



# Restorative Justice

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John Braithwaite

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## EDITORIAL

# Paralegals changing lenses

John Braithwaite\*

Distinguished Professor, Regulatory Institutions Network, Australian National University  
(Australia)

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This editorial is about how a paralegal programme can multiply the effectiveness of restorative justice and reduce the imprisonment rate. That programme is in Bangladesh, but it helps answer a question relevant for every country and that for me started in Democratic Republic of Congo (DRC).

My friend Symphorien Pyana from a Jesuit nongovernmental organisation (NGO) in DRC recently said that there was a desperate need in Eastern DRC for an initiative to get former child soldiers out of prison. Footloose former child soldiers frighten people when they hang around on the streets of Congolese towns. I have experienced that fear. Some have a faraway stare; when they congregate near an ATM, fear is a natural response if you are taking money from the ATM. So police and soldiers often arrest them with little justification. Those who do have affiliations with organised crime groups bribe prison officials to release them out the back door of the prison. It is the innocent children who are left there to rot. They are forgotten as they wait for completion of a non-existent investigation, often into a non-existent crime. One thought I had about this challenge was to approach the Catholic Cardinal of Belgium, whom I had met on a visit to KU Leuven, to solicit interest among retired Belgian lawyers to volunteer to work with Symphorien to get the former child soldiers released into educational/vocational programmes or to get them a trial date if there truly were grounds for a prosecution to proceed. On reflection, this did not seem an especially cost-effective approach, as the Belgian lawyers would all require expensive airfares, accommodation and security. Most of the former child soldiers would speak little or no French.

Contact: [John.Braithwaite@anu.edu.au](mailto:John.Braithwaite@anu.edu.au).

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In 2015, I became aware of a Bangladesh Ministry of Home Affairs project implemented by GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit) with local NGOs, on behalf of the Federal Ministry for Economic Cooperation and Development and the United Kingdom's Department for International Development (DFID). It does provide a cost-effective approach for application to this DRC challenge. This is even though the Bangladesh initiative, Improvement of the Real Situation of Overcrowding in Prisons in Bangladesh (IRSOP) (Scholte, 2014), does not target former child soldiers.

Bangladesh has a systemic problem where over 68 per cent of its prison population in July 2015 has not been convicted of any crime. This is falling, thanks partly to IRSOP, from an estimate from government figures of one to two years earlier of 74 per cent (International Centre for Prison Studies, 2014). Because there is a backlog of almost three million cases waiting to be heard in the Bangladesh courts, for different reasons Bangladesh has faced similar challenges to DRC (GIZ, 2015; Justice Audit Bangladesh, 2015; Scholte, 2014). There is a legal aid service in existence that is sponsored by the government however this is not working well enough for the high numbers of poor and vulnerable people that need it. The backlog is primarily driven by the fact that almost no one pleads guilty, and secondarily by some reluctance of courts to use bail. Part of the GIZ work is about changing a legal culture where lawyers almost always advise clients to plead not guilty even when they accept responsibility and judges are reluctant to grant bail. While we wait for the slow process of reforming these root causes of unjust and wasteful imprisonment, IRSOP has put in place a three-track strategy for reducing the prison population now. This is a combination of a paralegal, restorative justice innovation and approaches to rehabilitation and reducing recidivism that include restorative justice. Coupling a paralegal and a restorative justice innovation has so far allowed IRSOP to get 7915 people released from prison. The Ministry of Home Affairs in partnership with IRSOP is well on the way to its objective of reducing the prison population by 15 per cent and the number of women and children in prison by 50 per cent in three years.

For many of us, a great disappointment about the accomplishments of the social movement for restorative justice globally is that it has had so little impact on bringing imprisonment rates down. Hence, I was excited to be involved in a tiny way with an inspiring group of reformers in the IRSOP project who have already had a significant impact on their country's rate of incarceration. A key to the IRSOP innovation is that it puts restorative justice in harness with a paralegal programme where the paralegal entrepreneurship actually does more of the work of reducing reliance on imprisonment. Yet this editorial will also attempt to show that the genius of the innovation is in the synergy created by putting the paralegal and the restorative justice reforms in harness so that the paralegal accomplishments enhance the restorative justice accomplishments, and vice versa. This is partly about restorative justice providing a justice narrative that release from prison is not a bald exercise of impunity. But we will see that the restorative justice contribution to the IRSOP synergy has proved more profound than that.

## 1. Paralegal entrepreneurship

The paralegals are the equivalent of the old 'barefoot doctors' idea, translated into the justice field. They are not law graduates. So this is not a foreign aid programme that worsens the problems of a system with insufficient lawyers by foreign donors diverting that key human resource scarcity from the domestic system. Instead, new human resource capabilities are developed by training college graduates (mostly under 25 years of age) as paralegals for weeks rather than years. They are trained to chase the paper trail of an incarcerated person awaiting trial to ascertain the bottleneck in getting their case moved and ultimately resolved. Their wages are extremely modest, especially compared to those of Bangladeshi lawyers.

The best way to illustrate how paralegals uncork diverse bottlenecks that prevent the flow of prisoners out of jails is with examples of their work. One paralegal assisted an 11-year-old girl who worked as a housemaid in Dhaka. After she ran away from her abusive employers, her family believed she had died, but she had ended up in prison (Scholte, 2014). In another case, a 7-year-old boy fell asleep while playing in a parked bus, woke up in a strange city and also ended up in prison. The paralegals found the parents of these children and got them released to the care of their parents (Scholte, 2014). In an adult case, a family had orchestrated the incarceration of a man because they could not care for him at home. The work of the paralegals persuaded the family to take their son back. The potential of a restorative family group conference that addresses the needs of the family as well as the needs of the prisoner to achieve a family reconciliation is obvious in a case like this. Restorative justice also has potential where there are more serious criminal allegations against an offender. In one of several extreme cases of this kind, IRSOP secured the release of a man who was convicted of murder 21 years earlier, completed his time, but stayed in prison in connection with another charge. However, after this case was stayed by the High Court for some time, it was dismissed, and the defendant only found out about this dismissal three years after he should have been released for the first crime. He was accompanied to prison by his 14-year-old daughter and then 21 years later accompanied from the prison by her daughter, his 14-year-old granddaughter. A contribution restorative justice can make in serious cases where offenders are imprisoned for a long time without conviction is that victims can play a role in arguing that 21 years in prison is enough. Victims can argue that the pain for all the parties should end, as should the injustice system's dysfunction.

One case concerned a woman who had served twelve years of a prison sentence. With remission on the sentence for good behaviour, she had been entitled to be released for many months. However, her sentence also included a fine (of less than US\$20). The paralegal found that she did not understand that she could be released only if she paid this fine. Unfortunately, she had no means of paying it. She had lost contact with her family. Her baby daughter had been with her in prison during the early years of her

sentence, but for many years contact had been lost as the daughter had been removed from the prison to an orphanage. Her husband was blind. People in her village wrongly believed she had been released and started a new life elsewhere. The paralegal was able to advise the village that this was wrong. In a restorative process members of the village collected the funds to pay her fine. This secured her release. The restorative process triggered by the paralegal reunited the family; the woman was released to live with both her husband and her daughter. IRSOP through its local partner NGO RDRS trained her for six months in vocational skills in the RDRS rehabilitation centre. This helped her to support her daughter and her husband (and in turn be supported by them). RDRS supported the family with furniture and further livelihood follow-up. This is a good example of the holistic restoration that is within the power of an NGO like RDRS that provides integrated empowerment services to ultra-poor rural people. The holistic transformative capabilities of RDRS are discussed in the next section.

Much of the work of the paralegals involves simply restoring some simple functionality to an administrative dysfunction. One paralegal spent weeks searching for a lost court docket. When the paralegal made the paper trail visible, the sad fact was that the prisoner had been acquitted and should have been released three years earlier (Scholte, 2014). Other work has proved more efficient in a group. Paralegal aid clinics inside prisons educate prisoners on topics such as courtroom etiquette, on what bail is and how it could work for them, and their legal rights. This learning partly occurs through drama where prisoners themselves play the roles of lawyers and judges, and through song. As the paralegals entertain by singing their message, they point to individual prisoners and sing the message that this point could be relevant to you. This draws on *potsong* traditions of education through poetry sung with pictures that can work with Bangladeshis regardless of their literacy.

Paralegals not only support victims and those arrested by advising them how to file a case or find a lawyer, they also inform their family members of their arrest. They also help police to divert juvenile cases from the police station. In this work, IRSOP's case coordination committees have proved strategic. These meet monthly under the powerful joint chairmanship of the district and sessions judge (the head of the district judiciary) and the district magistrates (deputy commissioner—the head of district executive). Case representatives of all stakeholders in the justice process have a right to attend—the local civil service elite, judges, magistrates, prosecutors, police, Bar Association, Department of Women and Children's Affairs, Department of Social Welfare, Department of Narcotics Control, NGOs and civil society, etc. Yet the key player amidst all these local luminaries in making case coordination committees work is the young paralegal who has been trained to put in the legwork to discover a simple path out of the system.

Western restorative justice that remains at the margins, generations away from becoming a mainstream option, could learn from this. Western restorative justice is thick with talented restorative justice facilitators and teachers, thin on advocates who

work full-time at steering cases to restorative justice. Western societies must learn their own ways of coupling the inspiration of restorative justice with practical messages to judges, police and prosecutors who are afraid of making a mistake in granting bail, in releasing a prisoner to restorative justice. The paralegal engine is beginning to drive restorative justice in Bangladesh toward the destination of becoming a more mainstream option. The case coordination committee is the wise old regulator of the paralegals' youthful enthusiasm for transformation. It legitimates the justice entrepreneurship of the paralegals.

## 2. Restorative justice entrepreneurship

The second leg of IRSOP's transformative strategy is training restorative justice facilitators in selected rural areas and villages in seven different districts. A remarkable part of this strategy is that every restorative justice facilitator is a volunteer and part of the community. This is what embeds the sustainability of this approach. Trained facilitators are entrusted to carry out restorative practices in their community that go beyond set-piece restorative justice conferences. The project has also trained a core group of master trainers to train these facilitators and to conduct awareness sessions on the benefits of using restorative justice with respected village elders, elected representatives and key members of the communities. The conclusion of each conference is recorded by the IRSOP programme with paper copies provided to the harm-doer and the victim. This provides closure to the victim, accountability to the harm-doer and helps guarantee impressive follow-through on implementation of what is agreed.

Most of the cases diverted by paralegals do not go to restorative justice.<sup>1</sup> So one critique of IRSOP is that it has not yet fully developed its potential to create the synergies possible by integrating the paralegal and the restorative justice programmes. Much of the time they operate as completely independent programmes. In turn, both the restorative justice and paralegal programmes are insufficiently integrated with real rehabilitation options. In fairness, it is early days with the programme and not many rehabilitative options for drug treatment, vocational training and job placement are in place. So my reaction was a little cynical when one of the 'Results (Prison Issues)' presented in a GIZ (2015: 2) PowerPoint was the dot point: 'Identified Drug dependent Prisoners for referral (2,871+)'. 'Identifying' as opposed to helping to meet needs is a soft outcome indeed.

Three partner Bangladeshi NGOs coordinate the pilot IRSOP restorative justice programmes in harness with the paralegal programme in seven populous divisions of the country. I was only able to observe restorative justice in action in Rangpur district in

<sup>1</sup> There are no figures on the proportion of cases where this happens. One estimate from one programme member of 30 per cent of cases in one locality was questioned by other sources.

the northwestern corner of Bangladesh. I was asked to observe the programme and offer suggestions on how the restorative justice component might be done better. I benefitted in that process from representatives of the other two programmes operating further south—by Lighthouse and Madaripur Legal Aid Association—adding their critiques to mine. The focus of this article is on the genius of integrating a paralegal and a restorative justice programme rather than on the nuts and bolts of what might be done better in their conferences. Suffice it to say that the quality seemed better than I have observed on average in programmes in Australia and New Zealand that have high international standing, though of course I may not have been taken to see average facilitators. What was most interesting in our little quality enhancement exercise was that my colleagues from Lighthouse and Madaripur Legal Aid Association had more sophisticated comments than I on the quality of the programme. They had suggestions on how they might be doing certain things better in their part of the country, as well as acknowledging ways RDRS might be doing things better. One reason their peer review was superior to mine was because it did not focus mainly on the conference itself.

For example, one of the events we visited was a courtyard meeting in a village for awareness-raising about restorative justice. This event blew us away as a practical form of deliberative democracy. I could not imagine a meeting in Canberra occurring where very young people were so knowledgeable about restorative justice and so engaged with how it could be run in a better way in the context of their village. My reaction in our evaluation session back at RDRS head office in Rangpur was to say I was impressed by the courtyard meeting as giving a meaning to democratic empowerment that I had never seen in my own country. In contrast to me, the peer reviewers from the other Bangladesh restorative justice programmes had suggestions for getting more out of the courtyard meeting. ‘In village society you do better in raising awareness with a flip chart’. The Rangpur folk felt this criticism was right and were defensive about it, insisting that they were only just starting up and had plans in hand for flip charts with colourful pictures of restorative justice in action.

More important than the external peer review was peer review that was internal to the courtyard meeting. In one village, the restorative justice facilitator was a fairly young woman. A male elder of the village spoke up on why he felt his traditional *shalish* justice was superior to her restorative justice. Most *shalish* practices, in common with most *shuras* and *sulhas* across the Muslim world, are male-dominated (Khondker, 2015).<sup>2</sup> At one point the man became angry, alleging that the women who run restorative justice only care about women’s rights and do not care when a woman tortures her

<sup>2</sup> *Shalish* in Bangladesh has followed a variety of local forms since antiquity (Khondker, 2015). *Shalish* is derived from the Arabic *sulh* (meaning peace or reconciliation). *Shalish* originally had elements in common with the family of mediation practices that we can still see in the *sulhas* in the Middle East or in *shuras* across central and south Asia. All of these mediation traditions across the Muslim world are very different as they have been jointly influenced across the centuries by Islam (and by other religions), by local tribal custom and by varied colonial legal traditions.

husband. Women of the courtyard quickly retorted that restorative justice is appropriate when women torture their husbands. Yet the old man made some telling points and it was clear that some of the nodding participants in the courtyard meeting were finding him persuasive. He said that one advantage of *shalish* over restorative justice was that it was open to everyone in the village and that most village members in practice did attend *shalish* as observers or participants. People seemed to agree that this was a good thing in terms of:

- (1) participation in village democracy;
- (2) superior transparency and accountability of village justice;
- (3) educating the whole village about how to do justice, including how to do restorative justice.

It was also argued that this was why *shalish* was less corrupt than state justice. You do not have to pay anyone for justice with *shalish*. This was quickly questioned as an advantage of *shalish* over restorative justice by people who emphasised that they had not had to pay for restorative justice and that all restorative justice facilitators are volunteers. So it was agreed that there was no difference between *shalish* and restorative justice in terms of the process having dignity, respect and legitimacy because no one was exploiting it to make money. Likewise when he made the point that *shalish* is much speedier justice than the justice of the courts (as the Justice Audit [2015] proves), the restorative justice facilitator and participants who had experienced restorative justice were able to rebut this with evidence that restorative justice was as speedy as *shalish*, if not more so.

The concern about preserving whole-of-village democracy and transparency of *shalish* remained, however. And the elder pushed on with other advantages. When everyone in the village sees that an offender has agreed to pay back a debt to a victim, the community becomes a more effective enforcer of compliance with the agreement in comparison with an agreement of a small group signed behind closed doors. Then some argued that there were disadvantages as well as advantages in justice before the whole village. It could encourage some people to play to the crowd, to exaggerated rhetorical flourishes, to be reluctant to admit wrongdoing in front of a large gathering. Members of a youth committee argued during a subsequent meeting that old people 'shout too much' during 'chaotic' *shalish* mediations and that compromise decision-making can be hard in front of a large crowd. With good preparation, restorative justice was seen as better at calming these waters. Some argued that privacy was as important a value as transparency in justice processes. Why should everyone in the village get to know that I had lent a certain amount of money to my friend and they have failed to meet their promises to pay it back because of personal difficulties their family faces?



Then the point was made that matters of sexual or physical violence against women could be particularly shameful for both women and their families and were best not discussed in front of the whole village. A specific 2015 case was discussed at length. This involved a daughter-in-law who was being repeatedly beaten by her father-in-law. The woman refused point blank to take the matter to court. She did not want the shame, the endless delay involved in taking a case to court and the family conflict that would fester during that delay. Most of all she was very poor and could not afford to pay the police to lay a charge nor to pay further expenses involved in litigation. The view was expressed that the father-in-law, in contrast, was quite well off and relished the prospect of the case going to court because he had the resources not only to pay for a legal fight but also to bribe police and officers of the court. The restorative justice facilitator had advised her that it was outside the permissible guidelines for a restorative justice conference to be conducted with a family violence case. So it had been agreed that with both restorative justice and the justice of the courts inaccessible, the allegations would be settled by *shalish*.

The elders also agreed with the wishes of the victim that the restorative justice facilitator from the IRSOP programme would conduct the hearing, but as a *shalish* mediation. The father-in-law refused, insisting on his right to a court hearing. The facilitator then frightened him with the possibility that he might go to prison if he took the court route. So he finally agreed to a *shalish* mediation. For a complex variety of reasons, it was decided that the *shalish* mediation would be held in another ward. This was a disaster because in the initial hearing, fewer than a dozen of the young woman's supporters were able to travel to the *shalish* meeting, while almost a hundred supporters of the powerful man were able to get there. The feeling in our courtyard meeting was that these sheer numbers had created an imbalance of power. But it was generally agreed (a) that having the *shalish* mediation was better than allowing the matter to fester, and (b) that it would have been better still to have conducted it as a restorative justice conference where the facilitator ensured a balance between victim supporters and offender supporters. Finally, it was agreed that it would be a better world if poor people had a right to take their complaint to court, especially in a case like this if the father-in-law were to seriously assault the woman again. Nevertheless, the *shalish* mediation was seen as having some positives for the victim, the offender, the family and the village. The victim's husband had spoken up forcefully for her during the *shalish* meeting and stood up to his father with the accusation that he was wrong to think that he had the right to beat his daughter-in-law. He said his father had repeatedly been cruel to his wife. She drew the vindication that was most important to her from this and it resulted in the community pushing the father-in-law to apologise. On the negative side, *shalish* mediation and courtroom justice was excoriated by the courtyard in comparison to restorative justice because it failed to deliver the follow-through to ensure compliance with all that was agreed to meet the needs of the victim and to ensure the transformation of the behaviour of the perpetrator.

Two lessons were discussed from all of this, without being resolved. One was that it would have been better in this case to have allowed restorative justice and not to have a policy that precluded it for this kind of case. Second, it was concluded that perhaps what was needed was some sort of mixture of the whole-of-village justice provided by the *shalish* tradition and the balanced justice of proportionate representation of stakeholders of restorative justice. Perhaps either at the beginning or the end of the restorative justice process there could be provision for an open transparent meeting of anyone from the village who chose to attend. Then the facilitator should announce that now the stakeholders alone will move into private session. I agreed to report this suggestion as a discussion item for the wider national programme.

Then came an interesting surprise. The male elder who had argued in such an impassioned way for the superiority of *shalish* over restorative justice said that if that option were open as a possibility when requested, that would change his opinion. In fact he said after listening to all the points made on the other side of the argument in the courtyard (mostly by women) he had already changed his mind and he now concludes that restorative justice is generally superior to *shalish*. Important in this was that he was persuaded that restorative justice made a better investment in preparation of the parties for mediation (to avoid denial, abuse and assure a balance of power) and a better investment in follow-up to ensure that relationships were repaired and rights restored. The other villagers concurred with him on this and expressed appreciation that the courtyard debate had been taken seriously and that everyone had been listened to.

The point has often been made that reformers look to the executive and legislative branches of governance for democratic renewal, while it is in the judicial branch of governance that the opportunity for renewal of deliberative democracy is most profound through restorative justice (e.g. Braithwaite, 2002: 130–135). What we learned from Bangladesh is that this can be as true of courtyard meetings for raising awareness of restorative justice as it can be of restorative circles themselves.

In Rangpur, this was a comparatively feminised form of democracy. The Rangpur restorative justice was run by RDRS<sup>3</sup> (while paralegal programmes are run by Bangladesh Legal Aid and Services Trust (BLAST)). Five of the seven RDRS board of trustees are women, its chair, CEO and programme director are all women. RDRS is a regional NGO that offers the rural poor integrated initiatives for empowerment, livelihoods, justice, rights and development. Restorative justice delivery benefits from being integrated into the work of a local NGO with a philosophy of local integrated empowerment across many phases of life. To illustrate with another programme RDRS and other NGOs that deliver restorative justice in Bangladesh also run, the Acid Survivors' Network for Prevention and Better Inclusion supports mostly women, but sometimes men, who are disfigured by acid attacks after advances have been rejected (RDRS, 2014: 20). An

<sup>3</sup> Originally, RDRS stood for Rural Development in Rangpur and elsewhere. But now that RDRS operates in a number of parts of the country, its brand is simply RDRS.

organisation that also supports vocational training, rural livelihoods, women's rights empowerment and restorative justice is normally in a better position to prevent acid attacks and support their survivors in a fully integrated way than a stand-alone NGO that specialises only in acid attack support (or only in restorative justice). RDRS has organised elections for 375 union federations in the poorest region of Bangladesh in the northwest. These elected members decide RDRS programme priorities and advocacy priorities with government and donors. In all, 71 per cent of the RDRS union federation members are women and most of the RDRS restorative justice facilitators are also women, though there are also many men. However, only one-third of its elected union federation chairpersons are women (RDRS, 2014: 14).

### 3. Changing lenses on corruption control

In Rangpur, paralegals had enjoyed so much success in diverting cases, especially petty cases, away from the police station to restorative justice that as of 2015 the police were voluntarily referring large numbers of cases without being asked by paralegals to do so. Unfortunately, the situation is not so positive in other parts of Bangladesh. As in most of South Asia, when citizens want a service from the police such as the recording of their victimisation or some other complaint, they must pay the police for this to be done. Unfortunately in many localities in Bangladesh police are demanding standard fees for referring cases to restorative justice. This undermines the key strength of restorative justice reported in Rangpur—that people see it as dignified justice because it is justice that is not paid for, the justice of volunteers. The GIZ Rule of Law programme in Bangladesh has a corruption-prevention component; it is starting corruption-prevention education in schools. This raises the prospect of integrating corruption-prevention education with restorative justice education in its schools programmes.

A further possible integration I raised in my feedback was persuading a local police commander who is an advocate of both corruption prevention and restorative justice to require police to attend village restorative justice conferences to face allegations from villagers that they had demanded payments. The purpose of such a reform would be to persuade and deter police from demanding payments. If police undertook to withdraw the specific demand alleged and to desist from such demands in future, no punishment may be needed. Police officers who refused to withdraw or pay back bribes could be referred by the restorative justice conference to the reforming police commander with a request that they be demoted or dismissed. This could be a strategy for rippling anticorruption reform more widely from modest beginnings at nodes of reformism.

When restorative justice is both compromised by police corruption and needs police cooperation to divert cases from imprisonment, this challenge is difficult. Police corruption is endemic because it supports a large portion of police income. Even my gradualist

suggestion of reform rippling outwards from nodes of free access to community policing was greeted with concern by local activists that this could lead to derailing of restorative justice reform by powerful state beneficiaries of corruption. While the reaction of restorative activists at the local level was fearful, in the capital where police, judicial and restorative justice leaders could see that there already exist nodes of police commitment to both corruption prevention and restorative justice reform, reactions were not so fearful, yet still cautious.

#### 4. Changing lenses on counter-terrorism

The Taliban and other jihadist groups rose to power in places like Kandahar in Afghanistan and the Swat Valley in Pakistan because these were places that had an unusually acute rule-of-law vacuum (Braithwaite & Gohar, 2014; Braithwaite & Wardak, 2013; Wardak & Braithwaite, 2013). As David Kilcullen (2011) put it, the Taliban seized power as an 'armed rule of law' movement that promised women protection from rape through Sharia law and farmers access to markets without being shaken down and threatened by armed gangs. Because the Taliban more or less delivered these outcomes, they were popular at first, though in time most citizens realised Taliban rule and Taliban law brought their own profound tyranny, especially for women.

The northwest of Bangladesh, especially Rajshahi Division, was another space where in the early years of this century there was an unusually large crisis of access to justice, even by Bangladeshi standards. This resulted in the rise to local power of a salafist 'armed rule of law movement' linked to Al Qaeda called Jamaat-ul-Mujahideen Bangladesh (JMB). It organised hundreds of terrorist bombings in the mid-2000s (International Crisis Group, 2010; South Asian Terrorism Portal, 2012). The government of Bangladesh has performed well in suppressing JMB; indeed, like Indonesia, Bangladesh is a predominantly Muslim society that has moved from having a large Islamic terrorism problem to a small one during a decade when most Muslim societies and some Western ones have moved sharply in the opposite direction. Today JMB controls no significant portion of rural Bangladesh (Fink & El-Said, 2011: 5–7). A number of police, prosecutors and judges courageously sacrificed their lives to convicting the entire JMB leadership, whose followers fought back by bombing courtrooms. More importantly still, in the northwest of Bangladesh where JMB was spreading so quickly during the first decade of this century, the Bangladesh state has been acting to repair the root cause of an access-to-justice vacuum. IRSOP is perhaps the most important access-to-justice initiative in northwest Bangladesh. Its architects do not conceive IRSOP as a terrorism-prevention programme. I do view it as an effective approach to preventing one important root cause of terrorism in the region of greatest rural poverty in Bangladesh, where so many children in the past only managed to get an education through madrassas that could be captured and funded by organisations affiliated with Al Qaeda, where

access to justice was a dream that only organisations like JMB could fulfil in the eyes and hopes of many of the dispossessed.

## 5. Conclusion

This editorial appears in a special issue to celebrate the anniversary of Howard Zehr's classic, *Changing lenses*. I know Howard Zehr agrees that a nimble, learning restorative justice movement must keep changing lenses in new ways. Every country can learn from the lenses being applied to restorative justice in corners of the world far from themselves. No organisation has facilitated such exchange better than Eastern Mennonite University where Howard has taught for so long. Harnessing (modestly) paid young paralegals with older restorative justice facilitators who are volunteers is my reading of the genius of Bangladeshi entrepreneurship with access to a justice that heals.

My favourite lens change at the micro level from Bangladesh was with what rural police in many parts of the world say is the crime that occupies more of their workload than any other—offences associated with livestock, including stock theft or one farmer allowing their stock to eat the crops of another. In the latter circumstance, an ancient tradition is to imprison an offending cow! First, the cow will do no harm, no further harm, while incapacitated in the cow prison. Second, the idea is that imprisoning the cow creates incentives for compensation and reconciliation; the cow owner has an interest in liberating his cow; the victim of crop chomping an interest in compensation in return for decarceration of the cow, as well as assurances for herd management practices that will prevent recurrence. An impressive thing about restorative justice in Bangladesh is the quality of the follow-up by facilitators to ensure that restorative justice agreements are honoured. In one case of a farmer's cow eating the maize of another, follow-up ensured agreement by the victimised farmer that the offender no longer tethered his cows in proximity to his maize. Most importantly, however, the facilitator reported that relationships were restored between the two farmers because they had been 'observed smiling and laughing together sharing tea at the teahouse'. The relational lens was the more important key performance indicator than the livestock lens.

One of the paradoxes of restorative justice being applied to reduce the imprisonment rate (of people) is that it occurs in a country with the kind of low imprisonment rate we see in other large Asian societies such as Japan, India, Pakistan and Indonesia (Braithwaite, 2014: 72). The Bangladesh imprisonment rate is 45 per 100,000 (International Centre for Prison Studies, 2014). Its problems are a backlog of almost three million cases in its courts and the fact that 68 per cent of its prison population are still pre-trial detainees. Most of the eight countries that had a higher proportion of pre-trial detainees according to the International Centre for Prison Studies (2014) are post-conflict societies such as the two Congos, Liberia and Libya (the worst, at 90 per cent). This means that the imprisonment rate for convicted prisoners in Bangladesh

is far lower than for any Western society. We can draw one kind of inspiration from this: that a society with such a low imprisonment rate could still commit to using restorative justice to reduce it further.

More inspiring is the way a new kind of restorative justice reform can be attuned to the particular problems of one country. These were for Bangladesh a crisis of access to justice, a logjam crisis, and an overcrowding crisis in many prisons that were not built to cope with thousands of pre-trial prisoners. For example, Dhaka Central Jail holds 7,617 prisoners in a facility with a maximum capacity of 2,682. At the worst nodes of overcrowding in the system, 200 prisoners can be observed to sleep in a 40 square meter cell (GIZ, 2015: 2). Every day 500 unconvicted prisoners are herded from Dhaka Central Jail in appalling conditions onto vehicles to the courts in case they are finally called to appear; every day 450 to 475 of them are packed like cattle back to prison on those vehicles without getting that court appearance. The root causes of that crisis must be addressed. As part of the GIZ project, its Rule of Law Programme had several meetings with the law minister, the home minister and senior judges who are committed to leading reform top-down to address the root causes of near-zero guilty pleas and too few grants of bail. The hope is that this top-down commitment will complement the bottom-up reforms of programmes run by IRSOP that have already released 7,915 prisoners.

To facilitate this root cause analysis, the Bangladesh Ministry of Law, Justice and Parliamentary Affairs, in partnership with GIZ, has led a Justice Audit (2015) of patterns of delay and nodes of crisis within the system. The remedies required to address these root causes are simple enough. Implementing them is rendered complex by corruption and inertia. Theoretically, a corrupt judge with a backlog of 10,000 cases can earn more by clearing the cases that deliver the biggest bribes than can a judge with a tiny backlog. This editorial has been about the more general lessons of an integrated paralegal and restorative justice strategy for reducing overcrowding and sluggishness while Bangladesh awaits removal of the root causes of its prison crisis. Yet the larger imperative remains of course to conquer those roots of justice system dysfunction. As always, restorative justice reformers must be humble in acknowledging that restorative justice is only one part of a solution.

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