

Vera Institute of Justice

Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/pretrial-services-in-south-africa-lessons-from-the-past>

Public Facing Advocacy Writing

In 1997, in response to the problem of overcrowding in South African prisons, the Vera Institute of Justice (Vera) was invited by the then South African Minister of Justice, Dullah Omar, to establish a demonstration pretrial services project aimed at reducing the number of admissions into remand detention. The [project](#), based at various courts across South Africa, sought to provide magistrates with independently verified information about defendants at arraignment, which, it was hoped, would make the bail process more efficient, equitable, and informed.

In an article published last month in the [South African Crime Quarterly](#), Clare Ballard and I discuss why Veras pretrial services project was not adopted nationally. A number of practical shortcomings partially explain why the project never moved beyond the pilot phase. For example, after the project was handed over to the Ministry of Justice, no structures or supporting guidelines were put into place to ensure the continued support and participation of partner agencies critical to implementation. In addition, the projects success may have depended too much on its one high profile champion, Minister Omar, and others within agency leadership, while not enough had been done to recruit the support, cooperation, and trust of key operational staff on the ground. However, these considerations do not fully answer the question of why the project faltered as it did. We argue that the political and social climate in the late 1990s was not conducive to a national roll-out of pretrial services. It is clear that public concern at the time about crime and public safety, and subsequent legislative and judicial responses to this concern, played a role in the projects demise. However, in South Africas current social and political climate, we suggest that it may be worth revisiting the idea of pretrial services.

Incremental shifts on the legislative and policy fronts indicate that there is a growing concern about the excessive use of remand detention and the conditions to which remand detainees are exposed. The South African government has also begun to address problems in the criminal justice system that contribute to the unnecessary use of remand detention, such as the crippling delays regularly experienced in South Africas criminal courts. Yet, despite the governments current efforts, the number of remand detainees remains alarmingly high amounting to 46,432 as of 2011.

With political will no longer lacking, and a policy climate that is more conducive, a new pretrial services project may be more successful today than it was a decade ago. Moreover, a revived pretrial services project can draw on important lessons from Veras original pretrial services project (and subsequent 2007 research done at the three original pilot sites) as well as the projects sole progeny Port Elizabeths Integrated Justice System Court Centre Project. (This project, like Veras project, aims to reduce the amount of time spent in prison by defendants awaiting trial; but unlike Veras project, the pretrial element is just one of many components.)

Research has shown significant differences among court centres, which has important implications for how a new system of pretrial services should be designed. For example, 2007 research on the original pilot sites found that reasons driving postponements in Durban were trial-related, while postponements in Mitchells Plain were due to delays in investigations. This suggests that *meaningful* reforms aimed at reducing the length of time that defendants remain in remand detention in Durban would necessarily include a court processing component. By contrast, in Mitchells Plain, such reforms would need to include police operations, and perhaps an integrated investigatory approach that involved prosecutors to a greater degree. Thus, a new pretrial effort in South Africa may be better served by devoting resources to tailoring services to the particular needs of each court centre and the community it serves, rather than attempting to construct a one-size-fits-all national model. A system designed to be flexible in this way may well provide a tangible bridge between abstract constitutional guarantees of due process and the reality experienced by remand detainees in South Africa.

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