Victims to Partners: A Child–Inclusive Approach in Restorative Justice

6.1 Introduction

The generally positive results of restorative practices from a child–victim’s perspective discussed in Chapter 5 make it an attractive alternative to the criminal justice process. However, Chapter 5 also showed that restorative justice can harm children. Therefore, it would be wrong to include child victims in the ‘routine’ practice of restorative justice. Rather, it might be appropriate to create specific programs for child victims, and perhaps special programs for specific crimes against children (i.e. family and sexual abuse), to enable adequate training, facilitation and investment that will produce safe and successful processes for children of various ages. In crafting such programs, a needs–rights approach can maximize their success and minimize the risks to children. Therefore, the needs–rights model will be used in this chapter to propose some guiding principles for action for child–inclusive restorative justice programs.

Accordingly, this chapter translates the ideas and theories that were presented in previous chapters into practical methods within a restorative justice framework. Rights (Chapter 2) and needs (Chapter 3) are connected to principles for action. The Convention’s four guiding principles of Best Interests, Equality, Participation, and the Right to Life, Survival and Development, adjoin the right to be protected from abuse and neglect, and the right to rehabilitation and reintegration — and form a human rights framework for child victims. To convert these human rights into practical principles and produce a holistic model, however, findings from the psycho–social literature regarding the needs of child victims are integrated. Following the model presented in the end of Chapter 3 (see page 78), these two disciplines are connected to create a combined needs–rights model. Related needs are linked with correlated rights to create clusters that indicate the interrelationships between them. The human rights principles provide the normative aspirations and identify areas that should be explored empirically. The psycho–social findings support (or potentially negate) the linked normative arguments, and help translating the general norms into principles for action.
These principles for action are more specific than the human rights principles presented in Chapter 2, but they are sufficiently broad and flexible to be interpreted in different ways in various cultures, programs and contexts. Hence, they should be regarded as guiding principles rather than a list of specific requirements.

While relying on international norms on the one hand and on psycho-social literature on the other, many of the practical methods of realizing the rights of child victims are drawn from positive experiences of restorative justice initiatives involving child victims, such as those discussed in Chapter 5. Others are adapted from the criminal justice context, including UNICEF’s guidelines for the International Criminal Court (see page 112) and the UN *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime* (2005) discussed in Chapter 4 (see page 113).

The first four sections in this chapter discuss the principles for action that might be derived from the needs–rights framework. Each section relates to one of the four ‘clusters’ of the model, presented in Chapter 3: Best Interests, Control, Procedural Justice and Protection. Grouping the model’s elements into clusters seems to be more appropriate than an individual matching of each human rights principle with suggested principles for action, because of the indivisibility of the human rights principles and the arbitrariness of such an individual matching. In the Figures drawn to illustrate each cluster, each yellow oval in which the principles are articulated, should be seen as ‘floating’ and ‘connecting’ in the vicinity of the human rights principles and psycho-social needs included in the corresponding cluster, while still having some ties with the other parts of the complete needs–rights model.

The final section of this chapter proposes a set of eight heuristic principles which, if followed by professionals, are likely to ensure reasonably satisfying child–inclusive restorative practices. A child–inclusive process is, arguably, one that regards children as active, equally respected partners in it. It does not mean that children participate in the same manner that adults do, nor does it suggest that children are simply included in it. Rather, instead of being treated as passive objects of the discussion, children involved in such a process are treated with respect, and can exercise their human rights in it in a way that suits their best interests and wishes. At the same time, a child–inclusive approach is not identical to a child–centered approach, a phrase often used in child protection discourse. The latter, while being a vague concept, suggests that children’s interests are the only criteria for decision–making, or at least the central and trumping ones. In the context of justice mechanisms, however, other interests exist such as those of the perpetrator to a fair trial, that should not be understated. Although even then the best interests of the child should have primacy (as required by the Convention), it is acknowledged that other interests, such as those of defendants, are also vital and must be guaranteed as well. This could be especially true when the perpetrator is also a child — and therefore deserves equal protection of the human rights provided in the Convention. Accordingly, a child–inclusive approach realizes the existence and importance of other stakeholders and at the same time reflects a respectful, rights–based attitude toward child victims.

The following section, then, discusses the bottom part of the needs–rights model
6.2 The Best Interests cluster of principles for action

As explained in Chapter 3, the Best Interests cluster includes the best interests, rehabilitation and development human rights principles, as well as psycho-social findings regarding the importance of support networks, acknowledgment of harm, validation of behavior, mourning and material reparation for victims. While the best interests principle is a broad, perhaps vague term, rehabilitation relates to the long-term wellbeing of children and development to the changing interests of children as they age. All elements of this cluster, then, relate to different aspects of children’s wellbeing. Figure 6.1 demonstrates the principles for action that might be derived from the Best Interests cluster.

Starting from the best interests principle itself, perhaps its most important contribution as a human rights principle is the obligation it creates on decision-makers to consider the individual needs of each and every child under their authority, and to give primacy to these specific considerations.

In the restorative justice context, to ensure that the best interests of the individual child are given primacy, a thorough assessment should be conducted prior to any such process, to verify its appropriateness in the particular circumstances. Most importantly, it is vital to explore: 1. Whether there is a risk of victim blaming and manipulation during the process; 2. Whether the victim is prepared to have a direct encounter with the perpetrator; 3. Whether there is adequate support for the victim; 4. Whether there is high probability of a convincing safety plan; and 5. Whether there is a high risk of re-victimization by the process. Additionally, the timing of the conference, its location and the list of invitees should be designed with the interests of the child in mind. Finally, the outcome of the process should promote the best interests of the child. Accordingly, it should at a minimum ensure the safety of the child, include reparation (material, symbolic or both) that meets the specific needs and wishes of the child, and strengthen the child’s support system.

Clearly, some of these subsidiary principles also derive from rehabilitative (such as reparation) and developmental (such as readiness to confront the perpetrator) considerations. The best interests principle, however, includes a ‘formula’ for balancing the child’s interests with the interests of others, namely the ‘primary consideration’ formula, specified in Article 3(1) of the Convention. Therefore, it is useful, at least in the context of this cluster, to use it as a general provision, while filling it with more specific rehabilitative and developmental content through the other principles.

Although the best interests principle is ostensibly simple to accept, it would be naïve to assume that its practical application is without problems. In particular, other important interests may compete with the child’s interests, such as the perpetrator’s. For example, the child’s interest to have only the offender present at the process without his or her support group contrasts with the offender’s interest.
Figure 6.1: The Best Interests cluster: principles for action in restorative justice settings
Deciding on a large amount of restitution might help the child get therapy but might delay the offender’s rehabilitation due to financial stress. Does the best interests principle suggest that other interests should be ignored? Clearly, the answer is no. The competing interests need to be discussed and negotiated, with special attention given to those of the child. No magic solution exists, but arguably restorative justice provides space for an open, respectful negotiation where creativity and initiative might lead to resolutions that jointly promote the interests of victims, offenders and the other stakeholders.

Beyond individual considerations regarding specific children, the best interest cluster is also helpful in providing guidance about which process is most suitable for the short and long term wellbeing of children. It suggests that authorities are obliged to give primacy to children’s wellbeing when crafting new child–inclusive restorative justice programs and when choosing the most suitable type of process for discussing crimes against children.

Indeed, restorative conferences and circles are designed to bring together the support systems of victims and offenders, thus helping empower vulnerable stakeholders (Bazemore and Earle 2002, Pennell and Burford 2000a). More specifically, Chapter 5 demonstrated that Family Group Conferences have had considerable success in discussing all family related crimes, including sexual abuse. Conferencing was the process chosen and conducted in Newfoundland (Pennell and Burford 1995, 2000b), New Zealand (Morris 2002a), the ACT (Strang 2002) and South Australia (Daly et al. 2003). Traditional dyadic mediation, in contrast, does not include the support circles of either victims or offenders, and might expose the victim to unsafe and unbalanced situations (Busch 2002). It seems, therefore, that the Best Interests cluster indicates a preference for programs that bring together victims, offenders and their supportive communities, such as conferencing or community circles. Further evaluations, however, are needed of the latter, to address the concerns raised in regard to them (Goel 2000, Dickson-Gilmore and La Prairie 2005).

In addition to the choice of process, the wellbeing of child victims should be a central consideration in the training, program protocol, choice of location and physical design of the program. For instance, programs should consider the age of their target population in choosing and designing the physical environment of the restorative process. Children should feel comfortable and have age appropriate activities to engage with when necessary while the process takes place.

The Best Interests cluster also implies that accepting material restoration from the offender is important for victims’ rehabilitation (Zehr 1990, Strang 2002, Strang and Sherman 2003). As discussed in chapter 3, however, special attention should be given to the child’s wishes and specific material needs.

Another principle for action deriving from the Best Interests cluster is that state authorities should foster the healthy development of children. Therefore, not only are restorative processes obliged to promote the emotional and physical healing of the child through the process outcome, the process itself should be seen as providing an educational and developmental experience for the child. In particular, the value of active participation should be understood in a developmental context as well as an independent right. Indeed, Chapter 2 showed that providing children with op-
portunities to participate in decision-making processes enhances their development by promoting their negotiation skills, ability to express their views, self esteem and sense of belonging (see page 37).

In sum, the short and long term interests of children should be the cornerstone of every child-inclusive restorative justice program not only in its preliminary design, but in the application of the process with each and every child as well. When involving child victims, it is important to consider their age-specific needs and vulnerabilities. Therefore, the process should be designed according to the child’s level of development and wishes, to maximize its rehabilitative potential for the child, and the reparation agreement should be tailored to the child’s specific circumstances. Fortunately, one of the features of restorative justice is the ability to apply flexibility and creativity in its implementation, as long as it is based on the wishes and interests of the specific participants and does not violate their human rights.

6.3 The Control cluster of principles for action

The Control cluster presented in Figure 6.2 demonstrates the interconnections between children’s participation and their short and long term interests. Development, however, is also salient in constructing forms of participation since there are significant differences in the emotional, cognitive and social capabilities of children of various ages in engaging in shared decision-making processes. Findings regarding these developmental changes are relevant and important. Accordingly, despite the temptation to use a symmetrical model of four relatively even clusters, development was integrated into this cluster, in addition to its position in the Protection cluster (see page 170) and the Best Interests cluster (see page 155).

Participating in restorative conferences is not only a right of children. Often it might contribute to their short and long term wellbeing, or in other words, promote their best interests and rehabilitation.

The psycho-social literature presented in Chapter 3 reveals the rehabilitative effects of a safe, open encounter with the perpetrator whereby the victim can ask questions and receive answers about the crime (Zehr 1990), hear the perpetrator’s perspective (Lazarus 1999, Murray 1999), receive a sincere apology and grant forgiveness (Enright and Kittle 2000, Enright and Fitzgibbons 2000, Taft 2000, Bibas and Bierschbach 2004, p. 113), discharge shame (Ahmed et al. 2001, Chapter 17), and resolve their self-blame (Herman 1992, pp. 68, 199, Zehr 2002). These typically cannot occur (or cannot be effective from the victims’ perspective) without the participation of the victim. Restorative justice provides such opportunities where the victim, the offender, their supporters and a facilitator meet together in a process that fosters respect, active participation and non-domination.

Angel’s (2006) findings regarding the positive mental health impacts of restorative justice provide evidence of the rehabilitative power of such processes. Based on her findings regarding reduced post-trauma symptoms among conference victims compared with court victims from randomized controlled trials in Australia, the UK and the United States, Angel claims that although restorative justice conferences
Figure 6.2: The Control cluster: principles for action in restorative justice settings
are typically a single event, they may be sufficiently powerful to have a similar effect
to that of multiple therapy sessions.

While these findings have not included child victims, they provide a first thera-
peutic jurisprudence account of the relationship between the mental health of victims
and their participation in restorative justice processes that follow their victimiza-
tion. Clearly, it is important to conduct similar studies on child victims to explore
whether such direct encounters hold the same potential for children. The existing
psycho-social literature, however, makes a sufficiently strong argument for the care-
ful experimenting of safe, supportive and open encounters between child victims
and their perpetrators in order to test whether these encounters promote emotional
healing and rehabilitation as they do for adult victims.

In any case, findings regarding child victims’ needs for a sense of control, to
be empowered, listened to and respected (Melton and Limber 1992, Stafford et al.
2003, Graham and Fitzgerald 2005) demonstrate both the potential of restorative
justice and the great challenge when applied to child victims. On the one hand,
restorative justice fosters active participation by victims, offenders and their af-
fected communities. At the same time, considering children’s limited experiences
and evolving communication skills, a child–inclusive restorative justice needs to find
ways of enhancing children’s ability to have meaningful participation in the process,
in accordance with their specific age, needs, capabilities and wishes. Adults also
need to develop their ability to listen to children and understand their messages.
Furthermore, it is important to be attentive to children and respect their views not
only during the process, but prior to its commencement as well, while making the
decision regarding the form of participation.

One example of seeking young children’s viewpoints is the ‘Storycrafting’
method, developed by Finnish organization STAKES. Storycrafting is suitable for 1
to 6 year–old children, and was found effective in bringing out children’s thoughts
and viewpoints (Riihelä 2001, 2002). According to the method, the child is asked to
tell a story. The adult promises to write the story using the child’s exact words while
the story is told. The adult further reassures the child that there is no right or wrong
story, that they are simply interested in hearing the child’s thoughts and feelings.
When the child is done, the adult reads the story to the child, and any corrections or
changes the child makes are integrated in it (Riihelä 2002, p. 7). The success of the
method in improving communication between young children and adults, including
regarding painful matters such as divorce, was explained by Riihelä (2001, p. 2):

Oftentimes the situation loses its meaningfulness from the child’s per-
spective because the adults ask the children about things they already
know about. This is why the children in some way have to be told, that
‘Everyone has their own way of thinking. I am interested in how you
think. Since I am the other person I cannot know your way of thinking.’
Once a child said to me with a surprised expression: ‘You mean you are
interested in what I’m thinking?’

Since 1995, Storycrafting has been used in numerous Finnish municipalities and
adopted in other Nordic countries. It was accepted in 1999 as a preferable thera-
The Control cluster of principles for action

There is no evidence that Storycrafting is as effective in the context of child victimization and restorative decision-making processes. Nonetheless, it demonstrates how, with creativity and awareness to children’s own perspectives, it is possible to understand their worlds better than when using ‘adult’-oriented methods. This method can perhaps be tested as a way for achieving meaningful participation of very young children without having them present at the conference itself.

While participation might have a powerful rehabilitative role, it is important to consider Murray’s (1999) concern that forcing children to have control may be sometimes experienced as dominating them yet again and interfere with their healing journey. Therefore, participation should be always considered together with the wellbeing of the child. Whichever the chosen form of participation, taking part in the process means also receiving on-going information about its progression, in a way suitable for the child’s level of development and understanding.

As mentioned earlier in this section, developmental findings are central in the discussion of children’s participation. A related concept is that of ‘evolving capacities’. Children develop their capacities constantly and gradually, and their families and surrounding communities need to foster their development through providing guidance while allowing growing freedoms and autonomy.

Accordingly, restorative processes need to be adjusted according to such developmental issues at every stage of the process, and base these adjustments on general scientific data as well as individual assessments. Hence, the preparation of the child and the information given to him or her, the form of participation, the list of invitees, the location of the process and its goals — should all be conducted in a way appropriate to the developmental level of the specific child.

The Convention however makes it clear that every child who is able to form an opinion (even toddlers can), has the right to have these views heard and considered. In other words, every child has a right to participate in a decision-making process, and the key question is how. A needs-rights approach requires evidence-based findings, as well as specific assessments, before any exclusion of children from processes regarding their victimization occurs. Indeed, developmental studies have found three year old children are able to recognize that other people have different viewpoints (Selman 1980, p. 132, Hart 1992, p. 32, Smith 2002, pp. 82–83). Yet other studies have indicated the limited intellectual and emotional capacities of children and adolescents, which make them unable to make rational, future-focused decisions (for a review, see Lansdown 2005, pp. 23–24). One explanation for the different findings might be that developmental studies used experimental designs that take children away from their natural environment, thus inhibiting their true capacities to make rational decisions (Lansdown 2005, p. 25). Another explanation is that children and young adolescents are perhaps still not ready to make rational decisions on their own, but they are able from a very young age to engage with others in discussions regarding their daily lives. In fact, the differentiation between making decisions alone and engaging in a shared decision-making matches the Newfoundland finding that while young victims participated in the process, they were typically not the
main decision-makers (Pennell and Burford 1995, par. 6.5.1).

Whatever the reason might be, the differences between the studies suggest that an individual assessment regarding the capabilities and wishes of the child is necessary in every case, as well as a gradual understanding of the concept of participation. Taking part in the process does not necessarily mean being present at the conference, speaking up, and having an equal voice to the other participants, although this might be the preference for adolescents and some younger children. It can also mean sending a message through someone else. It might as well mean being present at the conference without taking an active role in it, or participating in part of it and then leaving the conference room. These are all specific forms of participation which can be tailored according to the specific needs, capabilities and wishes of the individual child. This gradual understanding of participation fits Flekkøy and Kaufman’s (1997, pp. 65–67) suggestion to evaluate the appropriate level of participation with regard to each child, balancing their best interests and evolving capacities. Indeed, this balancing between developmental and best interests considerations to determine the level and form of participation mirrors the Control cluster, which combines these concepts.

However, considering the rehabilitative effects of participation and the right to participate, it is essential not to be over-protective of children through allowing ‘best interests’ considerations to trump children’s wishes. Indeed, children often feel over-protected and want to participate in proceedings which adults regard as potentially harmful (Lansdown 2005, p.35). More specifically, children expressed a desire to have a voice in family and school matters, including in domestic violence situations (Prout 2001, p. 198). Marshall (1997) compared the views of child protection professionals with those of children who had had direct experience with the child protection system. She found that children wanted to take part in decision-making processes following child protection events much more than professionals were willing to let them. For example, in a situation where negative attitudes toward the child could be expressed during the process, children thought that they would probably hear them anyway, therefore there was no point in protecting them against such expressions. Children also said that it was not possible to ‘wrap people up in cotton wool’ (Marshall 1997, p. 74). This finding suggests that professionals are perhaps too often willing to give up children’s ‘participation’ for the sake of their ‘best interests’, even though the latter might not necessarily be in conflict with the former. Moreover, professionals’ unwillingness to take any risk of an unpleasant process for children could arguably be seen as a defensive organizational strategy to protect themselves from possible accusations, rather than the result of a genuine consideration of potential benefits and risks in each case.

Indeed, experience shows that even very young children are able to either be simply present in restorative justice processes or actively participate in them. In South Australia, 9 year-old victims participated in conferences and generally did well, with adequate preparation and support (see page 127). In child protection FGCs in the UK, children were present in the vast majority of conferences, and some were as young as 5 (see page 137). Restorative justice processes involved very young children in the school context. For example, 10 to 11 year-old children participated
in ‘Whole School’ programs in the Australian Capital Territory (Morrison 2002), and 5 year–old children participated in restorative practices in schools in Nottingham, UK (Hopkins 2002). Children aged 6 and older have participated, with high rates of participation and satisfaction, in school–related FGCs in Hampshire, UK (Crow et al. 2004).

Seiffge-Krenke’s (1995) work is an example of a developmental study that can be helpful in designing a developmentally sensitive restorative program. She identified developmental differences between boys and girls of various ages in the ability to actively choose and approach support people in coping with stress. Her findings suggest that children over the age of 15 should be quite free to choose whom to invite to the conference, while younger children should be given more intense help in this regard (see page 74). This however is a general assumption that can be rebutted when a young child exhibits resourcefulness in specifying a large, varying list of supporters, or when an older teenager displays passiveness at that stage.

One of the possible outcomes of a direct and genuine encounter between the victim and the offender is the exchange of an apology and forgiveness. The rehabilitative benefits of receiving an apology and granting forgiveness have been discussed in Chapter 3 (see page 69). It is important to give special consideration, however, to children’s greater tendency to behave according to others’ expectations, especially at certain ages. Thus, there is a need to ensure children are not coerced into accepting the apology or offering forgiveness. The developmental studies regarding children’s evolving capacities to forgive and accept apologies (Darby and Schlenker 1982, Park and Enright 1997, Enright and Fitzgibbons 2000), as well as their changing propensity to peer or family pressure (Park and Enright 1997, Holland et al. 2000) can give useful guidance in this matter.

### 6.3.1 Participation–enhancing techniques

Once a decision was made that a child victim will be present and actively participate at a restorative process, it is important to consider participation–enhancing techniques. Meaningful participation cannot be achieved simply by allowing children to state their views (Marshall 1997, p. 75). Certain techniques are required to help children overcome their disadvantage due to age, naïvety and lack of experience. The ability to participate in decision–making is not dependent on cognitive capacities alone. For example, Hart argues that the child’s stage of social and emotional development, cultural and individual differences, as well as motivational barriers, may affect the child’s apparent capacity to participate. Low self esteem can be a critical barrier to participation, as children can develop coping mechanisms such as being silent and obedient. Accordingly, he claims that enhancing their self esteem (through, for example, situations where their capabilities come to the fore) may encourage them to speak up (Hart 1992, pp. 31–33). Indeed, focusing on children’s strengths rather than their vulnerabilities and weaknesses may increase their trust in themselves and enhance their motivation to take an active role in the process. The ‘note taker’ from Newfoundland (see page 140) is a good example of a girl victim who found a way to participate in a manner which made her feel confident and in
control.

Additionally, children are often not used to being listened to and taken seriously, and there is no reason to believe they will spontaneously make a meaningful contribution without first enhancing their understanding of the process, their trust in the other participants, and their belief that their views really matter. To gain the child’s trust in him– or herself and in the facilitator, empowerment should start before the conference itself. Thorough, lengthy preparations should include rapport building, assessing the child’s best interests and wishes, constructing the invitees list with the child, deciding on the child’s form of participation and making the necessary steps to promote it. These not only help the facilitator prepare the conference, they also set the stage for partnership–based decision–making. For example, the most effective methods of ensuring the meaningful participation of child victims in the Newfoundland and Labrador experiment were assigning support persons, providing clear, detailed information about the process and preparing written statements to help children articulate their views at the conference (Pennell and Burford 1995, pp. 76, 94, 108–109).

The following points, made by Marshall (1997, p. 106), summarize the suggested principles for enhancing children’s participation:

- The child is prepared and given access to appropriate information;
- The child is helped in thinking in advance of his or her views;
- The child should know who will be present, and if there is anyone whose attendance might threaten the child, it should be reconsidered;
- Measures should be taken to ensure that the procedure meets the needs of the child and that no distressing ‘surprises’ will emerge;
- Adults should avoid ‘adult language’ and be aware of the impact their communication will have on the child;
- During the process someone should be in charge of securing the interests of the child;
- Toward the end, it is important to make sure that the child understands the agreement fully, and that if they have different opinions they are clearly expressed, if the child wishes so; and
- A followup with the child to make sure the child understands what happened and to ensure their wellbeing.

6.3.2 The Sierra Leone Truth and Reconciliation Committee: a test case

One example of an effort to promote children’s participation in a restorative process is that of the Truth and Reconciliation Commission (TRC) for Sierra Leone. While
not a criminal but a public process of community healing, this experience is significant for giving children’s testimonies centrality in an unprecedented way. Special policies, guidelines and directions were constructed by a group of national and international experts together with children and under the auspices of UNICEF, to promote the safe and effective participation of children as both victims and perpetrators of atrocities in Sierra Leone’s armed conflict during the 1990s (Mann and Theuermann 2001). According to the guidelines, statements by children should be taken by well–trained statement–takers and each child should be accompanied by a social worker, preferably from their existing social network. In accordance with the Convention’s evolving capacities principle, the statement–taker and the social worker are required to assess, together, the child’s willingness to testify, the child’s capability to give testimony, the child’s level of understanding of giving a statement to the TRC, and the ability to deal with emotional outcomes of their testimony. Instead of setting strict age limits, the guidelines propose grouping children into three categories which the statement–takers and social workers are expected to consider while assessing these issues: children under 6 who should be generally excluded from the discussion, children aged 7 to 12 about whom a specific decision should be made, and children aged 13 to 18, who are assumed to be able to express their opinions on political and social issues (Mann and Theuermann 2001, pp. 26–28).

The guidelines for taking statements from children testifying for the TRC provide an exemplary framework for enhancing children’s understanding, participation and wellbeing in relation to the process (Mann and Theuermann 2001, p. 28–32):

- Preparation: children testifying for the TRC should receive age appropriate information about the process, their role and other people’s roles in it.

- The environment should be child friendly: the interview should be held in an informal setting, preferably familiar to the child. Before starting, children should have the opportunity to familiarize themselves with the place, and some friendly discussion between the participants should take place prior to the formal interview.

- Methods of expression: staff should be equipped with alternative measures of communication to assist children, such as drawing and figurative materials, role–play sessions and so forth. Training should ensure that these techniques are used and then analyzed in an appropriate manner.

- Listening to children: children should not be interrupted while talking, and questions should be open ended. Generally, interviews should not last more than an hour, including a 10 minutes break. For children under the age of twelve, the interview should be no longer than 45 minutes.

- Children’s wellbeing: the child’s emotional state should be monitored throughout the session, and if a child seems to need a break it should be provided. The interview should be concluded with an emotional debriefing so that the participants can express and confront their feelings at the end of the session. Follow-up support by the social worker should also be available.
These guidelines include some helpful ideas which can be adapted in other restorative justice settings. Naturally, some of the assumptions in the report may be culture-specific, such as the time limitation according to age, and additional guidelines might be required. However, they can arguably be used as a starting point in the development of program protocols.

Another unique contribution of these guidelines is the inclusion of the views of youth during the process of their formulation. Importantly, the children thought that the process of telling their stories could be a form of healing, and stressed the importance of providing opportunities for children to practise their right to talk about their experiences. They also emphasized that children should be allowed to express themselves in various forms including songs, facial expressions, written statements, drawings and actions. Importantly, they stressed the difficulties children face in expressing themselves while there are adults around, as they are brought up to be silent near adults and not to participate. This provides a challenge to any promotion of the participation of children (Mann and Theuermann 2001, pp. 43–44).

Certainly, children in other countries and in different contexts may have other ideas regarding their participation in restorative processes. To increase the likelihood that children of various ages feel comfortable in the process, it may be appropriate to include young people in the planning teams of new programs and ensure their meaningful involvement in their design, similar to Pennell’s (1999) suggestion regarding the inclusion of different community representatives in the construction of new programs.

6.3.3 Child representation

The Participation principle explicitly states the right of children to be adequately represented in administrative and judicial processes (Article 12(2) of the Convention). Indeed, an emerging theme in restorative justice experiences involving child victims is the importance of someone representing and supporting the child during the process. This reflects an understanding that the involvement of advocates for victims who are disadvantaged in the process can reduce power imbalances and child-silencing during conferences (Bazemore and Earle 2002).

However, there are different approaches as to who should represent the child and what exactly is to be represented — the interests of the victim or his or her wishes. In other words, the representation of children in restorative processes might, instead of enhancing their participation, do just the opposite. It is therefore important to identify ways of helping children participating while not ‘taking over’.

For example, Bazemore and Earle (2002, p. 170) propose that in family violence matters’ advocates should sometimes represent not only the views of the victim, but also the victim’s interests and harms in order to discuss reparation, even when the victim is reluctant to do so. This, however, as Bazemore and Earle themselves admit (2002, p. 170), could be seen as manipulative. Furthermore, it can arguably create the very disempowering effect that victims’ advocates want to defeat. At the same time, if the victim and the victim’s advocate (or supporter) reach a prior agreement that the advocate will raise issues that the victim feels
The Control cluster of principles for action

unable or unwilling to raise, then this strategy might be helpful for the victim.

There are various forms of child representation in restorative justice processes, from support persons who monitor children’s wellbeing and safety, as was the case in the Newfoundland and Labrador experiment (Pennell and Burford 1995), through appointed counsellors, as in South Australian juvenile justice conferences (Doig and Wallace 1999), adult–survivors in family violence cases (Bazemore and Earle 2002), to barristers/solicitors or lay advocates as legislated in New Zealand (Children, Young Persons and their Families Act 1989). It seems that there is no one preferred model for child representation in restorative justice processes. Involving lawyers in the process could possibly lead to legalistic, adversarial and disempowering results similar to those that characterize the legal process, and stands against the ethos of restorative justice (Braithwaite 2002a, pp. 249–250). At the same time, it is possible to argue that children present a special case which justifies the participation of lawyers in order to ‘balance the imbalance’ child victims face in these encounters. Indeed, Federle (1996) proposes an empowering lawyering model for child representation, under which lawyers who represent children must encourage active involvement of their clients, refrain from subordinating lawyering practices, and be generally aware of and try to minimize the disempowering effect of the lawyer–client relationship. This might be a lawyering style appropriate for restorative justice, and can perhaps be used as a condition for involving lawyers as child representatives in the process (see Braithwaite 2002a, pp. 250–251 for a similar proposition regarding collaborative lawyering in divorce proceedings).

Conversely, supporters from the victim’s natural environment know the child best and could conceivably offer a less dominating, more democratic form of representation. However, family members and friends have their own views and feelings which might influence their ability to provide an objective representation of the child’s wishes, and can potentially also dominate the discussion instead of empowering the child. Accordingly, perhaps only trained advocates can overcome the power imbalance between young victims and the adult participants and represent the child’s wishes and interests effectively, without prejudice. Further research is needed to explore the benefits and limitations of each model. Whichever the choice is, the support person or representative should be thoroughly prepared for the role and be sensitized to its challenges.

The Wiltshire FGC project provides an illustration of the efficacy of child representation in child protection proceedings in UK. As discussed in Chapter 5, the evaluation study showed that children felt involved and empowered, and their perspectives were made known to both family members and professionals, with the provision of either ‘natural’ or trained advocates (Dalrymple 2002).

In sum, involving children of various ages in the decision-making process is challenging and requires careful design, thorough training and intensive individual work with each child. However, a true, developmentally appropriate inclusive process is not only a fulfillment of an important human right of children; it also increases the likelihood that the process and its outcomes will enhance the child’s wellbeing, rehabilitation and satisfaction with the process.
6.4 The Procedural Justice cluster of principles for action

As explained in Chapter 3, the Procedural Justice cluster displays the interrelationship between the human rights principles of equality, rehabilitation and participation with the concept of procedural justice. While equality in opportunities and treatment and participation in the process are both elements of procedural fairness, rehabilitation is a possible positive outcome of a fair process.

As Figure 6.3 shows, to meet the equality principle (and thus provide fair treatment and equal rehabilitative opportunities), all child victims should have access to restorative justice mechanisms and be able to expect equal responsiveness to their rights and needs. This means that restorative justice programs should be spread evenly in different areas and be accessible for all children.

A second aspect of the equality principle is that children with particular barriers or disadvantages should be provided special assistance in order to equalize their opportunities to have a meaningful participation in such processes. Indeed, the relationship between equality (or lack of it) and participation becomes salient here. It has been suggested, for instance, that children from low-income families would find it harder to actively participate, both because their parents value obedience rather than participation, and because they are used to seeing their parents being passive while others make decisions. Therefore the challenge of ‘liberating their voices’ could arguably be greater (Hart 1992, p. 33).

It is difficult to believe that a single process can change patterns of behavior and transform silent children into charismatic leaders of discussion. It is important, however, to be aware of these social and cultural barriers and create a relationship based on respect, empathy and sensitivity with the child. Technical aids might also enhance the participation of disadvantaged children. For example, translators might make children of minority groups feel more comfortable at a restorative justice conference. Special aids might help children with disabilities to overcome their physical, mental or emotional limitations. Free transportation can potentially make processes more accessible for children living in isolated communities, where programs are not available. Finally, children who are institutionalized should have full access to restorative mechanisms which take into account their difficulties in reporting crimes against them, their particular dependency on staff, special concerns regarding their supporters and other specific circumstances which make it more difficult for them to participate.

A somewhat different concern emerging from the equality–fairness–participation trio relates to victims whose perpetrators are unwilling to take responsibility and participate in restorative processes, and those whose perpetrators are not found. Are the needs–rights of these victims to equality, procedural justice, participation, and as a result, rehabilitation, violated? It might be argued that governments can only make restorative justice processes accessible to child victims and cannot guarantee the willingness of either victims or perpetrators to participate in them. Hence, when a perpetrator is not available or is unwilling to participate in such a process,
Figure 6.3: The Procedural Justice cluster: principles for action in restorative justice settings
the child victim is not necessarily discriminated against — but rather, perhaps simply unlucky.\(^1\) Naturally, it is vital to find other ways of promoting the wellbeing, rehabilitation and participation of children without a known ‘wilful perpetrator’. For example, providing these victims with equal opportunities for restoration and justice might mean having some alternative processes available with their supporters, other victims or other offenders. Clearly, restorative mechanisms which are not ‘deliberative’ are substantially different and have other effects (Sherman and Strang 2004), but these can be the best alternative, when a fully–restorative encounter is not feasible.

Restorative justice then needs to be both universal in its accessibility, and diverse in its application, in order to fulfill the needs–rights of children included in the Procedural Justice cluster. Clearly, financial limitations pose a serious problem in achieving this goal. Regarding translators, special aids and free transport for disadvantaged children as part of their human rights, however, may generate a change in priorities and increase the accessibility of these mechanisms to all populations.

6.5 The Protection cluster of principles for action

As Figure 6.4 shows, to understand children’s various vulnerabilities, coping mechanisms and different reactions to crimes, it might be useful to consider collectively the human rights principles of equality, development and protection. Indeed, developmental differences as well as special needs and belonging to different population groups affect both vulnerabilities and strengths of children. Gaining knowledge about these issues might help states target the protection of children and reduce the risk of both victimization itself and re-victimization during the process.

As discussed in Chapter 2, the right to protection has been interpreted as not only creating an obligation on governments and public organs to prevent childhood victimization to the maximum extent possible; it also implies the prevention of harms associated with children’s involvement in the process following their victimization. An additional meaning of the protection principle emerges from Finkelhor’s research group (1997, 2005). They argue that the consequences of corporal punishment and peer and sibling violence can be as devastating as criminal forms of violence against children, and therefore should be regarded crimes. Consequently, to fully meet the right of children to be protected from all forms of injury and abuse, states should seek ways to prevent these (often non-criminal) forms of violence and domination as well. Restorative justice can perhaps be a suitable platform to address bullying, sibling violence and non-criminal corporal punishment without criminalizing these acts.

An important question in this context is whether restorative justice is more effective than the criminal justice process in reducing crimes (as well as non-criminal forms of violence) against children. Current recidivism studies on restorative processes (with mainly adult victims) showed mixed results (Braithwaite 2002b,

\(^1\)It is possible, however, that the existence of a restorative alternative would encourage more offenders to admit their crime, as the Hollow Water program demonstrated (see page 134).
Figure 6.4: The Protection cluster: principles for action in restorative justice settings
Bonta et al. 2002, Sherman and Strang 2004, Latimer et al. 2005). However, none of the randomized controlled tests conducted until now has focused on recidivism rates in crimes against children, nor on the most problematic types of such crimes. This lack of data can only be addressed with the foundation of carefully designed studies with randomized control groups involving offenders and victims of such crimes.

It is important to note, however, that restorative justice emerged, among other reasons, because of the unsatisfactory results of the criminal justice system in identifying, prosecuting and reducing crime. With this in mind (and considering the other positive effects of restorative justice on victims) it is arguable that to prove successful, restorative processes should merely be as effective as the criminal justice process in identifying and reducing crimes against children. Indeed, the Hollow Water and the Newfoundland and Labrador programs in Canada indicate that restorative justice mechanisms might be at least as (and perhaps more) effective than the criminal process in identifying and reducing family violence against children (Braithwaite 2000, Pennell and Burford 2002).

In the non–criminal context, child protection FGCs have increased children’s safety (Nixon 2000, p. 99, Marsh and Crow 2000, p. 208); and school–based restorative justice programs have improved children’s sense of safety (Morrison 2002) and reduced behavioral problems (Crow et al. 2004, p. 42). Restorative justice has not specifically targeted non–criminal family violence such as the use of corporal punishment by parents and sibling assaults, although these matters could have been raised during conferences. Small scale experiments should perhaps be designed to address these types of violence as well.

A first step, then, in fulfilling the Protection cluster is to design small scale experimental projects that include child victims of different crimes and other forms of violence, and test their effectiveness in reducing violence — both against the particular children whose cases are dealt with through these mechanisms, and against other children. Operating large scale programs without testing them first can presumably increase the risk of childhood victimization, and constitute a violation of children’s human rights.

A second requirement drawn from the Protection cluster is securing the safety of the specific child during and following his or her involvement in the process. Careful screening of cases should be conducted in order to exclude those children who are at increased risk of being re-victimized by the process, due to the crime, their young age or special needs. In such cases it is possible to either consider alternative measures of participation for children, or to decide not to facilitate a conference at all. Addressing the specific needs of the child might also increase the likelihood of the process being a positive, instead of a distressing experience. The example of an outcome for an offender to take a victim who was terrified of him discussed in Chapter 5 (see page 131) demonstrated how young victims with disabilities can be victimized during restorative conferences when their special needs are not adequately addressed.

The safety of the child must not only be a precondition for facilitating the conference, but the central goal of the process as well. Accordingly, a safety plan for the child should be a key element of the outcome agreement. To ensure that this
goal is achieved, it is important to go beyond the agreement itself and monitor its compliance by everyone. While ideally family members and other stakeholders are in the best position to conduct such monitoring, professionals should stay involved and ‘monitor the monitoring’ (Burford and Pennell 1998, p. 253).

Included in the Protection cluster are developmental considerations (the development human rights principle) and concerns regarding children with special needs (the equality human rights principle). Indeed, all people under the age of 18 should not be treated similarly simply because of their legal status as minors. There are considerable physical, emotional, mental and cognitive differences between young and older children and between children with various capabilities. Therefore, policies need to consider scientific knowledge about developmental stages (and the qualifications of such data), and use this knowledge as a starting point for individual assessments, in order to meet the rights and needs of children of all ages and with various types of needs.

In sum, the Protection cluster creates an obligation that no restorative process should be conducted without taking adequate measures to ensure the safety of the child before, during and following the process, as illustrated by the prudence of Pennell and Burford’s method (1995, 2002). In doing so, the individual capacities of the child and any special needs should be considered. Additionally, restorative practices might be used for non-criminal violent acts against children, such as bullying and parental and sibling violence, thus broadening the scope of protection provided.

**6.6 Child–inclusive restorative justice: heuristic principles**

This chapter used the needs–rights framework for proposing principles for action for child–inclusive restorative justice. Seen as a whole, the needs–rights approach for restorative justice presented in Figure 6.5 suggests that child victims are not merely objects of protection at the mercy of the authorities — but rather full partners whose emotional wellbeing, empowerment and participation are central goals in the process. This fits neatly into the underlying restorative justice values of empowerment, rehabilitation and repair of harm for all stakeholders. The needs–rights model also reminds us of the importance of paying special attention to children as a vulnerable population who are despite their vulnerability entitled to be included in public discourse. Moreover, it helps identifying issues of concern beyond the protective elements that are usually the focus of child–related policies.

Accordingly, this chapter divided the model, similarly to the method employed in Chapter 4 regarding the criminal justice process, into four ‘clusters’: Best Interests, Control, Procedural Justice and Protection. Based on theories and existing empirical findings, subsidiary principles for action that might promote the ideas represented in each cluster were suggested. These subsidiary principles are a little less abstract than the human rights principles, and move us closer to the world of practice. The importance of such guiding principles is that they may have a ‘gatekeeper’ role by grounding practice in certain values, hence assisting in creating new programs,
Figure 6.5: A needs–rights framework for a child–inclusive restorative justice: principles for action
retaining their quality, and helping stakeholders guard against abuses (Bazemore and Earle 2002). They are also designed to be flexible enough to accommodate adaptation of various restorative justice practices to multiple settings, as opposed to more specific manuals for action which may fit only specific contexts.

An underlying idea behind these subsidiary principles is that of restorative justice as a social movement aimed at promoting equality among human beings. Therefore, child–inclusive restorative justice seeks to find ways which structurally empower children, help them overcome their inherently weaker status and enable them to participate in adult discourse as equal partners. Children are less experienced in group discussion, they are less articulate than adults, they are usually not used to speaking up and making their views known — and when they do — they are often misunderstood. Children also often regard adults, and professionals in particular, as authority figures and may find it difficult to engage in an open conversation with them. The younger the child, the greater these barriers are. Hence, the Convention’s equality principle should be understood in its broader meaning under which children are equally valued people in society who need assistance to learn how to exercise their rights.

To move these principles even closer to practitioners, it is possible to articulate them in eight heuristic principles, which, if followed by practitioners, might help them meet the complete set of needs–rights without needing to go through the laborious task of addressing each one of the model’s components separately. One limitation of the model is the large number of elements it includes and the complex interrelationships between them. While it is hoped that the needs–rights model would be valuable for the development of theory, policies and further studies on child victims, a simpler framework is more useful for practitioners. The heuristics proposed to ensure that practitioners secure all the needs, rights and practices in Figure 6.5 are:

1. Holism;
2. Tailor–made process;
3. Children as partners;
4. Participation as a continuum;
5. Liberating children’s voices;
6. Let go;
7. Restorative process as a goal; and
8. Empowering advocacy.

The first heuristic principle emerging from the needs–rights approach is that of holism — child victims need to be treated in a manner that considers them as whole human beings and addresses the full scope of their rights and needs. Accordingly, providing protection and meeting immediate needs alone are insufficient. Children’s
rights to participation, rehabilitation, maximal development and equality need to be met as well, and adults need to consider their strengths, social circumstances and developmental needs too. Furthermore, these aspects of being a child victim are intertwined and affect each other. One right cannot be considered apart from the others and ignoring one means making incomplete, sometimes wrong decisions. Holism means continuity as well. As found in the Newfoundland and Labrador experience, when social services stopped being provided once the crisis was over, families felt disappointed and children’s wellbeing was compromised (Burford and Pennell 1998, p. 164). Accordingly, holism should imply that restorative processes are only part of the full picture; children who have suffered victimization (particularly, but not only, those who suffered family abuse) need continual support and various services that should be provided until they are psychologically and socially rehabilitated. The idea of holism also suggests that children’s different worlds should be considered together and should not be dealt with separately. Put differently, professionals need to make the child’s life their starting point rather than the perspective of any individual state authority such as school, child protection services or the police. If a child is being bullied at school while at the same time is experiencing family violence, these problems should all be included in a restorative process. Without addressing the full scope of violence experienced by children it is difficult to believe that their rehabilitation can be secured.

A second heuristic is that each restorative process should be designed as a tailor-made process, rather than a standard procedure. To meet the complete scope of the child’s needs and rights, and to enable children to overcome their lack of experience and developmental limitations and become true partners, each process should be designed, to the maximum extent possible, according to the child’s wishes, interests, developmental and social circumstances.

Following Minow’s argument for ‘taking the perspective of the other’ (1990), it is arguable that only in an environment that accommodates the child’s specific wishes and needs can children feel that they are listened to and fully respected, and can begin to believe they are able to overcome their inherent weakness due to age. In other words, crafting the form of participation and other elements of the process around the wishes and interests of child victims can structurally empower them and provide the ‘push’ they need for having an equal voice in the process. Creativity and flexibility are needed to allow for different settings and special adjustments. Processes may differ, and be adjusted according to the child’s interests and wishes, in their locations, timing, invitation list, form of participation of the child, choice of advocate, the number of meetings, the length of each meeting and the breaks taken, special activities organized before or during the gathering, the language used, the outcome plan, the form of reparation, and the form of apology expected. The diversity in facilities, professional expertise and training required in different circumstances suggests that one program in each geographical area might be insufficient. A restorative process with a six-year-old child will look very different from one with a 15-year-old. Sexual abuse against children requires different training and settings than those for victims of burglary or bullying. Family abuse presents yet another set of unique challenges not existing in other offences against
children. The variety is so great, that it seems desirable to have separate programs with specifically trained staffs for different age groups and different types of crimes against children.

In addition, children are sometimes victims of crimes together with other adult victims, such as in house burglaries. In these cases they can join a ‘standard’, adult restorative process. Still, regarding them as human rights holders means their inclusion in the process — in accordance with their wishes and interests — while paying due consideration to their specific needs. It seems then that a tailor-made model creates great diversities among processes even when identical crimes are discussed. This diversity could potentially raise concerns regarding discrimination, varying levels of professionalism and risk for the wellbeing of child victims themselves. In such a diverse network the human rights of child victims (as well as other stakeholders) become central in guarding against malpractice, domination and harm to stakeholders.

A third heuristic principle derived from a needs-based approach is that of children as partners: child victims and professionals handling their cases are partners in designing the process, making it happen, reaching an outcome plan and monitoring its implementation. Despite their age, children possess unique perspectives important in making the process meet their needs and rights. Therefore, simply giving them opportunities to talk like everybody else is far from being enough and can easily lead to their voices being lost in the general discussion, or worth, create further frustration and stress. Instead, starting from the early preparation stage, children and facilitators need to engage in a partnership, in which each partner contributes according to his or her own perspective, experience and capacity, until the outcome plan is implemented. To make this partnership work, professionals need to make active efforts in seeking children’s views, listening to them, understanding their messages and translating them into action. The Finnish Storycrafting method (Riihelä 2001) demonstrates how adults can find new ways in listening to very young children and gaining knowledge about their worlds without imposing on them adult methods of communication.

A fourth heuristic principle is that of participation as a continuum. We know that very young children can form opinions and communicate in varying levels. We also know the developmental benefits of having opportunities to participate, as well as the importance of having a sense of control on the process in the healing journey. A utilitarian argument of reaching better outcomes also supports children’s participation, as well as the moral argument relying on their human rights. However, we also know that for some children, in some situations, being encouraged to participate might be experienced as yet another form of domination and control, expose them to information that they do not wish to be exposed to, or put them under undesirable pressure. Therefore, special caution should be taken when discussing the form of participation with the child. An understanding of participation as a continuum (following Flekkøy and Kaufman 1997) might be appropriate. At one end of the continuum is the child’s wish not to take part in the process. This is still a form of participation, as the child is given an opportunity to make his or her choice on this matter. Asking the child for their views makes a great difference from the
child’s perspective, and having an option is already empowering. Even toddlers can deliver messages of not wanting to speak, draw, play or think of matters regarding their lives, and this should be respected as well. At the other end of the continuum is full, active participation of the child in the process, and children can be creative in the ways they feel comfortable in participating. In between these two extremes exists an endless number of other options, including indirect (‘shuttle’) conferences, having a one–way mirror which allows the child to watch the conference without being seen and decide if and when to join the group, having someone speaking on behalf of the child and so forth. According to the previous principles, the form of participation is created in partnership between the child and the facilitator, and can be changed at any stage if the child wishes so.

Hart’s concept of liberating children’s voices (Hart 1992) might offer another heuristic principle. It suggests that it is the facilitator’s duty to actively seek the child’s viewpoint. It captures the challenge of overcoming social, developmental, physical and familial barriers and finding the specific way suitable for each child to speak up. Its underlying assumption is that children have valid stories to tell and that with the right tools, adults can understand and learn from them. This is a strengths–based approach which focuses on the capacities of the child instead of their weaknesses. Hart’s suggestion to engage in activities that demonstrate the child’s strengths and talents (1992) is an example of a method that enhances the child’s self esteem and makes it easier for them to take part in an open conversation. Liberating children’s voices relates also to Pranis’s (2002) account on the empowering effect of telling one’s story and being listened to respectfully. Children in particular are often overlooked, especially those who have been victimized. Therefore having their voices liberated and listened to by ‘a room full of adults’ (Haines 1998) is in itself an empowering experience.

An additional heuristic principle is what might be called the let go approach. Professionals, like parents, have to take calculated risks with children in allowing them to practise their evolving capacities, even when the cost might be great worries, and sometimes painful outcomes. As Waldron (2000) explains, being over paternalistic might violate the child’s human rights just as much as neglecting the child’s needs for assistance and support (see the discussion on Waldron’s theory in page 14). Therefore, just as parents learn to let their children climb trees, walk on narrow logs and go out at night when children insist they are ready for it, professionals too need to understand that participating in a restorative process may be a risk the child is ready to take and is appropriate developmentally, despite their own concerns. Marshall’s study on children’s views regarding their participation in FGCs demonstrates that children want to take these risks more than professionals are willing to let them (Marshall 1997), and suggests that professionals’ over–protectiveness might derive from reluctance to risk their own positions rather than from truly child–centered considerations. The other side of this principle is, however, that like parents, professionals too have to provide emotional support, thorough preparation and close supervision when letting children make their choices. When a child crosses the road alone for the first time, it often occurs only after numerous explanations, warnings and practice. The parent might be standing (or hiding) a meter away, ready to jump
and grab the child away should a speeding car suddenly appear. Similarly, when children express wishes to take part in conferences, facilitators should respect this wish even when they fear the child can potentially get hurt in the process. They should, however, provide full, clear information about the process and its expected outcomes, try to construct a safe setting for discussion with the child, and monitor the child’s emotional wellbeing throughout the process. Emotional debriefing after the process, as conducted in Sierra Leone (Mann and Theuermann 2001, p. 32), is an example of the emotional support needed in such cases.

A related heuristic principle is that of the *restorative process as a goal*. Considering the importance of having opportunities to take part in decision-making processes and having a safe and positive encounter with the perpetrator, a respectful, non-dominating restorative justice process can be seen as an important goal in itself, no matter what the outcomes are. The accumulated experience from school-based restorative practices suggest that children who participate in such processes improve their conflict resolution skills, develop empathy for others and improve their ability to communicate (Morrison 2002, Crow et al. 2004, p. 42). Moreover, by simply being listened to respectfully and being able to be *partners* in a decision-making process, children learn that they are respected members of civil society, that their views matter. In other words, in restorative settings children can be empowered through the respectful listening of others to their stories (Pranis 2002), in contrast to the adversarial court environment in which children’s stories are systematically distorted, questioned and disqualified (Scheppele 1989). The process itself can also teach family members to treat children with respect and listen to their messages. While the restorative process is not the equivalent of, nor a replacement for, counselling, it nevertheless can be a positive experience which might enhance the child’s feelings of forgiveness and satisfaction and reduce anger and fear, no matter what the outcomes are. At the same time, this principle warns professionals against dominating processes, even when the outcomes seem to address the child’s interests.

Finally, Federle’s ‘empowering lawyering’ model (1996) might be translated into an *empowering advocacy* principle, under which every child who participates in a restorative justice process should be supported by someone — either from the child’s natural environment or a trained professional — whose role is to advocate for the child’s rights and interests. Such advocates face the challenge of promoting the child’s interests without taking over and silencing the child. The disempowering advocacy dilemma exists in many social movements. Advocacy organizations and human rights lawyers often promote their clients’ cause while silencing them yet again and leaving them uninformed and passive out of good will. On the one hand, the higher the advocate is located in the social ladder (for example, a white male lawyer), the more likely it is that the client’s interests will be accepted. Powerful advocates, however, are typically more distant from their clients and use more subordinating practices. In contrast, the lower the advocate is located in the social ladder (for instance, an unprofessional female volunteer from the victim’s community, or even another teenager), the less likely it is that they will be effective in promoting the child’s interests; but it is easier to assume that they will engage in a more equal conversation with the child victim. The empowering advocacy principle suggests
that while the child’s interests should be effectively represented in the process, the child should be constantly in a position to decide on the specific role of the advocate and take over whenever they are ready to do so. It requires programs to provide advocacy effective enough to be able to overcome manipulations and power imbalances against the child by the perpetrator or other adults. Accordingly, highly trained professionals or skillful, thoroughly prepared ‘natural’ advocates should be used for this position. At the same time, advocates should be aware of their tendency to use professional jargon and other threatening practices which they should avoid with the child victim.

6.7 A final (idealistic) comment

It seems, then, that child victims deserve and require individual, intensive treatment in order to enable them to participate on an equal basis in restorative processes. This means investing considerable amounts of money and work in treating, at least at first, a small number of children. Are all these efforts worthwhile? Naturally, a moralistic reply would be that this is part of children’s human rights and therefore society is obliged to provide these justice mechanisms, according to the Convention on the Rights of the Child. Since the criminal justice process falls short in meeting the full range of children’s human rights, a child–inclusive alternative has to be created. There is, however, a utilitarian justification as well. If adult victims can be positively affected by such processes, as demonstrated in the studies reviewed in this thesis, then children might be affected by it even more. Because children are still developing, restorative justice in fact has great potential to affect their growth positively, sending children into the adult world with an optimistic message about the power of reconciliation, empathy, forgiveness, and trust in others. It could conceivably also develop children’s abilities to negotiate with others and enhance their self esteem and sense of competence. An even more optimistic perspective points at the broader societal benefits of such a practice: sending victimized children away empowered, forgiving and equipped with improved negotiation skills, has the potential to reduce violence, promote deliberative democracy, and enhance social justice. Potential is not reality, however, and we should not be surprised by the empirical experience we have documented of some restorative justice conferences that are less than perfect, or damaging, from children’s viewpoints. It seems, nevertheless, that practitioners who follow the eight heuristics suggested might find that they are able to address the needs–rights of child victims in a comprehensive way, without neglecting the vital interests of the other stakeholders. If they do that, the normative and empirical considerations synthesized in this thesis suggest that damage of children will be rare and their liberation from fear and oppression common.