

An Evaluation of the Project to Re-Engineer Small Claims Courts in South Africa

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1. Background

This evaluation report considers the progress made in implementing the Project to Re-Engineer Small Claims Courts in South Africa ("Project"). This Project is a combined endeavour by the South African Department of Justice and Constitutional Development ("DoJCD") and the Swiss Confederation represented by the Swiss Agency for Development and Cooperation ("SDC").

In 1983 the Hoexter Commission¹ suggested that access to certain legal services were beyond the reach of the majority of the South African population. Hoexter recommended that the South African justice system should investigate the introduction of alternative dispute mechanisms as a method of extending access to justice. Hoexter highlighted small civil claims and family law as particular areas requiring attention. The Hoexter report resulted in a range of interventions being introduced with the aim of increasing access to the South African justice system. One such intervention was the introduction of Small Claims Courts in 1984². These courts are aimed at providing a forum for the resolution of civil claims below a pre-determined monetary value³. The primary characteristics of Small Claims Courts are⁴:

- They were established to be informal in nature;
- The commissioners are volunteers largely drawn from the formal legal profession (advocates and attorneys) and are not remunerated for their services;
- Parties are not allowed legal representation;
- The costs of using the Small Claims Court process are minimal⁵; and
- The court is not a court of record and consequently there are no appeals against the judgements of the court.

The importance of the principle of providing access to justice in the South Africa context is emphasised by the inclusion of s34 of the Constitution which deals with access to courts⁶:

"Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

In 2003, the DoJCD, with the support of its then Deputy Minister, held a series of engagements with the organised legal profession aimed at investigating ways of extending access to justice as constitutionally required. Support to the Small Claims Courts was identified as an intervention which could have a profound impact on increasing access to justice services. A widely representative workshop was held in Cape Town in 2003. Delegates were divided into a number of small groups which considered practical steps which could be taken to improve the functioning of Small Claims Courts.

¹ Hoexter Commission: Commission of enquiry into the rationalisation of the provincial and local divisions of the Supreme Court report (1983).

² Small Claims Court Act 61 of 1984 ("the Act").

³ Initially the monetary value was R3 000. This amount was adjusted to R7 000 in 2003.

⁴ For a comprehensive overview of the characteristics of South African Small Claims Courts as well as a comparative international study of similar courts see: Draft Comparative Study on Small Claims Courts, Department of Justice and Constitutional Development, October 2008.

⁵ The Parties' costs are restricted to the payment for sheriff services. Sheriffs are tasked with the service of court documents as well as execution procedures.

⁶ s34, Access to courts, The Constitution of the Republic of South Africa 1996.

The primary product of the workshop was the adoption of a document titled “The Guidelines and National Action Plan for the Small Claims Courts in South Africa” (“NAP”), which identified 7 key result areas aimed at improving the operations of Small Claims Courts. The Project was established as the mechanism to implement these key result areas.

2. Purpose of the evaluation

In 2007, a funding agreement was reached between the Government of the Swiss Confederation represented by the SDC and the Government of the Republic of South Africa represented by the DoJCD. The SDC undertook to provide a grant contribution of R4.5 million to assist in the implementation of the NAP.

The grant was for a three year period commencing in March 2007 and terminating in February 2010⁷. The DoJCD, in turn, undertook to provide an in kind contribution by way of operational costs of not less than R3.101 million during the applicable three year period.

This document aims to give effect to article 6(6)(a) of the grant agreement which provided that a final close out report outlining the results achieved in relation to the original goals and objectives of the programme would be completed at the end of the funding cycle. A copy of the relevant terms of reference for the evaluation is attached as Annexure A.

3. Methodology used for the evaluation

The evaluation commenced with a literature review. Base documentation was provided by the DoJCD. Following this review a number of site visits were undertaken. The courts visited were located in the Eastern Cape, Northern Cape and Western Cape Provinces and comprised a mix of rural and urban sites. Structured interview questions were prepared and addressed to role players at each of the sites. Role players included active commissioners, area or court managers, clerks of the small claims court and interpreters. The purpose of these interviews was to obtain information about the day to day running of Small Claims Courts. The interviews were structured to obtain information on both the historic running of the courts as well as any suggestions for future improvements. Court sessions were also observed.

Following the site visits, further documents were identified and sourced from the DoJCD for review. A further set of unstructured interviews were then conducted with members of the Project's National Steering Committee. The purpose of these interviews was to obtain information as to both the governance of the Project at a National level as well as to obtain suggestions as to how future operations could be improved.

Finally, interviews were conducted with role players responsible for the financial accountability, monitoring and training requirements of the Project. Once again these interviews focussed both on past and future Project issues.

A full list of the documents perused is attached as Annexure B, while a list of people interviewed and courts visited is attached as Annexure C.

⁷ This termination date was recently extended to the end of August 2010.

4. Relevance of the National Action Plan to re-engineer the Small Claims Court

This section of the document firstly examines the relevance of pursuing a Small Claims Court strategy in the South African legal and socio-economic context. It further considers the relevance of the selected 7 key result areas as a method of achieving greater access to justice for poor, disadvantaged and marginalised people.

South Africa adopted its current Constitution, inclusive of its progressive Bill of Rights, in 1996. The Bill of Rights guarantees all South Africans the right to have their legal disputes settled by an appropriate forum. South Africa has a well developed and sophisticated legal system.

However, in the area of Civil Law, accessing the legal system by the use of advocates and attorneys is an expensive undertaking beyond the means of most South Africans.

While the South African Constitution provides that all people are equal before the law, socio-economic realities can undermine this aspiration. By way of example⁸:

- The per capita annual income of the poorest 20% of the South African population is equivalent to R1 486;
- 49% of South Africans were living below the monthly R528 poverty line;
- 16 147 000 South Africans have an average monthly income of less than R3 130. This represents approximately 36% of the population; and
- 70% of the South African population is aged 30 years or younger;
- The richest 20% of the South African population earns 70% of the total national income;
- 4 444 000 South Africans have an average monthly income of not less than R16 296. This represents approximately 10% of the population;
- South Africa currently has a GINI coefficient of 0.66. This scale sees 0 as perfect income equality and 1 as perfect income inequality. Any measure above 0.5 is cause for concern.

The State has established an independent statutory body known as Legal Aid South Africa. This organisation provides legal services to people who would otherwise not be able to afford them. Due to resource constraints, Legal Aid South Africa primarily provides free legal services in criminal matters. It currently remains difficult for many South African citizens to pursue their civil legal claims.

Assistance regarding civil legal remedies is part and parcel of the need for improved access to justice to the indigent. In this socio-economic and legal context, all initiatives which promote access to justice must be seen as being relevant.

The NAP's objective is "to afford greater access to justice for the poor, disadvantaged and marginalised groups⁹". This objective is pursued by way of 7 key result areas¹⁰:

- Key result area 1: Project Organisation

This key result area was aimed at the establishment of a National Project Office to provide the day to day management capacity to implement the NAP.

⁸ South Africa: Development Indicators 2009, 3rd edition, The Presidency: National Planning at page 23. All figures quoted are as at 2008.

⁹ The Guidelines and National Action Plan for the Small Claims Courts in South Africa ("NAP"), 2003, DoJCD at page 5.

¹⁰ The terms of reference for this evaluation are limited to 6 key result areas. The 7th key result area, public education and communication is missing from the terms of reference but is covered in this document.

- Key result area 2: The Manual and Guidelines for Commissioners and Court Officials

This key result area was aimed at the development of a manual and guidelines for Small Claims Court clerks and commissioners.

- Key result area 3: Training for Commissioners and Court Officials

This key result area was aimed at using the completed manual and guidelines to design, develop and deliver customised training for small claims clerks and commissioners.

- Key result area 4: The Status and Jurisdiction of Small Claims Courts, including Legislative Amendments

This key result area was aimed at researching the legal framework governing Small Claims Courts and identifying legislative and regulatory amendments for the attention of the Legislature and responsible Minister.

- Key result area 5: Decentralisation of Rural Courts

This key result area was aimed at extending the reach of Small Claims Courts by creating new seats in rural areas.

- Key result area 6: The Establishment of a student internship pilot programme for Small Claims Courts

This key result area was aimed at the establishment of a pilot student internship programme involving three Universities in the Western Cape.

- Key result area 7: Public Education & Communication

This key result area was aimed at popularising the use of Small Claims Courts and educating users as to the appropriate procedures to be followed when using the Small Claims Court system.

The 7 key result areas contained in the NAP would appear to be relevant in that the implementation of the envisaged activities would directly assist in the obtaining of the identified Project objective.

5. Efficiency of the use of resources

This section of the document considers the efficiency of the Project. It considers the high level governance arrangements including its placement within the DoJCD institutional environment. It then examines the operational management of Small Claims Courts and the resources assigned to the achievement of key result areas. It concludes with an examination of the monitoring of the Project and an overview of financial accountability.

5.1. Governance

Following the 2003 National Workshop, a Working Group was established. The NAP identified that this Working Group should be replaced by a duly constituted National Steering Committee which would strategically direct, review and guide the implementation process. In line with the NAP's recommendations, the Committee was comprised of the Deputy Minister of the DoJCD, officials of the DoJCD, members of the formal organised legal professions, members from academic institutions and donor representation. The categories of people on the Committee have largely remained the same since inception¹¹.

¹¹ The need for a Steering Committee and the categories of membership are identified in the NAP, see page 13.

According to the terms of reference of the Steering Committee, it is the decision making body tasked with the completion of the programme/project and assuring that the identified outputs are achieved and that funds are managed efficiently. Its scope and mandate includes¹²:

- Approval of all planning documents;
- Overall responsibility for the monitoring of programme activities and outputs;
- Monitoring technical assistance;
- Monitoring of auditing procedures and results;
- Decisions regarding major implementation issues such as budget, procurement, technical advisors, short term consultants, studies, research; and
- Oversight of reports.

Specific tasks of the Steering Committee include¹³:

- Approval of major planning documents (annual work plans and budgets, revised semi-annual request for funds.);
- Monitoring of overall progress of the programme with a special focus on delays, problems and bottlenecks;
- Approval of progress and financial reports, decisions on follow-up on recommendations in the annual audit report;
- Monitoring the continued coherence between the programme and sector development;
- Decisions concerning deviations from the National Action Plan/programme document;
- Approval of Terms of Reference for short-term consultants/advisors;
- Approval of timing of programme reviews;
- Endorsement of Review report and ensuring follow up;
- Ensuring that time-frames and work schedules are adhered to;
- Evaluating and assessing the work of the programme team; and
- Overall management of the Project and its resources.

In order to assist the Steering Committee in the pursuit of its functions, the NAP recognised the need for the establishment of a Project Office comprising of a full time Project Manager and two supporting staff members. This Project Office was established in 2007.

According to the terms of reference for the Project Manager s/he is responsible for¹⁴:

- The preparation of a process action plan and framework;
- The actual drafting of the plan;
- Convening meetings of the Steering Committee;
- Reporting to the Steering Committee on the Project's development and activities of the working committee/s;

¹² Terms of reference for Steering Committee

¹³ Terms of reference for the Steering Committee.

¹⁴ Terms of reference for the Project Manager.

- Interacting with all relevant role – players in order to develop the draft plan;
- Collating of information/ audit/ research reports/ bibliography;
- Facilitating workshops which will inform the process;
- Identification of KRA's through consultative and investigative processes;
- Managing an effective and efficient secretariat;
- Managing the finances/ budget of the Project with direct accountability to the Chief - Director: Court Services. The preparation, submission and presentation of monthly reports on the programme's progress and implementation to the Steering Committee, DoJCD, and the Swiss Agency for Development and Cooperation;
- The development of an implementation plan – as prescribed by the framework;
- Adhering to the guidelines of the Steering Committee and the framework as proposed by the Steering Committee;
- Liaising with all outsourced agencies involved in the audit and the transformation enquiry;
- Assist in the identification of suitable consultants;
- Assist in drawing up the terms of reference for consultancies or related assignments; and
- Ensuring that the plan conforms to constitutional and legislative imperatives and promotes a system of justice which guarantees access to all.

The Steering Committee was established with the specific purpose of including role-players other than from the DoJCD in the overall direction, review and guidance of the Project implementation process¹⁵. The Project Office itself was established to implement the day to day operational activities of the Project strategic plan.

Since 2007, the Steering Committee has met on six occasions namely: 18 July 2007; 3 April 2008; 17 July 2008; 7 May 2009; 23 October 2009 and 19 February 2010. In terms of the working procedures contained in the terms of reference of the Steering Committee, one would have expected to see a minimum of 4 meetings per year. The minutes from these meetings do not indicate that a process action plan and framework¹⁶ was prepared by the Project Office for consideration and approval by the Steering Committee. In the absence of such a plan it is currently difficult from the Steering Committee minutes to easily ascertain a coherent strategic approach to all aspects relating to the implementation of the Project over the funding cycle.

In November 2009, a decision was taken to move the location of the Project Office from the Chief Directorate: Promotion of the Rights of Vulnerable Groups to the Chief Directorate: Criminal Justice System Review and Projects. This decision was motivated by the recognition that the Project had suffered due to a low performing senior management structure within the DoJCD. Both of these Chief Directorates are located within the Court Services branch of the DoJCD.

It therefore appears that the high level governance of the Project could have been more efficient.

¹⁵ NAP p12.

¹⁶ Terms of reference for the Project Manager.

5.2. Key result areas

As mentioned previously there are 7 key result areas aimed at giving effect to the Project. These are each dealt with below.

5.2.1. Key result area 1: Project Organisation

The financial administration and operational management of the Project has, at least since 2007, been vested in the Project Office. The NAP was contradictory as to the precise location of the Project Office. The organogram and narrative contained on page 12 of the NAP suggests that the Project Office should be located in Court Services, subject to the oversight of the Chairperson of the Steering Committee, the Deputy Minister. Page 13 of the NAP however, suggests that the Project Office should be located in the Office of the Deputy Minister.

The Steering Committee minutes of 18 July 2007 provided that the Project Office was to move to the Deputy Minister's Office while remaining accountable to the Steering Committee. The envisaged arrangement was that the Project Manager would report to the Deputy Minister in his or her capacity as Chairperson of the Steering Committee. When the Project Office was established it was in fact located within Court Services, the entity responsible for the operational management of courts. From the interview process it appears that this decision was taken as it was felt that day to day operational issues could not be managed by the Steering Committee which would, at best, meet quarterly.

Given that the Project Office is the implementing body of the Steering Committee it makes sense that it be located within Court Services. This is due to the fact that Court Services is the operational arm of the DoJCD with respect to the running of courts. It is not however clear from Project documentation why the Project Office was originally located within the Chief Directorate: Promotion of the Rights of Vulnerable Groups. Having regard to the previously mentioned management weaknesses the decision to move the Project Office to a new Chief Directorate within Court Services appears appropriate.

The Project Office is comprised of a Project Manager and two assistants (one Project Administrator and the Assistant Director). Approximately 60% (R1 462 788) of the utilised donor funding has gone directly to the Project Office salary expenses. The Project Office is responsible for a number of activities including the compilation of reports to the donor, the convening of meetings and workshops and general day to day activities aimed at giving effect to the key result areas.

During the interview process it became apparent that this office was also busy with issues related to the day to day running of existing Small Claims Courts. In other words the Project Office is also seized with operational issues arising from day to day Small Claims Court activities. This function is not directly specified in the NAP but clearly lends support to the obtainment of the NAP objectives.

From the available documentation and interviews it appears that there are no significant concerns with the operations of this office.

5.2.2. Key result area 2: The Manual and Guidelines for Commissioners and Court Officials

This result area was dealt with extensively in the NAP¹⁷. The NAP considered issues relating to the development of the manual and guidelines such as:

- Format;
- List of sources to research;
- Time required for development of the manual;
- Detailed list of content;
- Suggestions towards a blue print;
- Updating of the manual;
- Team to draft the manual;
- Circulation and availability;
- Steps to ensure practicality;
- The need for follow up on issues; and
- The costing of the development process.

It is clear that a great deal of thought went into the requirements for the manuals. The manuals were seen as foundational documents which would inform and shape the obtainment of the activities envisaged by key result area 3. The NAP originally contemplated a single manual for all of the role players but this appears to have changed to two manuals, one aimed at commissioners and one aimed at administrative staff.

It was felt that the manuals could be completed within 6 to 12 months. A task team was established in order to facilitate the drafting of the manual on 18 July 2007. The task team was responsible for appointing a service provider to draft the manual. On 13 April 2008 the Steering Committee appointed a service provider to draft the manual. No further mention is made of the Task Team in subsequent Steering Committee minutes. On 17 July 2008 the Steering Committee was informed that the drafting of the manual had commenced. On 7 May 2009 the Steering Committee was informed that the guides had been drafted but were not ready for circulation. At this stage a quality control committee was appointed. On 23 October 2009 the Steering Committee was informed that the manuals had been submitted to another service provider for the editing of language and content. The product ultimately supplied did not meet the quality assurance process which was set in place by the Steering Committee and Project Office. This resulted in members of the Steering Committee assuming responsibility to overwrite the manuals. This process was finalised in January 2010.

The manual for Commissioners now appears to be of a satisfactory standard. The manual for Clerks is essentially identical to the Commissioner manual. However, given the fact that clerks are not legally qualified their manual would benefit from a plain language edit. Perhaps more importantly, a base document used by clerks on a daily basis, the Code Small Claims, was identified by the NAP as being a critical source document to be used when drafting the manual. This does not appear to have occurred. Thought needs to be given to whether this gap could be addressed in future versions of the clerk manual.

¹⁷ See NAP pages 13 to 25

The original NAP envisaged that R155 200 would be allocated to the development of the manuals and a further R200 000 on printing and reproduction. The Project Office's allocated budget for this key result area is R480 000. An amount of approximately R131 342 has been spent. An amount of approximately R104 000 was committed in terms of a contract with the appointed service provider for the development of the manual. Interviews indicate that an amount of approximately R79 800 has inadvertently been paid to the service provider in two instalments from vote funds in 2009¹⁸. We have been informed that these service provider payments will shortly be credited to the vote account from the donor account. A further payment of approximately R24 200 is due to the service provider. An amount of R10 000 for external editing appears on the donor control sheet in December 2009. The amount of R114 000 spent on developing the manuals appears reasonable.

5.2.3. Key result area 3: Training for Commissioners and Court Officials

The NAP implicitly recognised that the development of training materials was reliant on the completion of an updated manual. As such the development of customised training programmes for commissioners and clerks has not yet commenced.

From interviews with role players it appears that this is one of the priorities for the 2010-11 financial year. Nevertheless, training for administrative clerks has been provided by Justice College on an ongoing basis. During the period under review the following training took place.

- During the 2007/8 year 4 courses were presented to a total of 86 delegates;
- During the 2008/9 year 1 course was presented to a total of 34 delegates; and
- During the 2009/10 year 3 courses were presented to a total of 94 delegates.

The existing course is 4 days in duration and all clerks we spoke to at a court level had attended the training. In order to avoid the same clerks attending repeat training courses, the Project Office and Justice College have identified a need to monitor and screen the applicants for training to ensure that an equal opportunity is presented to all clerks.

We were further informed that the DoJCD Kwazulu/Natal Regional Office had commissioned an additional 5 day training course for their administrative clerks. This course was developed and delivered by the University of Kwazulu/Natal. This training aimed at supplementing the Justice College training with a particular emphasis on practical difficulties experienced by clerks at court level. Consideration should be given to integrating these materials as well as the Justice College materials during the next training design and development phase.

As far as we are aware, no formalised training of Commissioners has been undertaken in the review period. We were informed at a regional level that the aim is that senior commissioners would present ad hoc training sessions as and when local advisory boards deemed them to be necessary.

During interviews we were informed that Justice College, Legal Aid South Africa and the Legal Education and Development arm of the Association of Law Societies South Africa is currently preparing to undertake the design, development and delivery of training to commissioners in the 2010-11 year and going forward. The Project Office has budgeted an amount of R700 000 for this purpose. These funds will be used to offer four training courses of three days duration each.

¹⁸ Vote funds are those funds which are allocated to the DoJCD by Parliament in order to fulfil their mandate. In other words these are South African funds transferred by National Treasury to the DoJCD.

5.2.4. Key result area 4: The Status and Jurisdiction of Small Claims Courts, including Legislative Amendments

The activities envisaged under this key result area, including specific legal issues to be addressed, are set out in the NAP¹⁹. These issues included:

- The need to increase the monetary jurisdiction in respect of claims;
- Remuneration of Commissioners;
- Qualification of Commissioners;
- Delay in appointment of Commissioners;
- Area of appointment of Commissioners;
- Appeal and review of decisions;
- Indemnity of Commissioners;
- Juristic persons as plaintiffs;
- Actions against the State;
- Language of proceedings;
- Consent to jurisdiction;
- Service of Process;
- Definition of plaintiff;
- Definition of legal assistant; and
- Enforcement of judgements.

In response to this KRA, two DoJCD documents have been prepared:

- A draft discussion document on small claims courts legal framework; and
- A draft comparative study on small claims courts.

The legal framework document and the draft comparative study were prepared by the Chief Directorate: Promotion of the Rights of Vulnerable Groups through a service provider. They are both substantial and well researched documents. The documents cover all aspects raised for consideration under this key result area in the NAP.

In fact, the framework document also raises issues which are relevant and were not raised in the NAP. The document adopts a non prescriptive method. In other words, it debates issues and raises points for consideration. This document is more than sufficient for the purposes of the Steering Committee and merely requires an actualised decision making process. This decision making process would cater for the short to medium term legislative and regulatory needs of Small Claims Courts in South Africa. During interviews it became apparent that many members of the Steering Committee felt that while ad hoc amendments to the legislation may have their benefits, it would be preferable if a single comprehensive amendment could be introduced in the short to medium term.

¹⁹ NAP, see pages 35 to 41.

The draft comparative study is also non prescriptive and highlights areas for decision making. These decisions go to the architecture of the Small Claims Court itself and should be seen as being longer term in nature. As the DoJCD is currently busy with a substantial review of the Civil Justice System, it offers the Project the opportunity to put forward for consideration the issues raised in this document

All activities conducted under this result area have thus far been funded by vote budget and appear to have been efficient.

5.2.5. Key result area 5: Decentralisation of Rural Courts

This key result area recognises the fact that access to justice for poor, disadvantaged and marginalised people could be furthered by paying specific attention to rural communities²⁰. The working group which defined this key result area implicitly recognised the logistical challenges associated with extending Small Claims Court services to these areas. Identified issues included the shortage of available commissioners, transport, security and compensation for commissioners who were willing to travel long distances to service rural courts.

It was not easy for the evaluation team to fully consider the difficulties with rural court extension. However, it was apparent during interviews that extending Small Claims Courts to rural areas remains important and that role players are mindful that strategies need to be established for this purpose.

In 1985 there were 98 Small Claims Courts in existence. During 2003, at the time of the drafting of the NAP, there were 151 such courts. In 2007 when the Project Office was established, there were 153 courts. After the slow start between 2003 and 2007, there has been new impetus in the establishment of new Small Claims Courts. At the time of this evaluation, there are currently 201 courts. Most new Small Claims Courts that were established during the period between 2007 to date are located in provinces with large rural populations such as Limpopo, Northern Cape and Eastern Cape. This has had the effect of establishing courts in previously disadvantaged areas. We were informed that Legal Aid South Africa is shortly going to make available in excess of 300 practitioners to act as commissioners. These commissioners could cover both urban and rural areas and present the Project with a good opportunity of further extending services into rural areas.

The concern expressed in the NAP about the possible conflict between rural Small Claims Courts and Traditional Courts will need to be considered. During the interview process this issue was raised. It is important to note that any potential conflict would not apply to all rural areas. The Steering Committee and Project Office will need to be mindful of this potential tension going forward.

All activities conducted under this result area have thus far been funded by vote budget in what appears to be an increasingly efficient manner.

²⁰ NAP, see pages 41 to 44.

5.2.6. Key result area 6: The Establishment of a student internship pilot programme for Small Claims Courts

The literature review revealed that there has been considerable debate around the role of legal assistants in Small Claims Courts. The legal assistants are seen as providing diagnostic and paralegal advice to court users. The legal assistant is further seen as the person responsible in assisting court users to draft appropriate letters of demand and or summonses. Without properly drafted legal causes of action, decision making at a commissioner level is made difficult.

Currently there are no legal assistants in the Small Claims Courts and the envisaged functions are performed by administrative clerks. Interviews with clerks suggested that they were not opposed to performing this function but wished to be supported by receiving relevant and adequate training.

The appointment of designated legal assistants would have significant budgetary implications for the DoJCD and is unlikely to occur in the short term. The working group which formulated this result area in the NAP was mindful of these resource constraints and wished to pilot the use of law students as legal assistants. It appears that at some stage this idea was rejected as not being practical. The Steering Committee minute of 7 May 2009 noted that the internship programme would be changed into a fully fledged internship programme run by the DoJCD. This process does not, as yet, appear to have reached an advanced stage.

Currently there is a suggestion that those of the approximately 300 Legal Aid South Africa practitioners who do not qualify to be appointed as commissioners could be used as legal assistants in larger courts. According to the information provided the workings of this relationship are currently being fleshed out and will be completed during the present financial year. An obvious obstacle which will need to be dealt with is that legal assistants will be required during normal court working hours which overlap with normal Legal Aid South Africa working hours.

There has been minimal budget spend on this key result area and as such no comment can be expressed on the efficiency of resource use.

5.2.7. Key result area 7: Public Education & Communication

The activities envisaged under this key result area are set out in the NAP²¹. These activities included:

- Internal communication strategies;
- Communication with existing legal professional bodies;
- External communication such as radio, print, civil society organisations, electronic media, community police forums and industrial theatre;
- Development of interactive learning materials;
- Development of pamphlets and brochures;
- Holding of community workshops;
- Holding of stakeholder conferences;

²¹ NAP, see pages 50 to 57.

- Website development and management; and
- Public launches.

An amount of almost R5 million was budgeted to this key result area in the NAP for a 3 year roll out. Subsequently a decision was taken not to pursue this key result area as originally contemplated by the NAP.

While some of the content of the original NAP document may not be workable, interviews at court and regional level indicated that it remains an area requiring attention. Some work has been undertaken including the development of a specific Small Claims Courts website. There were several radio talk shows with SABC radio stations and other independent radio stations. A set of information brochures and pamphlets have also been developed.

Interviewees at a court level felt that this key result area should be pursued. They drew a distinction between education and communication needs. Communication strategies would be concerned with the popularising of Small Claims Courts. The rationale behind this is that if people are not aware of the forum it will not be used. Education strategies would be concerned with assisting court users to engage with the Small Claims Court. These strategies would focus on preparing court users by way of adult rights education on practical steps to be followed in presenting their matter to the court. Suggestions were made that both plaintiff and defendant should receive plain language information sheets informing them of their rights and obligations as well as practical formalities to expedite hearings.

For proper coordination of these activities and to be able to raise the profile of Small Claims Courts, a clear and sustainable public awareness and rights education strategy needs to be developed.

5.3. Financial accountability

All financial contributions underpinning the Project are either sourced from vote funds or designated donor funds. Article 4 of the donor agreement read together with the NAP provides that the SDC will contribute an amount of R4.5 million over a three year funding cycle. During the same period the DoJCD would make a contribution in kind to the value of not less than R3.101 million.

The SDC contribution has been paid into the RDP Fund Account at the South African Reserve Bank. The RDF Fund Account in turn disburses this contribution to the DoJCD on request. Currently the following information is available for the period March 2007 to January 2010.

Two payments have been transferred from the RDP account to the DoJCD under the Small Claims Court Project objective code. On 11 May 2007, an amount of R2 500 000.00 and on 27 February 2008, an amount of R1 099 600.00 was transferred. The total sum of these two payments is R3 599 600.00. A balance of R650 000.00 remains available in the RDP account while a further amount of approximately R250 000 is being held by the SDC to be paid over on conclusion of the Project. Currently an amount of R2 411 173.80 has been spent on Project activities. The table on the following page²² sets out the broad categories of costs, amounts spent per key result area (KRA) and percentage of total current spend of the donor funds.

²² Information provided by Project Office.

KRA	Activities	Budget	Expenditure	Variance	KRA Totals	KRA %
1	Salaries (Project Organisation)	R 2 124 776.54	R 1 462 788.48	R 661 988.06	R 2 115 323.92	87.73
	Office Furniture (Project Organisation)	R 137 142.29	R 137 142.29	R 0.00		
	National Steering Committee	R 250 000.00	R 81 779.57	R 168 220.43		
	Integrated Case Management System (Program automating court systems)	R 300 000.00	R 300 000.00	R 0.00		
	Administration Costs (Project Organisation)	R 40 490.17	R 23 534.00	R 16 956.17		
	Stationery, Computer consumables (Project Organisation)	R 150 000.00	R 110 079.58	R 39 920.42		
2	Manuals & guidelines for Commissioners and Clerks	R 480 000.00	R 131 341.88	R 348 658.12	R 131 341.88	5.45
3	Training of Commissioners	R 800 000.00	R 0.00	R 800 000.00	R 0.00	0.00
6	Student Internship Programme	R 60 000.00	R 8 917.00	R 51 083.00	R 8 917.00	0.37
7	Publications (Public Education and Communication)	R 155 591.00	R 155 591.00	R 0.00	R 155 591.00	6.45
Total Spent			R 2 411 173.80			
Available Balance			R 2 086 826.20			

The table below sets out how the balance of donor funds available is to be used according to the Project implementation plan for the period April to August 2010²³. An amount of approximately R526 826.20 of the donor funds currently remains uncommitted.

KRA	KRA Available Budget	KRA Projected to August 2010	KRA Projected Variance
1	R 887 085.08	R 510 000.00	R 377 085.08
2	R 348 658.12	R 350 000.00	-R 1 341.88
3	R 800 000.00	R 700 000.00	R 100 000.00
6	R 51 083.00	0	R 51 083.00
7	0	0	0
Totals	R 2 086 826.20	R 1 560 000.00	R 526 826.20

The quantification of the DoJCD spend is more difficult. At the time of writing we had not been furnished with a detailed print out of all vote spend under the relevant responsibility code. This is partly the result of it not being possible to easily disaggregate court spend on Small Claims Courts. Most of these costs occur at a court level where there is no disaggregation of overhead costs between different types of court work.

What we can extrapolate is that the major cost drivers on the DoJCD side are located in the operational expenses associated with the running of 201 Small Claims Courts. Many of these courts have dedicated Small Claims Court clerks and some urban areas have more than a single dedicated clerk. If we were to assume that there were only 100 full time equivalent clerks at an entry level salary of R60 000 per annum, this would equate to R6 million in salary per year or R18 million over a 3 year period. This excludes all associated costs such as interpreters, overtime pay and travel and subsistence allowances.

²³ Information provided by Project Office.

In addition, the DOJCD has, during the review period made additional specific allocations for Small Claims Court spend. We have been informed by the Project Office that the following specific allocations were made:

Financial Year	DoJCD Allocation
2007 - 2008	R 900 000.00
2008 - 2009	R1 000 000.00
2009 - 2010	R1 000 000.00
Total	R2 900 000.00

As such, we are of the view that the DoJCD has exceeded the stipulated payment in kind by some way. With respect to any future agreements, care should be taken to not impose a financial contribution requirement from the DoJCD which is not easily ascertainable. At the same time it is understandable that a donor would want to ensure financial contributions from the recipient.

Since the Project Office was established there has been a noteworthy increase in the establishment of Small Claims Courts in previously disadvantaged areas. However a number of planned activities were delayed or not realised. We were informed by the DoJCD that this was attributable to a low performing senior management structure. This weakness was identified and addressed in November 2009 by the relocation of the Project Office.

The overall efficiency of the use of resources by the Project is mixed. We are satisfied that all donor spend has been allocated to Project activities and has not been misused or diverted. A significant amount of funds remains unused at this stage. It appears that the majority of the remaining funds will have been spent by August 2010.

The evaluation of the efficiency of the use of resources was complicated by the fact that it did not appear as if the NAP had been updated since its drafting in 2003. In many respects the NAP is an outdated document and did not reflect all of the activities with which the Project was seized. Similarly certain activities contained in the NAP now appear to have been abandoned. As a result, the decision making of the Steering Committee as reflected in its minutes did not always approximate to the activities contained in the NAP. It is necessary for the Project to adopt an updated medium term implementation plan which contains a list of costed and budgeted activities. This will allow for greater operational oversight, more efficient use of resources and facilitate easier evaluation.

6. Effectiveness of Project approach

The purpose of this section of the document is to evaluate the effectiveness of the chosen Project approach and methodology in achieving the intended objectives of the NAP including:

- the promotion of justice for all;
- establishing accessible systems and rules of court; and
- providing a well trained administrative support staff.

We will once again consider all 7 key result areas for completeness of picture.

6.1. Key result area 1: Project Organisation (including monitoring)

The Project Office has identified that the monitoring of the operations of Small Claims Courts is vital if strategies to improve access to justice are to succeed. Aside from narrative reports from Regional Offices, the Project Office currently has two primary sources of data at its disposal. Firstly, the National Operations Centre ("NOC") receives monthly statistical reports from all Small Claims Courts. These statistics are transmitted electronically to head office where they are collated and sent to the Project Office for analysis. It is also possible for the Project Office to specifically request mandatory fields to be inserted or deleted from the monthly returns. In other words it is possible for the Project Office to customise the information that they receive on a monthly basis from all Small Claims Courts. The availability of this type of information provides a potentially powerful tool to improve the effectiveness of Project oversight. The table below is indicative of the statistics available to the Project Office.

Small Claims Courts Statistics (06/07; 07/08 & 08/09)(Three Year Cycle)

Province	Inquiries			Litigants referred for legal assistance			Summonses issued			Trials		
	06/07	07/08	08/09	06/07	07/08	08/09	06/07	07/08	08/09	06/07	07/08	08/09
Eastern Cape	8144	6771	15284	416	604	1342	1403	1395	5341	1645	1256	14349
Free State	1327	2277	1612	884	1405	291	884	1003	2074	817	691	1276
Gauteng	46354	50757	34646	3203	12902	3832	7614	7980	11961	9111	5901	9661
Limpopo	6015	5450	8228	171	1377	1162	2145	2101	3551	1615	1631	3802
Mpumalanga	8112	8120	10132	1116	1013	814	5418	564	4244	1013	1358	2859
North West	4533	5368	8548	141	211	1276	1106	1323	4613	861	1028	7521
Northern Cape	716	613	554	17	1	13	344	354	946	383	369	825
Western Cape	12690	9841	14200	603	178	698	3086	2521	7530	2782	2044	6000
Kwa – Zulu Natal	00	00	18596	00	00	2087	00	00	5987	00	00	5420
Total	87891	89197	110188	6551	17691	11515	22000	17241	46237	18227	14278	51713

NB: Kwa – Zulu Natal information was not available on statistical data used except for 08/09.



The green colour shows an increase in the particular financial year



The orange colour shows a decline in the particular financial year.

Data is generally collected under 4 broad headings. Inquiries refer to people approaching the court for general information. Litigants referred for legal assistance is the number of people who could not be assisted by the Small Claims Court for whatever reason and who need formal legal assistance. The number of summonses issued is also counted as are the number of trials held. It is not clear why these 4 broad categories were selected. The latter two categories are clearly relevant when monitoring the effectiveness of the operations of Small Claims Courts. There should be a direct relationship between the number of summonses issued and the number of trials held. This is especially so given the relatively quick turn around time in small claims matters. However, if regard is had to the number of summonses issued by Small Claims Courts in the Eastern Cape Province over the three year cycle (about 8 138) and the number of hearings held, (about 17 250) there appears to be a major discrepancy. In other words, there were twice as many trials held than summonses issued which seems extremely unlikely. Similar types of questions can be asked with respect to the numbers of inquiries received in Gauteng compared to the number of matters referred to legal advice and the number of summonses issued.

The strategic prioritisation of what information needs to be collected should be considered. In the second quarter of 2009 new statistical fields were introduced. The number of old cases against new cases was included to check if there are backlogs. Matters settled out of court, withdrawn, number of judgements granted and those dismissed are now also being tracked. Finally the tracking of causes of action was included to enable the Project to identify trends at either Regional or court level. Currently no information is collected around the number of warrants of execution issued pursuant to Small Claims judgements.

Interviews with court staff indicated that there are considerable difficulties experienced by court users when enforcing Small Claims Court orders. Tracking the number of warrants issued by courts would give an indication of how many court orders are being complied with and how many are being ignored. It would also allow the Project Office to consider whether the enforcement procedures currently in place support improved access to justice in civil matters. If there is a barrier posed by the use of current enforcement procedures then remedial steps need to be taken to either identify new enforcement procedures or improve on the effectiveness of existing procedures.

The Project Office allocated the amount of R300 000.00 of donor funds in June 2009 to design, develop, deploy and train users on a specific Small Claims Court module attached to the DoJCD case management system. This process has been successfully completed and has been rolled out country wide and to date approximately 20 courts have been registered and are using the system. In due course, this system will provide a useful repository of data. The ICMS module comprises of manual data inputting as well as the scanning of files.

Perhaps the lesson to be drawn is that the statistics available to the Project Office should be subjected to trend analysis to inform strategic planning. Interviews with the Project Office indicated that there is a desire to strengthen the existing monitoring and oversight mechanisms in the forthcoming years. The Steering Committee and the Project Office should consider investigating ways of optimising existing available data to inform this process.

The increasing availability of information on the functioning of Small Claims Courts suggests an improvement in the effectiveness of Project monitoring and oversight.

6.2. Key result area 2: The Manual and Guidelines for Commissioners and Court Officials

The difficulty in assessing the effectiveness of the manual and guidelines in achieving the Project's objectives is that they have only just been completed. As yet they have not been distributed to their target audience. Despite the initial difficulties in compiling the manuals, described earlier, the Project now does have base documentation on which to proceed. The true test for the manuals will be whether they are able to aid in the facilitation of the standardisation of Small Claims Court operations, the overhaul of the existing Code Small Claims and the development of meaningful training materials.

As such it is too early to express an opinion on the effectiveness of the activities under this key result area.

6.3. Key result area 3: Training for Commissioners and Court Officials

As discussed above, training has thus far only been provided to clerks of the Small Claims Court. The clerks we spoke to were unanimous that the training was useful and should be extended as far as possible. The NAP indicated that a new set of training materials was to be developed. As the core reference materials, the manuals and guidelines, have only recently been finalised this design and development process has yet to begin. It is therefore not at this stage possible to assess the effectiveness of the proposed new training.

6.4. Key result area 4: The Status and Jurisdiction of Small Claims Courts, including Legislative Amendments

The necessary research papers which have been prepared in order to inform the strategic planning around this area are comprehensive. We were informed during interviews that some legislative amendments have already been put to Parliament and are following the normal processes. It is premature to speak about the effect of longer term amendments prior to their implementation. In this regard, it also appears that the Project intends participating in the broader Civil Justice Review being undertaken by the DoJCD. This process is the correct forum in which to consider longer term initiatives.

6.5. Key result area 5: Decentralisation of Rural Courts

The number of Small Claims Courts has been expanded significantly since 2007. The process of further expansion continues but at times appears to be hampered by the bureaucratic process of appointing designated seats, advisory boards and commissioners. This weakness in implementation has been noted as early as 2003 and remedial steps have now been set in place to remove unnecessary administrative hurdles. We were informed by the DoJCD that the administrative process of appointment of commissioners has been reduced to seven days from date of receipt of request and the process of establishment of new Small Claims Courts is now taking at most 21 days. The Project Office has further developed a template that ensures that the Regions provide all the necessary documents in the initial requests to National Office. The significant increase in the establishment of Small Claims Courts over the past three years points to the increased effectiveness of the Project in promoting access to justice for all.

6.6. Key result area 6: The Establishment of a student internship pilot programme for Small Claims Courts

No substantive activities were performed under this key result area during this evaluation period. The initiatives for Legal Aid South Africa personnel, and the embryonic plan to appoint DoJCD interns, to provide services as legal assistants are currently in the early stages of planning. It is therefore not possible to express an opinion on the effectiveness of these activities as yet.

6.7. Key result area 7: Public Education & Communication

The revising and subsequent publication of materials is currently not completed. It is therefore not possible to express an opinion on the effectiveness of activities.

The overall effectiveness of the Project's chosen approach and methodology is acceptable. Certain activities were not pursued as initially envisaged by the NAP. Conversely, some activities not contained in the NAP are now being pursued. This demonstrates that the Project is flexible in adapting its approach in order to facilitate the obtainment of its goals and objectives.

As mentioned in the efficiency section, the overall assessment of the effectiveness of the Project would have been enhanced by the continuous updating of the Project plan.

7. Sustainability of Project intervention

This part of the document considers the sustainability of interventions aimed at strengthening the capacity of advisory boards, commissioners and clerks and assessing the integration of the Small Claims Court into the broader justice sector.

An assessment of the sustainability of the Project's interventions is hampered by the fact that many of the activities aimed at strengthening the capacity of Small Claims Courts have not yet been completed. Interviews with local role players suggested that there were two common areas of discussion around the functioning of Small Claims Courts namely: structural and operational issues.

One of the main structural issues raised related to the appointment of new commissioners and or the proclaiming of new courts and advisory boards. We were informed that there have been historic difficulties in this respect. This challenge has been recognised by the Project Office and, as we have already noted, recommendations have been made around the necessary administrative adjustments to correct the challenges.

A second major structural issue relates to the lack of an entrenched enforcement procedure within the Small Claims Court itself. This relates to the fact that if a person needs to enforce an order they are required to obtain a warrant of execution (or other available remedy) in terms of the Magistrate's Court Act and Rules. Once again, this has been identified as an area requiring attention by the Project and legislative amendments have been suggested. Once the activities contemplated in key result area 4 are completed, the most pressing structural issues will be taken care of.

An operational difficulty which was frequently raised was the issue of security. As the Small Claims Courts sit after hours, the buildings are generally empty at the time of the hearing. While the South African Police Services have a duty to provide orderlies for criminal matters, there is no such duty on them for civil matters. Various role players expressed concern about their personal safety especially when decisions went against certain litigants. Local arrangements have been made in some instances whereby a security member of the team tasked with guarding the building after hours is encouraged to sit in the court during the hearing. Difficulties were also expressed with an absence of secure parking areas. In some courts it is the practice that no clerk is present at the hearings. This can at times present problems to commissioners when they have questions relating to filing and service. However, it is clear that the Act and Regulations task the local advisory board with resolving these types of difficulties.

We were informed that the responsible Chief Directorate and the Deputy Minister, are currently planning to hold detailed discussions and project planning with the various Regional Heads of the Department. These discussions are aimed at improving the operations of the various Small Claims Courts, improving infrastructure and security issues, and the general strengthening of the capacity of advisory boards, commissioners and clerks.

Key result area 2 initially contemplated activities which would address these local operational concerns. However, the recently completed guide does not contain content on practical operational issues as originally intended. As a result, the Steering Committee should consider whether there is a need to establish norms and standards for the holding of Small Claims Court sittings and if so whether this takes place on a national or a local level.

Issues around the quality of paper work, both the letter of demand and the summons were also raised. It was felt that sometimes the causes of action for the claims were not properly formulated or identified. This touches again on the absence of legal assistants in Small Claims Courts and the subsequent filling of this role by the clerks themselves. This issue has been well documented and it is for this reason that a training programme is contemplated for both commissioners and clerks.

Clearly the existing clerk training has been beneficial and it is hoped that the new training materials will further improve the situation. With respect to the proposed training of commissioners, it may be beneficial to include a session which focuses on operational issues and the powers of advisory boards. This could assist in the strengthening of the capacity and decision making of advisory boards.

Commissioners are wary of allowing matters to become part heard. The reason for this is due to the roster nature of commissioners which means that it may be some weeks before a specific commissioner is again scheduled to preside over the court. Often litigants appear without the necessary documents, evidence or witnesses which could support their claim. Commissioners then inform litigants to be prepared on their next visit and postpone the case to the next sitting.

Commissioners felt that methods should be investigated so that these unnecessary postponements could be avoided. Suggestions included information sheets being provided to both parties explaining their rights, duties and obligations. Activities were planned around this under key result area 7.

The final operational issue which was repeatedly raised related to the number, race and gender of available commissioners. From the audit undertaken by the Project Office the following breakdown of commissioners is available²⁴.

DISAGREGATED FIGURES OF COMMISSIONERS ACCORDING TO RACE AND GENDER FOR THE PERIOD OF OCTOBER 2005 TO NOVEMBER 2007
TABLE C

Name of Province	MALES				FEMALES			
	White	Indian	Coloured	Black	White	Indian	Coloured	Black
Eastern Cape	89	3	4	22	6	1	-	8
Free State	42	-	-	2	-	-	-	-
Gauteng	143	9	2	20	18	-	-	3
Limpopo	36	4	-	37	5	-	-	1
Mpumalanga	48	-	-	21	5	-	-	-
North West	29	-	-	13	3	-	-	-
Northern Cape	34	1	2	-	-	-	-	-
Western Cape	239	3	7	1	12	-	2	-
Kwa-Zulu Natal	59	77	-	11	-	14	-	-
Total	719	97	15	125	46	15	2	12

NB : WM = White Male BM = Black Male IM = Indian Male CM = Coloured Male WF = White Female BF = Black Female IF = Indian Female CF = Coloured Female

From this table and the interviews it appears that there is a shortage of available commissioners generally. Given the voluntary nature of the commissioner base, it is not necessarily a simple matter to rectify this challenge. In addition, the pool of commissioners does not currently reflect the demographics of South Africa with respect to race or gender. Rectifying this situation cannot be the sole responsibility of the Project Office as the attracting of commissioners is beyond their control. With respect to gender representivity, female practitioners have indicated their unwillingness to serve as commissioners given that the court sits after hours and that there is inadequate security at a court level to satisfy their personal safety concerns.

²⁴ Op cit Legal Discussion Document at page 20.

Working mothers also felt that the after hours nature of the court sessions did not suit their family arrangements and needs. Steering Committee members as well as external organisations such as the Black Lawyers Association, National Association of Democratic Lawyers and Advocates for Transformation could be useful partners in attempting to rectify these imbalances. A by-product of increased Commissioner representivity would be the likelihood that litigants could conduct Small Claims Court proceedings in their home language without having to rely on interpretation services.

We have previously noted that the intervention logic of the Project is relevant. As such it seems likely that there will be a gradual strengthening of the capacity of advisory boards, commissioners and clerks as Project implementation progresses.

With respect to the integration of the Small Claims Court into the justice sector perhaps the greatest test would be the extent to which the courts and efforts to improve their functioning are funded from vote budget. Currently these courts and their operational staff are entirely funded from vote budget. It would therefore appear that the integration of these courts into the broader justice sector has not proved problematic. In fact the current debate is not whether or not these courts should exist but rather how best to increase their jurisdictional competencies.

8. Impact of Project intervention

During the inception meeting it was agreed by the role players and the evaluation team that given the life cycle of the Project it is currently premature to measure impact. In other words, the outputs and outcomes contemplated by the achievement of the key result areas have not yet been concluded. We therefore cannot consider the outcomes and their impact on affording greater access to justice for the poor, disadvantaged and marginalised at this stage.

However, Small Claims Courts have been operational in South Africa since 1984. There is anecdotal evidence that these courts have had a significant impact on improving access to justice. Small Claims Courts have disposed of thousands of matters since their inception and records of the parties are available.

The usefulness of establishing Small Claims Courts as a method of providing access to justice for poor people has attracted regional interest. Kenya and Botswana are also pursuing a Small Claims Court strategy, while Uganda and Zambia have sent official delegations to South Africa in order to inform their own initiatives. This regional cooperation is ongoing. The interest of regional partners in the South African Small Claims Court system is indicative of the regard in which the operations of these courts are held.

9. Project successes and challenges

This section of the document considers key Project successes and challenges. Any recommendations flowing from the discussion are contained in the next section.

- **Governance**

The Project has an established Steering Committee and Project Office. The Project Office has sufficient capacity to complete the implementation of the identified activities. Financial safeguards are in place and all transactions are recorded. There is however a potential overlap between the functions and duties of the Steering Committee and the Project Office which needs to be resolved by a revised Terms of Reference.

- Establishing a foundation for the Project's operational oversight of courts

The Project Office undertook a detailed audit of all Small Claims Court operations. This audit identified a number of areas of operational difficulty at a court level. Currently the Project oversees operations of approximately 201 courts and 1 150 commissioners. The number of commissioners is due to be increased by approximately 300 Legal Aid Board practitioners in the 2010-11 financial year. This will not only significantly increase the pool of commissioners but will also assist in extending the geographical reach of Small Claims Courts.

The majority of courts have operational advisory boards and remedial steps have been set in place to address the improvement of the appointment of commissioners, designation of courts and methods of dealing with inactive advisory boards and or commissioners. In the short term, methods of formally appointing the Legal Aid Board practitioners will need to be set in place and fast tracked to avoid unnecessary delays.

- Legislative framework

Short and medium term legislative interventions aimed at improving the efficiency and effectiveness of the courts have been identified. What remains is for the contemplated decision making process to be facilitated and completed.

In the longer term the Project team has further provided a framework for discussing the architectural framework of the courts. Once again the decision making process itself still needs to be undertaken.

- Manuals and guidelines

Guides for commissioners and clerks are in the final stages of production and will be distributed in the 2010-11 financial year. The commissioner guide is of an acceptable standard and can provide the base document required for training needs. The clerk guide would, in the future, benefit from a plain language overwrite and a clearer linkage to the existing Code Small Claims.

- Training

Although there are existing training materials for clerks of the Small Claims Court, the Project intends revising these materials and developing both clerk and commissioner training courses. These courses should draw from the completed guides as well as existing training materials. It is anticipated that the clerk course will be a 5 day course. Plans are well advanced for the development and delivery of 4 commissioner training courses within the current financial year.

- Legal assistants

The student internship programme held out the promise that senior law students could fulfil the role of legal assistants at identified courts. This process appears to have stalled. The absence of legal assistants continues to present operational problems. The new attempt to use Legal Aid Board practitioners and or the appointment of legal interns for this role will need to be carefully planned and considered. These initiatives could inform a consideration of whether or not this position remains in the Act. Should it appear that it is likely that clerks will continue providing this service, it is paramount that they receive appropriate training. Regard would also need to be had to implementing methods of ensuring that the skills of trained clerks are not lost due to internal DoJCD rotation policies.

- Gender

There are two main aspects to considering gender in the Small Claims Courts. The first aspect relates to the number of female commissioners presiding over courts. As stated previously there are operational difficulties which impede the willingness of female practitioners to make themselves available. Hopefully the Project Office will be able to set in place strategies to improve gender representivity amongst the available commissioner pool.

The second aspect relates to the use of Small Claims Courts by female litigants. No data is currently captured on this. However, from the hearings we attended, we were able to observe significant numbers of female litigants. The ICMS system holds out the possibility of such information becoming available in due course.

10. Recommendations

We have been informed that there are currently discussions around the possible further funding of the Project by the SDC. The evaluation indicates that such support for the Project would contribute to increased access to civil justice for the poor, disadvantaged and marginalised South Africans. If such funding is to be forthcoming we believe that the following recommendations could assist in strengthening and improving the Project.

- a. The overall governance of the Project would be strengthened by the restating and clarification of the terms of reference / mandates of the Steering Committee and Project Office.
- b. The governance structures of the Project should engage in a strategic review of the existing Project Plan. The key result areas should be revisited. A logical framework with new result areas should be developed. The logframe should contain linkages between the Project's objectives and activities. All activities should be costed and show linkages to the budget cycle. Ascertainable performance indicators should be included.
- c. The identified short to medium term legislative amendments should be prioritised for decision making by the mandated governance structure and onward forwarding to the appropriate bodies.
- d. A process for decision making in respect of the longer term amendments to the broad architecture of Small Claims Courts should be set in place. Consideration should be given to the active participation of the Project in the current Civil Justice Review process.
- e. A process of preparing for the appointment of the 300 Legal Aid South Africa practitioners as commissioners should be set in place to avoid unnecessary delays.
- f. The draft Clerk manual would benefit from a plain language overwrite. At the same time, relevant aspects of the Code Small Claims should be incorporated into the new guide to avoid contradictions and to ensure consistency of practice.
- g. The design and development of the proposed training materials for clerks should build on the existing materials held by Justice College and the University of Kwazulu/Natal. The training must cover areas relevant to the role of the clerk as a legal assistant. Particular attention should be placed on covering causes of action.
- h. Proposed training schedules should be drawn up to ensure that, where possible, the training delivered to commissioners and clerks in a particular geographical area should take place within a similar timeframe.
- i. Minimum norms and standards for Small Claims Court operations should be established. Issues to be covered would include advisory board operations, personnel required to be present at court, suggested nature of court proceedings, safety and the general management of the courts.

- j. An evaluation of the nature of data collected for monitoring and evaluation purposes should be conducted. Currently data is not collected across the entire life cycle of the case. Specific attention should be focussed on the number of orders which are required to be enforced and their success rates as well as those matters which are taken on review.
- k. Consideration needs to be given to whether it is possible to reduce and or contain even further the financial costs associated with using Small Claims Courts. To this end, a relationship with the Sheriff's Board should be cultivated in order to deal with service and execution costs.
- l. The recommendations contained in the NAP with respect to the establishment of a study group to investigate the relationship between the Small Claims Courts and Traditional Courts should be revived.
- m. Public education should be redefined to distinguish between initiatives aimed at popularising the court and those aimed at empowering court users. The development of plain language information sheets for both plaintiffs and defendants, available in multiple languages, should be considered.

11. Conclusion

It is apparent from the evaluation that Small Claims Courts are an important mechanism in promoting access to justice in civil matters. As the chairperson of the Steering Committee, Deputy Minister Nel, put it²⁵:

"A vast majority of our citizens experience justice in local courts. We are striving to make sure that all local courts have a Small Claims Court in operation. We want to ensure that in the next 5 years there is a Small Claims Court in each Magistrate Court. We also want to change the operational hours of the courts. We also aim to expand the pool of the commissioners by approaching more practitioners and academics to make time available to sit in these courts."

We would like to thank the SDC and the DoJCD for their assistance in the conducting of this evaluation. We particularly wish to thank Ms. Funeka Thema, the Project Manager, and her team for all assistance in scheduling court visits, arranging interviews and accessing data sources for us.

We hope that this evaluation will prove useful and wish the Project well in its endeavours.

²⁵ Justice Today, Volume 6/2009 November December 2009, DoJCD at page 17.

Annexure A: Terms of reference

1. INTRODUCTION AND BACKGROUND

In the year 2003 the Department of Justice and Constitutional Development convened a conference on Small Claims Courts where all key stakeholders were invited to discuss the transformation of these courts and to ensure that civil justice reaches the most underdeveloped sections of our communities. At this conference a National Action Plan to re-engineer Small Claims Courts was developed with six key result areas:

Project Organisation

Development of the Manual/ Guidelines for Commissioners and Clerks of the Small Claims Courts;

Training of Commissioners and Clerks;

Determination of the status and jurisdiction of Small Claims Courts, including legislative amendments;

Decentralisation of rural courts; and

Establishment of a student internship program.

Key result area one is on the Project Organisation which includes the establishment of a Project Office whose main goal is to afford greater access to justice for the poor, marginalised and disadvantaged communities. The government of the Republic of South Africa through the Department of Justice and Constitutional Development (DOJ&CD) and the Swiss Confederation through Swiss Agency for Development and Cooperation (SDC) have entered into an agreement wherein both parties will contribute financially towards the National Action Plan to Re – Engineer Small Claims Courts. According to the initial proposal and plans, the Project Office was supposed to run for 5 (five) years and implement the other 5 (five) key results areas but due to some challenges, the duration of the Project was reduced to 3 (three) years and the key results areas were also reduced as well as financial contribution.

The Department of Justice and Constitutional Development established a Small Claims Project Office in 2007 for a period of three (3) years starting from 1st March 2007 to February 2010.

The Project Office has been mandated to deliver on the following key results areas:

Development of the manuals (practical guidelines) for Commissioners and Clerks of the Small Claims Courts;

Training of Commissioners;

Monitor the proper functioning and effectiveness of Small Claims Courts; and

Secretariat to the National Steering Committee.

The Project Office has a total budget of R4.5 million for the three year period funded by SDC.

The other key results areas are implemented by the department (Small Claims Courts Sub – Directorate) through departmental funds.

This are the Terms of Reference (TOR) for an external evaluation of the project which will assess the extent to which the Project's goals have been achieved, expected results attained and intended outcomes registered. This evaluation will also serve as a mechanism for DOJ&CD to account for the funds received from SDC and receive feedback on its performance (both programmatic and financial) to improve the relevance of its approach and the efficient and effective use of its resources.

2. OBJECTIVE OF THE EVALUATION

The objectives of the project evaluation are threefold:

- a. Accountability: Provide substance on what has been accomplished by the programme with a reference to the original and the adjusted objectives and the agreed upon work – plans and budgets;
- b. Learning: Provide insight into what has been learned during the implementation of the project or what can be learned from the experiences. The mission will look both at the approach and the methodology used as the management of the project
- c. Way – forward: Both SDC and DOJ&CD will use the evaluation to chart the way forward on the basis of possible future scenarios. On the basis of the recommendations of the evaluation, it will be determined whether the programme continues in its present form, whether changes have to be effected in both its form and content or whether there is a need for an exit strategy.

3. SCOPE OF WORK

The evaluation shall assess the overall results of the project (in terms of output, outcome and impact), comparing original plans with actual implementation. Considerable deviations from the plans should be identified and explanations for deviations shall be provided. More emphasis will be given to the outcome of the project as opposed to the outputs. The following issues shall be addressed:

Evaluate the relevance and effectiveness of the chosen project approach and methodology in achieving the intended objectives of the National Action Plan including:

Promotion of access to justice for all, and in particular the vulnerable groups, through an adequate network of accessible and service orientated Small Claims Courts for all communities, including hearing of the matter in a language that the litigants understands;

Establish systems and rules of court that are accessible, easy to understand and will enhance the use of the Small Claims Courts;

Provide an administrative support staff that is well trained on necessary skills, human rights driven and people friendly;

Attract and retain Commissioners through a conducive environment, who are suitably qualified, and who will apply the law impartially and without fear and favour or prejudice. Evaluate the sustainability of the project intervention in strengthening the capacity of commissioners, clerks and advisory boards and in assessing the integration of the Small Claims Court in the Justice sector.

c. Provide the project with an indication regarding the efficiency of the use of its resources, e.g. could the same have been achieved with fewer resources?

d. Describe the successes of the project and the challenges encountered and present these as lessons learned

e. Examine DOJ&CD institutional development: its capacity, strategic orientation, governance arrangements, stakeholder analysis, monitoring and evaluation systems, programme management and organisational setup, including the coordination between DOJ&CD National Office and Regional offices and stakeholders; knowledge management.

In order to improve practices and ensure a result based approach the evaluator is requested to address the questions defined in Annex 1 when examining the monitoring and the knowledge management system put in place by the project unit.

The evaluator is requested to present its findings and conclusions on which results have been achieved and provide SDC and DOJ&CD with recommendations on how DOJ&CD can increase the relevance, effectiveness, efficiency and sustainability on access to justice for the poor and marginalized communities.

Monitoring

When assessing the monitoring system of the project office, the following questions should be answered:

Monitoring (maximum 2 pages)

What level is monitored (output, outcome and impact) and how is it done (inclusive quality control of collected data)?

Is it done for all projects/programmes or for part of them only?

Is the Small Claims Courts Project monitoring requirement different from other donors (if yes, what are the differences and what does it imply for DOJ&CD)?

4. What is the use of the monitoring in the project office (management purposes, reporting purposes)?

4. The approach to be used by the Evaluator

a. Pre-Mission (3 days)

Desk-study

A brief desk study shall be carried out prior to the evaluation mission, to review the most relevant documentation concerning the project. Documents to be studied include: the National Action Plan, the agreement between SA and SDC, the bi-annual reports, financial reports, work plans, and any other progress monitoring reports.

Elaboration of evaluation framework and instruments

On the basis of the desk-study, the evaluator will prepare an evaluation framework that (re)constructs the intervention logic of the project. The evaluator will identify and elaborate appropriate methods, tools and instruments for the data-collection and analysis during the field mission. The evaluator will develop a detailed list of questions to respond to the areas outlined in section 3.

Logistical support

The evaluator shall indicate the support it expects to receive during the mission from DOJ&CD. This can relate to required time (for interviews, field visits), organisational support (of field visits, etc), logistics (transport, booking accommodation, etc.). The Manager of the Small Claims Courts Projects and the evaluator will discuss how these needs can be met.

b. Evaluation Mission (5 days)

The mission, including field visits shall be carried out in 5 days. Based on the desk study, the evaluator may however decide to select courts/regions he would like to visit. Dates and mission programme are to be confirmed between the evaluator and DOJ&CD. It is also suggested that the evaluator meets with the National Steering Committee members.

Briefing with DOJ&CD Team

On the first day of the mission, the evaluator and the DOJ&CD team will meet. During this meeting, the evaluator provides a briefing regarding the mission's approach. The evaluator will take into consideration the suggestions of the DOJ&CD team members regarding this approach.

Field visits, data-collection and initial analysis

The Evaluator will conduct interviews with local stakeholders (including Law Societies, Regional Offices) and other local beneficiaries of the project.

Debriefing with DOJ&CD

At the end of the mission the evaluator holds a de-briefing for DOJ&CD. Here, the evaluator presents a verbal and written summary of its findings, conclusions and recommendations (ca. 5 pages). The DOJ&CD team will be given an opportunity to comment on the evaluator's findings, conclusions and recommendations. The evaluator may consider these comments for the final report.

c. Post-Mission (5 days)

Draft reporting, including preliminary findings and recommendations

It is expected that the evaluator will first list the opinions of the various stakeholders before drawing conclusions. Towards the end of the mission the evaluator shall have prepared a draft report, which includes preliminary findings and recommendations. The length of the evaluation report should be a maximum of 20 pages single-spaced document before inclusion of appendices typed in Arial using a font size of 12.

Debriefing with project management

Shortly after the mission, a debriefing of the evaluator with SDC and DOJ&CD management will take place, based on the draft report.

Reporting

Within one week after the end of the mission, the evaluator shall submit a Final Report to the Chief Director: CJSR & Programme Coordination and the Governance Programme Manager of SDC. DOJ&CD and SDC will check whether requirements are in line with the ToR and quality standards have been met, who shall then give final approval.

5. Profile of the Evaluator

SDC and DOJ&CD jointly select an evaluator who has sufficient experience in the fields of civil justice and particular knowledge of Small Claims Courts in South Africa. The evaluator shall be familiar with Project Cycle Management (PCM) and shall have significant experience in carrying out evaluations. At least 5 years of relevant experience is requested.

6. Tentative Time Schedule

Activity	Duration	Period
<i>1. Pre-mission:</i>	3 days	16-18 February 2010
Documentation review; elaboration of evaluation framework and instruments; programming of evaluation mission		
<i>2. Evaluation mission:</i>	5 days	22 - 26 February 2010
Briefing by DOJ&CD team		
Field visits, data collection and initial analysis		
Drafting of summary and debriefing with DOJ&CD		
<i>3. Post-mission:</i>	5 days	Until 15 March 2010
Drafting of Draft Report		
Presentation and Debriefing with SDC and DOJ&CD management		
Drafting of Final Report		
Submission and presentation of Final Report		
Total :	13 days	

The evaluation will be undertaken over a period of thirteen (13) days spread over four (4) weeks. Payment will be made on the basis of thirteen (13) working days. The allocation of the thirteen (13) of work could be adjusted in consultation with SDC and DOJ&CD. However, the total days of work and payment should not exceed thirteen (13) days.

Annexure B: Document List

Name	Date	Author
Small Claims Court Act 61 of 1984	1984	
Regulations to Small Claims Court Act	1984	
Code Small Claims	1985	DoJCD
Small Claims Court National Action Plan	2003	DoJCD
Steering Committee meeting 31 October 2005	2005	DoJCD
Audit Report - Eastern Cape	2007	Regional Office
Audit Report - Free State	2007	Regional Office
Audit Report - Gauteng	2007	Regional Office
Audit Report - Kwazulu/Natal	2007	Regional Office
Audit Report - Limpopo	2007	Regional Office
Audit Report - Mpumalanga	2007	Regional Office
Audit Report - North West	2007	Regional Office
Audit Report - Northern Cape	2007	Regional Office
Audit Report - Western Cape	2007	Regional Office
SDC and DoJCD final funding agreement	2007	SDC
Financial report March 2007	2007	Project Office
Steering Committee meeting 18 July 2007	2007	Project Office
1st SDC Report March 2007 to July 2008 narrative	2008	Project Office
Comparative Study Small Claims Courts	2008	Policy Unit
Financial report - April 2007 to March 2008	2008	Project Office
Legislative Framework for Small Claims Courts	2008	Policy Unit
Steering Committee meeting 3 April 2008	2008	Project Office
Steering Committee meeting 17 July 2008	2008	Project Office
2nd SDC Report August 2009 logframe	2009	Project Office
2nd SDC Report August 2009 narrative	2009	Project Office
3rd SDC Report October 2009 narrative	2009	Project Office
4th SDC Report October 2009 logframe	2009	Project Office
Financial report - April 2008 to March 2009	2009	Project Office
Small Claims Brainstorming session October 2009	2009	Project Office
Small claims court statistics 2007 to 2009	2009	NOC
Small claims court statistics 2007 to 2009 presentation	2009	NOC
Steering Committee meeting 7 May 2009	2009	Project Office
Steering Committee meeting 23 October 2009	2009	Project Office
Clerks guide Small Claims Court final draft	2010	DoJCD
Commissioners guide Small Claims Court final draft	2010	DoJCD
Financial report donor funds - March 2007 to end January 2010	2010	CFO
Foreword for guides - DoJCD Deputy Minister	2010	Andries Nel
Foreword for guides - Swiss Ambassador	2010	Rudolf Baerfuss
List of Steering Committee Members	2010	Project Office
Small Claims Court draft statistics October to December 2009	2010	NOC
Small Claims Court Project manager terms of reference	undated	DoJCD
Terms of reference for Steering Committee	undated	DoJCD

Annexure C: People interviewed and court sittings observed

Role Players

Adv I Bredenkamp	Pretoria Society of Advocates
Mr F Droz	Swiss Agency for Development and Cooperation
Adv. P Du Rand	DoJCD: Court Services
Mr. JB Greese	Association of Law Societies South Africa
Ms. N Gangen	Cape Law Society
Mr. P Hundermark	Legal Aid South Africa training
Ms. D Ishwarlall	DoJCD: Chief Financial Office: budget coach
Mr A Nel	DoJCD: Deputy Minister
Ms. P Moodley	DoJCD: Acting Chief Director Vulnerable Groups
Mr. M Palekar	University of Cape Town-Department of Private Law
Mr. N Swardt	Association of Law Societies South Africa
Mr. E Tadesse	Swiss Agency for Development and Cooperation
Ms F Thema	DoJCD: Small Claims Court Project Office
Ms A Thuynsma	DoJCD: Chief Financial Office: donor funds
Ms K Visagie	DoJCD: National Operations Centre
Mr B Williams	DoJCD: Office of the Deputy Minister

Court Visits

East London Small Claims Court

Court Manager
Small Claims Court Clerk
Interpreter
Commissioner
Court session attended
Court users interviewed

Zwelitsha Small Claims Court

Chief Magistrate
Area Court Manager
Court Manager
Two Small Claims Court Clerks
Commissioner for Zwelitsha and King Williams Town

Kimberley Small Claims Court

Court Manager
Small Claims Court Clerk
Interpreter
Commissioner
Court session attended
Court users interviewed

Cape Town Small Claims Court

Court Manager
Supervisor Civil Section
Small Claims Court Clerk
Commissioner
Court session which was scheduled to be attended on 9 March 2010 was cancelled