in France in terms of film nationalities (%)¹⁴ :

	2008	2009	2010	2011	2012	2013	2014	2015(*)
French films	45,5	36,9	35,9	41	40,5	33,8	44,4	35,2
U.S. Films	43,4	50	47,9	46,2	43	54	45,4	54,5
Others	11,2	13,1	16,2	12,9	16,5	12,2	10,2	10,3

(*) *Estimation*

Besides the Cannes film festival, which pays world cinema an important attention, France counts a lot of events and institutions dedicated or very favourable to such cinematography: Aide aux Cinemas du Monde (World Cinema support), co-managed by the CNC and the French Institute, Script development support from the Amiens Film Festival, Atelier Produire au Sud (producing workshop) and the Nantes 3 Continents Film Festival, Moulin d'Andé residency, Gan Fondation, Cinefondation residency, etc.

The emergence (quantitative and qualitative) of productions from numerous new territories of cinema over recent years (such as Latin America and South-East Asia) generates strong competition for the South African cinema in Europe. However the fact that the majority of South African films are in English could be an asset in terms of marketing with regard to other world cinema films.

Also, from the point of view of the French companies in search of partners and outlets for their productions, the European context which sees the share of national films shrink on the European territory makes all the more attractive a partner and market as South Africa. The later offering not only attractive financial incentives, but is also a strong influencer for the whole continent.

¹³ 3% in Europe according to the Observatoire Européen de l'audio-visuel

¹⁴ Source : CNC

3.1.2.2 South Africa: an unprecedented market in Africa and influencer for the whole continent

South Africa can represent a market with a high potential of expansion and opportunities. Two main aspects among others can be put forward to illustrate this situation:

- A soaring demand for cinema and television content;
- A window to access the African continent.

- **A soaring demand for cinema and television content**

For the Cinema sector

South Africa is the richest country - with Nigeria - and the most developed of the African continent. It possesses the most important network of cinemas and distribution in sub-Saharan Africa with 750 screens. In 2014, the country had more than 25 millions entries (for 53 millions inhabitants) with 228 films released in theatres.

The French cinema encounters a relatively modest but stable situation there (8 films a year for a little more than 2% of market share¹⁵). This is to be put in perspective in a market dominated by the Hollywood cinema (80%) and where national cinema being at 6,3% of the market share.

France finds itself in the 3rd position in term of foreign cinema after American and British cinema. In 2014, French cinema sold 555.312 tickets in South Africa, increasing the entries by 120% compared with the previous year (and a 180% increase of revenue mainly due to Luc Besson's *Lucy*)¹⁶.

For the Audio-visual sector

South Africa is the most important pay channel market in Africa with more than 5 million subscribers. With a 90% share, the historical operator DSTV-Multichoice is the main content provider for satellite television in South Africa and the whole continent. It has more than 3 millions subscribers in other English speaking African countries.

In South Africa, the satellite free-to-air offers are developing and, even if delayed, as it is everywhere else on the continent, the DTT is arriving and should create new needs for content. The growth perspectives of this market are strengthened by the development of VOD and the TV offers on the Internet and mobile phone (a dozen local providers already present on the market and Netflix just entered the country).

- **A reference market and window to the African continent**

DISCOP, the rally point for African broadcasters

For four years, Johannesburg has hosted the DISCOP Africa, market of African audio-visual programs, which shines on the entire English-speaking zone and beyond¹⁷. With 2200 participants in 2015, 58 % more than in 2014, the DISCOP is now the professional main event of the year for the buyers and sellers of African contents. It also attracts more and more distributors and producers of non-African content (Indian, Chinese, American

¹⁵ Source: Unifrance, Report 2014

¹⁶ Source: Unifrance, Report 2014

¹⁷ A DISCOP for French speaking Africa is organised in Abidjan, Ivory Coast

and European), which are growing their investments in the South African and African market. More than 40 French companies took part in the latest DISCOP on October 2015, including important players as Lagardère and Canal+, demonstrating a strong interest for this territory and continent on the part of the French media industry.

The Durban International Film Festival, a continental platform with a strong French participation

The Durban International Film Festival is one of the oldest and most important on the African continent. The 36th edition expressed the will of the organizers to emphasize its shine over the continent, which was translated through the participants and programming: screening of Fespaco awarded films, the presence of its Delegate Director, Ardiouma Soma, a selection of African classics such as *Touki Bouki* by Djibril Diop Mambety, a focus on Tunisian cinema including Mohamed Chellouf's presenting his film *Tahar Chérifa - under the baobab*.

In addition, the Durban Film Mart (DFM) remains the first and only co-production platform for African projects, with the support of international partners as the Berlinale, Nantes, Rotterdam and Amsterdam Film Festivals. In 2015, more than 500 delegates and 19 projects were selected, fictions and documentaries (10 South Africans, 9 from other African countries).

In the continuity of a strong French participation in 2014, the country's industry was highly represented in 2015 as well; through films programming, experts and professionals participating to the DFM:

- 17 French films or co-productions were screened, including 2 national premieres presented by their directors: *Le Dernier Loup* by Jean-Jacques Annaud and *Hope*, by Boris Lojkine;
- As in 2014, the Best Feature Film Award went to a French co-production (*Sunrise*, by Partho Sen-Gupta);
- Two Cannes selections showcased through a selection of films presented at the latest Critic's Week and the Film Factory (workshop for emerging talents) in partnership with the Directors' Fortnight, dedicated in 2016 to South Africa.
- Delegation of producers from the Reunion Island and experts from Produire au Sud (Nantes festival producing workshop) to participate to the DFM.

- **South Africa: a high expertise that extends through the continent**

Since decades, South Africa welcomes numerous international shootings, among which big Hollywood film and TV productions (*Blood Diamonds*, *Avengers*, *Black Sails*, *Dominion* for the series). In 2014, the country attracted more than 120 foreign productions, thanks to financial incentives, lower costs than in Europe or the United States, the landscapes as well as the technical equipment and skills available.

Production companies and South African teams are highly experienced in terms of shooting (fiction and documentary) and are now working on the whole continent for the shooting of national films just as much as production services. Even the Maghreb is concerned, in particular with a documentary in Libya currently coproduced by a South African company.

This experience and rather unique network is also an undeniable asset for a country as France having much presence in Africa with a view to develop triangular collaborations. From then on, the recourse to South African teams can allow access, in terms of shooting, to territories with otherwise difficult access for French teams and companies.

3.2 Existing obstacles

Below is a display of the main problems identified during the conversations with the various partners, the institutions and the investors in both countries. We're dealing here with problems specific to the South Africa-France co-production treaty and not the often recurring obstacles to any co-production: additional legal and communication fees, diverse obligations of national spending connected to the financing, the translation of the various documents, the necessary relocation of certain elements of the assembly line, etc.

3.2.1 Geographical and cultural distance

South Africa and France are geographically distant partners speaking a different language. There are also certain cultural differences to be noted between both competent authorities (CNC and NFVF), even if both have the same mission: to regulate, support and promote the economy of the cinema, nationally and abroad. Indeed, the financial support criteria of these two institutions are not necessarily based on the same elements of the project. On the French side, the *Aide aux Cinémas du Monde (World Cinema support scheme)* or *Avance sur Recettes (Advance on earnings)* are very much attached to the script and its artistic qualities; whereas the criteria of the NFVF are much more focused on the economic and social fallouts.

As a result, some French and South African producers met for the study qualified both systems of support as "not necessarily culturally compatible". To be noticed that these principles surrounding national financial support systems - more artistic on the French side and more economical on South African side- did not prevent *Skoonheid* from being achieved as the first official co-production. An artistically ambitious film and sensitive in its subject, *Skoonheid* was financed up to 80% by South African coins.

3.2.2 Legal issues

Various legal problems can be met during an international collaboration between two private companies. Below the main ones suffered within the framework of an official co-production between South Africa and France:

- **Copyright Vs. droit d'auteur (author's right)**

The countries of *common law* as South Africa apply the copyright laws, whereas France used the concept of *droit d'auteur*. The copyright is more attached to the protection of the patrimonial rights than to the "moral" rights, to which is attached on the other hand the *droit d'auteur*. However, since the adoption of the Convention of Bern, the copyright and the *droit d'auteur* are partially harmonized, and the registration of the work is generally no longer mandatory to benefit from a legal protection. France and South Africa both have ratified the Bern Convention, as has a large part of Africa and all of Europe.

In reality, certain problems persevere and can be suffered during the manufacturing of the film; problems, which always require additional time and expenses to be resolved. For example, certain South African investors and funds (such as IDC) request the implementation of a "Completion Bond" for the film, which implies the possibility of dismissing the director during the shooting if necessity commands. This is an infringement on the "Droit Moral" in France ("Moral right", the dominant principle of the *droit d'auteur*) and a legal impossibility within the framework of the *droit d'auteur*. This was the main reason why the *Lionhood*'s production decided not to approach the IDC for the financing of the project. In the case of *Accident*, the issue could be solved after several months of negotiations and the use of a specialized lawyer.

- **« Previously disadvantaged crew »**

It is a principle existing in South Africa of positive discrimination towards populations previously disadvantaged during Apartheid. This implies that every employer has to favour the hiring of people stemming from previously discriminated and oppressed communities. The film industry is naturally concerned by this principle. An audit after the delivery of the film is requested listing all the staff used and their racial origin. The results of this audit will have a strong influence on the obtaining of the final ruling by the NFVF.

According to the latter, this measure is soon going to be strengthened by becoming more repressive than incentive, and no dispensation will be possible in the case of an official co-production. This new dispensation can generate three major problems within the framework of a co-production with France:

- The illegality of such a measure on the French territory, the race of an individual cannot expressly be a criterion of decision for their hiring;
- A moral problem for the French partner who can perceive this discrimination as being negative;
- A lack of black talents and technicians on the French side due to a racial distribution of the population different from South Africa.

- **Eligibility to French broadcasters investment obligations**

A recent change of policy concerning eligibility to film financing from French broadcasters risks to render ineffective or much less attractive the appliance to the treaty. To be in accordance with the European regulations, the French media authority (CSA) decided that an extra-European co-production could not be considered as European if the non-European partner was majority. It implies that if South Africa is majority in terms of financing (as for *Accident*), the film cannot be considered as European (for the television domain) and be part of the mandatory quotas of national audio-visual works to be invested in or bought by national broadcasters.

The production in such a situation will thus not be included in the European acquisitions or supported productions by broadcasters. The later financial contributions being generally quite an important element of the film financing in France, it may eventually alter the attractivity of all the extra-European co-productions agreements signed by France; at least the ones where the French partner does not have the majority of the financing.

3.2.3 Increase of production costs

This point was already highlighted above (2.2.1. *Skoonheid*), but it deserves to be considered here again. Besides the inherent, but marginal expenses, inferred by any co-production (translations of documents, set-up fees, etc.) the application of the various rules of each country (agrément and final ruling) activate other obligations with much stronger incidence on the budget and the financing of an official co-production between the two countries.

Below some examples noticed:

- The obligation to respect the collective agreement ruling the salaries of French technicians and talents. To the salaries are added the travel expenses (transport, hotel, per-diem);
- The obligation to relocate the post-production in France when the shooting took place in South Africa, and vice versa -in order to obtain on each side enough technical and creative elements to be qualified as a national production- generate additional costs: more expensive services from French laboratories and technicians and the incompatibility of the French tax credit for post-production only;
- Additional financial expenses due to long delays in obtaining the necessary approvals;
- Incompatibility of the French tax credit and the financial rebate of the DTI in South Africa only on post-production expenses - the amount of eligible French spending can then hardly reach the minimum required of 1 million euros (Cf: *Lady Grey*). The French tax credit requires in addition at least 5 days of shooting in France to be eligible.

Furthermore, the fact that the distribution of the film is not guaranteed in both countries (Cf: *Lady Grey* has not been released in South Africa), could reinforce the decision by producers not to abide to the treaty for their collaboration. In such a situation, the incentives (access to certain financing) are not compensating for the spending and administrative complexity generated by the application of this treaty (Cf : *Endless River*, coproduced un-officially).

3.2.4 Administrative weight and delays

The administrative process of approval by the regulatory authorities from each country has been perceived by the producers as extremely long, pointlessly time-consuming and sometimes complicated. Numerous documents are required on top of the usual documents for a simple registering of the movie in the various bodies and to obtain a visa of exploitation, besides the fact that documents must be passed on in different languages or formats.

The time necessary to process approval applications were described on each side as being extremely long, which, for some, has generated cash flow issues, as first instalments from financiers were subsequently delayed.

Furthermore, the late obtaining of these approvals does not allow the broadening of financing sources by not leaving the necessary lapse of time for this fund raising before the shooting starts. Indeed, the obtaining of this approval is most often necessary to start negotiating with numerous investors in both countries (IDC in South Africa, broadcasters

in France, which can then pre-buy the work as being a national production, etc.). The time lapse between the obtaining of this approval and the first day of shooting (when the budget must be closed) is then insufficient to conclude these negotiations with potential investors, therefore limiting the financial contribution on the South African side to the rebate of the DTI on top of its technical and artistic contribution.

The lack of clarity and transparency on the criteria to obtain advanced then final ruling (and thus the South African nationality) has been stressed by certain producers met as part of this study. This will eventually, and regrettably, discourage certain foreign partners from coproducing with South Africa (or from complying with the co-production agreement), the obtaining of final ruling being perceived as random or unpredictable. This issue may explain the drastic fall of the co-productions in South Africa since 2012 (all countries included). The South African government indeed wanted to redefine these criteria and launched in 2012 discussions with various partners in this sense (the NFVF, civil society, etc.). Discussions that are still in progress to this date, without having established "temporary" criteria and subsequently generating confusion within national and foreign producers as for the real possibilities (and constraints) to obtain these approvals.

4. POSSIBLE IMPROVEMENTS AND RECOMMENDATIONS

Various measures, mechanisms or events can be set up to optimize the treaty application, develop collaborations and increase official co-productions between both countries in the future. Below some proposals are made for the attention of the regulatory authorities as well as civil society and the private sector. Some of these measures are common to both countries; others can be applied according to each country's specific situation.

The main recommendations are:

- The strengthening of the professional networks and the dissemination of information connected to the agreement;
- The clarification, simplification and acceleration of the administrative processes;
- Better coordination between regulatory authorities and main funders;
- The strengthening of the incentives already in place.

4.1 Strengthening of networks, knowledge and know-how in terms of co-production (co-production workshops)

The continuous development of a common network of professionals within both industries, a direct and thorough access to information concerning the co-production treaty as well as the strengthening of the professional know-how in the domain of co-production are essential conditions to the development of co-productions between France and South Africa.

Some institutions or initiatives already contribute in such a way: high participation of French professionals and experts at the DFM / DIFF (supported by the French Embassy / IFAS), important South African delegations at the Annecy and Cannes film festivals (supported by the NFVF and DTI), workshops and delegations organized by the ATFT, etc.

Nevertheless, a more specific and long-lasting support to co-production seems necessary to go one step beyond the existing dynamics between France and South Africa. More elaborate and regular events could be organized in that direction. Events presented as co-production workshops or meetings for targeted projects and professionals (institutions, producers, distributors) should be organised. Besides networking between potential co-producers and partners, these workshops - meetings would serve as platform to strengthen professional knowledge and know-how in the realm of co-production: dissemination of practical information, professional training, legal and financial counselling, etc.

These workshops - co-production meetings would be particularly useful for the South African participants, not as hardened to the international co-productions as their French counterparts. In its 2015 report on co-productions, the NFVF itself recommends the organization of co-production workshops: "Co-productions can be complicated hence there is only a handful number of companies participating in that space. In order to broaden participation the NFVF should consider conducting workshops wherein participants will be guided on navigating co-productions".

The workshops - co-production meetings could be added to existing events in both countries: Cannes film festival (or other festivals as Nantes) on the French side, Durban

IFF / Durban Film Mart in South Africa. An alternative could be the DISCOP Africa, which already has a co-production side (DISCOPRO) and which intends to create a cinema market in addition to the existing audio-visual one.

This type of event and meeting has to be sustainable and regular (at least once a year) in order to bring results by regularly feeding these networks with new projects, new professionals, while reinforcing knowledge and know-how in the longer term by providing case studies (the film *Lady Grey* could be a good example to explore), directories of companies, technicians, bilingual reports, etc.

To really bear fruits, parallel support for the mobility of professionals and talents (concerning either its financing or visa applications processes) should be reinforced. The later already exist in both countries but would certainly gain in being developed and/or coordinated.

On a more technical level, and especially for post-production, partnerships between laboratories and technical service providers should be encouraged in order to develop direct collaborations in this sector as well. This would favour better knowledge of the processes and the technical practices of the other part and thereby achieve harmonisation and cost reduction of the overall assembly line.

4.2 Clarification, simplification and acceleration of the administrative processes

This point has already been highlighted previously but deserves to be emphasized again. Various measures are specifically French or South African; some others are common to both countries.

Common measures suggested:

- Harmonize the formats of documents requested by both parties;
- Meet the deadlines announced for the management of the approvals (1 to 2 months after deposit);

In South Africa

- Clarify quantifiable criteria granting South African nationality to a feature film;
- Offer the possibility of applying simultaneously to the NFVF (advanced ruling) and to the DTI (cash rebate), or create a common commission/application;
- Authorize a dispensation to the rule of "Previously disadvantaged crew" within the framework of an international official co-production (or to make it an incentive);

In France

- Solve the problem with the CSA, and the non-European nationality of international co-productions where the non-European partner has more than 50% of the financing, which now disabled these co-productions to access television investment obligations.

4.3 Better coordination between regulatory authorities and investors

This recommendation was put forward within the last report concerning the co-productions of the NFVF: “better co-ordination between DTI and NFVF is essential more specifically in relation to final budgets”. Furthermore, various other measures could be discussed:

- The organization (at least annually) of formal or informal meetings between the competent authorities (CNC and NFVF, but also NFVF, DTI and others);
- The constitution and dissemination of studies concerning the respective national markets, their industry, the level of professionalization, measures of the impact of the incentives, directories of companies, technicians, talents, etc.;
- The use of a mediator appointed in common by the CNC and the NFVF to accompany the process and the dialogue between co-producers and national institutions.

4.4 strengthening of the existing financial incentives

The financial incentives already existing and described in this study could be completed or reinforced by the following measures:

- Strengthening the support for the distribution of the official co-productions on both territories;
- Creating a fund dedicated to co-production in South Africa. This would appear to be the responsibility of the NFVF which evokes this possibility in its 2015 report on co-productions “to attract projects and also have a competitive advantage on other destinations of co-production”;
- Enhancing the development support in South Africa, by strengthening the already existing scheme, and/or by encouraging televisions and other broadcasters to invest more in local contents;
- Widening the eligible expenses for the DTI rebate to the post-production.

These additional incentives or measures naturally imply a certain cost for their respective regulating bodies. However, results in terms of economic fallout and the strengthening of both industries (in particular in South Africa) could reasonably be measured in the short term. Especially as this additional financial support will be directly reinvested in the country and its cinema industry, generating more co-productions hence more revenues and greater competitiveness of national works on both a national and an international scale.

CONCLUSION

As highlighted through this document, the co-production treaty between France and South Africa proved its relevance and its efficiency since its ratification in 2010. It is considered satisfactory by both parties (with one movie per year) in comparison with other treaties signed either by France or South Africa.

Institutions and professionals involved from both sides managed to overcome issues raised by the geographical estrangement, the language barrier and differences between the professional approaches. There is moreover a real expressed will to develop further the co-production dynamic between both countries. Granting on the South African side the perspective of accessing the European market as well as French-speaking Africa (through potential tripartite co-productions). On the French side, South Africa is seen as a front door to English-speaking Africa and an access to a more than emerging territory and hub regarding investments and collaborations.

This voluntarism from national institutions matches an existing potential from the professionals and respective industries and could only soar if solutions are applied to overcome obstacles met by professionals in the implementation of the agreement -and detailed in this study. Among the proposed recommendations and possible measures, the strengthening of the network, knowledge and necessary skills through co-production workshops-meetings. A proposition also recommended by the NFVF in its latest co-production report. Moreover, the European professional training program EAVE (more than 20 years of existence) also imagines the possibility of a training program around co-production between Southern Africa and Europe, based in South Africa. One already exists for Western Africa in Lagos since 2015.

It should also be noted that other European bodies think about developing a professional collaboration between Europe and South Africa (as well as other extra-European partners) in the field of film production. Among them is Eurimages, a Pan-European support fund for production, whom extension to South Africa would be an extraordinary accelerator for co-production between South Africa and European countries such as France.

Last but not least, a relevant measure to be discussed to increase the volume of official co-productions between both countries would be the inclusion of audio-visual works in the existing agreement. Several elements could be put forward: collaborations that already exist, a clear request emanating from South African professionals, the rapidly expanding South African and African audio-visual market, etc. To be also noted that the audio-visual and television works are already included in the co-production agreement between South Africa and Germany (which explains the higher number of co-production between both countries), and negotiations are currently in progress with Great Britain in that sense.