

# Best practice guide for drafting forensic psychological reports on child custody and visiting schedules in cases of gender violence

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## INTRODUCTION

The ongoing evolution of Spanish society towards structures and forms of horizontal relationships in different social spheres underscores the need for professional experts to reason and justify their conclusions and recommendations proposed in a wide array of professional settings. The legitimacy of the expert's authority rests on the fact that their findings are grounded on unbiased criteria, attested theories, peer-reviewed research, reliable instruments, and efficacious interventions.

On account of the previously mentioned degree of complexity, the professional psychologists is required to apply a broad spectrum of effective state-of-the-art procedures, instruments and techniques to an array of settings in order to obtain contrasted, unbiased and useful data. Hence, Best Practice Guides are a synthesis of current acquired knowledge on the optimum procedures for forensic practice which serve to guide professionals, users, government agencies, and the wider community.

In recent times, the professional psychologist has been responsible for the formidable task of educating the public and disseminating knowledge which often entails a high degree of theoretical and practical complexity. This undertaking has been paralleled by the increasing social presence of the psychologist, which together have popularized multiple concepts, techniques and instruments specific to this discipline, and to a certain extent have contributed to a better understanding of human behaviour.

One of the key areas of professional practice required a Best Practice Guide was the writing of forensic reports on child custody and visitation schedules. Bearing in mind not only the number of children affected, but also, and most importantly, the impact on the child's development and emotional stability, as well as the personal and social repercussions of family reports, all of them are among the main motives spurring the need for the BEST PRACTICE GUIDE of the Official College of Psychologists of Madrid. This Guide was aimed to give professional advice to the conflicting interests between the different parties affected by these reports, which often give rise to complaints to institutions such as the National Ombudsperson, the Ombudsperson for Children of the Community of Madrid, and the Administration of Justice and the colleges of psychologists themselves. This Guide (available in the College of Madrid Psychologists' web page at <http://www.copmadrid.org>) was published in April, 2009, after a long process of consultation and agreement with the various professional sectors involved.

However, as it had already been pointed out in the previous BEST PRACTICE GUIDE and following the advice of several experts consulted, it became necessary to adapt the guide to the special circumstances of intimate partner violence cases and the procedures set forth in Organic Law 1/2004, December 28th, on Integral Protection Measures Against Intimate Partner Violence (L/O 1/2004); this adaptation should take into account all the special characteristics of the domestic-violence victims' judicial, family and social situations in order to guarantee an appropriate and effective implementation of this. Under this law and since its enactment, intimate-partner violence is legally interpreted from a gender approach in Spain. Thus, from an exclusively legal point of view, intimate-partner violence in Spain is interpreted

as synonymous with gender violence, with the man always being the active subject and the woman the passive subject.

## **GENDER VIOLENCE AND SOCIETY. ADAPTATIONS IN THIS GUIDE**

The importance and severity of the universal problem of violence against women was not fully acknowledged by public authorities and society in general until the 90's in the past century. From that turning point, a qualitative change that enabled a shift in the social perception of the problem took place, which favored a series of institutional declarations and the celebration of world and international symposiums and conferences that, in turn, enabled a general agreement to condemn violence against women and to urge the different policy-makers and government agencies to address this issue by adopting effective measures.

Nowadays, there is clearly increased social awareness of issues related to this type of violence, which has stopped being regarded as a family issue in a private sphere to be considered a situation requiring intervention and attention from public authorities.

In this respect, privileged uxoricide<sup>1</sup> has been overcome by the legislative evolution of femicide, thus yielding a significant legislative development in the fight against gender violence<sup>2</sup> set forth in the Organic Law on Integral Protection Measures against Gender Violence of a preventive, educative, social, judicial and interventional nature and with a multidisciplinary approach.

Gender violence in this law refers to all physical and psychological acts of violence, including aggressions to sexual freedom, threats, coercions or the arbitrary privation of freedom.

The objective is, as described in Organic Law 1/2004, to act against a type of violence which,

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<sup>1</sup> *Uxoricide*, from *latin uxor*, 'wife' and *-cida* —from *latin caedere*, 'kill'—, 'murder'), that is, the *murdering of a wife by her husband*.

*Diccionario enciclopédico de Derecho usual*, Tomo VIII, Ed. Heliasta, Buenos Aires, 1981, defines *privileged uxoricide* as the murder of the wife caused by the husband's presumed or well-founded feelings of jealousy, being the honor offense and revenge considered as the ultimate causes.

This type of crime was differently sanctioned if the offender was wife or husband. The sanction provided for in the case of the husband, was to be deported; however, when the offender was the wife, she was condemned to major imprisonment or death. This explains the qualifier "*privileged*" when the crime was a *uxoricide*.

The last time this type of crime was tried, the sentence was based on the 1944 Spanish Criminal Code, which set forth in article 428 that "*the husband who, after finding his wife in adulterous circumstances, killed both adulterous at sexual intercourse, or one of them, or caused serious injuries, shall be punished with deportation. When there are only minor injuries, the husband is exempt from punishment*". However, when the wife was the offending party, the crime was sanctioned as a parricide offense, and it was sanctioned with major imprisonment or death.

This offense was not definitely eliminated from judicial procedures until the modification of the Criminal Code in 1963, which assimilated this offense to parricide or homicide.

<sup>2</sup> Organic Law 11/2003, September 29th, on Specific Measures for Public Security, Domestic Violence and Social Integration of Minority Groups; Organic Law 15/2003, November 25th, which modifies Organic Law 10/1995, November 23rd in the Criminal Code; Law 27/2003, July 31st, which regulates Domestic Violence Victim Protection Law; Organic Law 1/2004, and Royal Decree 513/2005, May 9th, which modifies Royal Decree 355/2004, March 5th, which regulates the central Registry for domestic-violence victim protection.

as a manifestation of discrimination and unequal status and power relations of men over women, is exerted by husbands or ex-husbands over their wives, or any other type of partners still related to them by similar relations of affection, with or without cohabitation.

However, gender violence is such a serious and complex problem that it exceeds any simplistic description or one-sided approach, and thus we can only understand this complex reality from a multiple (multidisciplinary) and coordinated (interdisciplinary) approach. Therefore, this BEST PRACTICE GUIDE FOR DRAFTING FORENSIC PSYCHOLOGICAL REPORTS ON CHILD CUSTODY AND VISITING SCHEDULES IN CASES OF GENDER VIOLENCE is aimed to be a frame of reference not only for psychologists, but also for the several agents involved in these processes (judges, attorneys and prosecutors).

It must also be emphasized the fact that these situations affect children, who become direct or indirect victims. Therefore, it is essential to establish the adequate measures to safeguard the standard of the child's best interests.

Indeed, Organic Law 1/2004 establishes the importance of a forensic psychological intervention, which includes the expert evaluations in criminal and civil proceedings. The latter comprises all civil referral questions pertaining to parent-child relations, also known as "parental competences", which can deal with legal-physical custody procedures, visitation rights, fostering and adoption processes, and termination of parental rights. The aim is to provide information on the feasibility, for example, of establishing visitation schemes, by examining family functioning and dynamics, the psychological state of parents or minors –or both– who participate in this type of litigations, the modification of previous custody regimes, etc.

At this stage, it is important to point out that, when performing any type of evaluation in a case of gender violence, it must be taken into account the fact that there are important differences between this violence and other types of violence which cannot be overlooked, because they can determine the evaluation process itself. Psychology studies draw a difference between acceptable aggressive behavior (as a response at some threat to physical or psychological integrity, or both) and unacceptable aggressive behavior or violent behavior, such as gender violence (as a response without clear threat to physical or psychological integrity, or both). In this case, we are dealing with a gender-based type of violence with gender as a variable increasing the chances of suffering violence.

Thus, it becomes a priority to pay special attention to all issues related to victims, both spouses and children, among other things because of:

- their excessive emotional ambivalence at the situation they have suffered and at the aggressor himself (since they have or have had affective bonds with him),
- their unawareness of being victims, or a distorted perception about what this means.
- changes in the perception of their own situation and, therefore, in their previously usual response of over-adapting to a violent family environment.

With regard to aggressors, we can also point out certain elements that can influence directly their psychological evaluation; these elements are related to their ability to manipulate and their interpersonal skills to establish, perceive and interpret the type of affective relation established with the victims.

These elements gain a special relevance with minors, who are especially vulnerable in these situations, as it has been already pointed out; therefore, it becomes necessary to adapt a response ad hoc to safeguard the minors' best interests. Taking these differences and their effects on the several aspects to be evaluated as a starting point, this guide is aimed to enable a good understanding of the particular aspects to be taken into account when psychologically addressing the already-mentioned civil disputes: procedures related to forensic custody-visitation evaluations in proceedings at the corresponding courts.

As already mentioned, Organic Law 1/2004 enabled a profound reform of the legal code to adapt the previous regulations to the new legal framework. Under this framework, the corresponding courts establish the intervention areas associated to psychology professionals in the ongoing forensic evaluation. Thus, expert evaluations can deal with judicial questions in criminal cases (on the defendant: evaluation of the mental state or legal responsibility, and evaluation of the risk or dangerousness for the victim; on the defendant's wife/children: evaluation of the mental state, injuries and psychological effects, of vulnerability factors, etc), and in civil cases (issues related to child legal and physical custody, fostering and adoption processes, termination of parental rights and civil marriage annulment).

Therefore, this GUIDE is an adaptation only applicable when the aggressor has been prosecuted, with or without precautionary measures, or condemned for an offense of gender violence.

The BEST PRACTICE GUIDE FOR DRAFTING FORENSIC PSYCHOLOGICAL REPORTS ON CHILD CUSTODY AND VISITING SCHEDULES published in 2009 was based on three broadly agreed principles that must be clearly stated in cases of gender violence.

The first is the principle of the priority assigned to the child's interests, this principle predominates for two main reasons i.e., it is mandatory under our current Spanish legislation, and because the recommendations of forensic reports on child custody have a major impact on the child's personal development.

The second refers to parental competence. In the previous general Guide and in order to assess parental competence for custody, professionals were advised to adopt the hypothesis of equal parental competence of both parents for custody as the starting point in the evaluation process. However, in cases of gender violence and after the psychological evaluation on criminal matters, experts cannot be expected to start the process of evaluation from the hypothesis that both parents are equally competent to be awarded child custody, even though it is still advisable. The defendant's parental competence cannot be ruled out prematurely, and it should be evaluated in all cases (presumption of innocence). Thus, one of the main objectives



of the evaluation is to assess the fitness of both parties involved to take care of the child or, on the contrary, to evaluate and explain appropriately and from a positive approach the more suitability of one parent than the other.

In relation to the above-mentioned aspect, and bearing in mind that in many cases of gender violence both criminal and civil proceedings take place simultaneously, and criminal matters always prevail, it is advisable for the psychological evaluations in cases of gender violence to wait for the criminal matters to be resolved in first place, since the conclusions from those have a clear impact on civil matters.

Moreover, bearing in mind the aforementioned, the assessment must appraise the entire family unit if the report is to meet the standards of a forensic report on the assessment of alternatives for child custody. In the previous Guide, it was pointed out that the evaluation of the family group should be done with all the family members together, but after adapting the guide to cases of gender violence, the professional may choose not to carry out the evaluation with all the family members together after justifying it adequately.

Throughout this document a clear distinction has been drawn between psychological reports on child custody and other types of psychological reports (reports on parental competence, reports on parent-child relationships, reports on the relationship between brothers and sisters, etc.) that, in spite of being useful in providing data on the child's relationship with either of their parents, do not evaluate all of the members of the family unit and the relationships among them, nor do they meet the full requirements of reports recommending child custody and visitation schedules. Obviously, this requirement in cases of gender violence must comply with the judicial principles set forth in the Organic Law LO 1/2004.

The psychologist must avoid any ambiguity between the psychological report on child custody and other types of reports by clearly indicating the purpose in the title and throughout the entire report so as to distinguish between the following:

- Forensic psychological report (assessment of alternatives) on child custody;
- and other titles such as: Forensic psychological report on parental competence, Report on the father-child relationship or the mother-child relationship, etc.

Therefore, if the report is not a «Report assessing alternatives on child custody», as it does not evaluate the entire family as a unit, this should be explicitly stated.

This GUIDE is applicable both for reports regarded as «forensic», and for reports providing «documentary evidence» in judicial proceedings; for this reason in this document the term «forensic report» should be understood as referring to both types of reports, unless specified otherwise. Moreover, this GUIDE is applicable to all psychological reports on the subject.

Additionally, the purposes of THE BEST PRACTICE GUIDE are as follows:

1. To offer guidance by establishing the standards of quality for professional psychologists.
2. To guide judges as to the standards of quality of forensic reports in order to improve their understanding and assist them in requesting the appropriate psychological report.
3. To provide a source of data for the different actors involved, providing elements that clarify what may be expected or demanded in these reports.
4. To contribute to a more homogeneous decision-making process by the deontological committees of the colleges.
5. To develop an instrument for the professional development and praxis of forensic psychology.

With this adaptation, the College of Psychologists of Madrid aims to:

- Increase the awareness among psychologists on the need of keeping maximum quality standards in the process of forensic evaluations in a field with so much public repercussion as gender violence.
- Offer guidance to judicial agents and other persons dealing with issues frequently controversial and, therefore, of great repercussion and easy disagreement between the parties.
- Set up quality standards for the forensic psychological custody-visitation evaluations and to reduce the possible biases influencing children and arising from the violence in their environments when assessing/discerning or considering if they have been victims of this.
- Adapt and update Forensic Psychology tools and methods to the reality of our legal and judicial framework in the field of gender violence.
- Continue to develop psychological formative and informative instruments designed to adequately address family conflicts and their consequences in the most rigorous and reliable way.

This GUIDE should not be conceived as a set of norms regulating the Deontological Code of the profession.

The goal of the Governing Body of the Official College of Psychologists of Madrid is that the BEST PRACTICE GUIDE FOR DRAFTING FORENSIC PSYCHOLOGICAL REPORTS ON CHILD CUSTODY AND VISITING SCHEDULES IN CASES INVOLVING GENDER VIOLENCE should become a useful reference for professionals and the general public, and is open to ongoing feedback to improve the quality of future editions.

## **1. THE MISSION OF THE PSYCHOLOGIST IS TO ASSESS THE PARENTAL COMPETENCE OF SEPARATED COUPLES IN EXERCISING CHILD CUSTODY**

Assessment of the family unit is a complex task, and thus should be grounded on objective and validated criteria for the assessment of all the parties involved. The psychologist should strenuously evaluate the child's upbringing, communicative skills, and personality characteristics related to care on the basis of the relevant data obtained from all of the family members in accordance with the current knowledge and advances in the science of psychology. The findings of the assessment, resumed and structured in the forensic report, should be an instrument aiding the judicial decision-making process by establishing the competence, or in specific cases, the different degrees of parental competence for exercising child custody.

Hence, the task of the psychologist in preparing assessment reports on the parental competence of separated parents for exercising child custody is:

To apply valid and reliable procedures, techniques, and instruments specific to psychology to evaluate the personal capacity and competence of each parent in exercising child custody by taking into account relevant individual variables as well as others related to the actual family dynamics, and the contexts in which it unfolds.

## **2. PRINCIPLES GUIDING THE FORENSIC REPORT**

In order to fulfil this task the overall objective of the report is to understand the family as a functional inseparable whole. As the family is a structure that is undergoing an ongoing transformation, the forensic report should clearly stipulate that the findings of the report are specific to the context and date in which the evaluation was carried out.

Consequently, any report lacking valid and reliable data on each member of the family, and the relationships among them, will fail to meet the requirements of a valid forensic report on child custody. The forensic psychological report on child custody should include the entire family unit by evaluating all its members, and the relationships among them. If the psychologist is unable to contact any member of the family unit, no forensic (alternative assessments) or child custody reports will be issued.

Notwithstanding, other forensic reports may be carried out on other aspects of family dynamics such as parental competence, relationships between siblings, parent-child relationships, but these reports fail to meet the standards and objective requirements of a forensic psychological report on child custody. Thus, the actor commissioning the report should be cautioned to this effect, and accordingly this must be explicitly stated if required to give expert evidence in a court of law (see Chart 1).

As previously mentioned in relation to gender violence situations and proceedings, the expert reviewing the case may waive a joint assessment after justifying it in the report.

Likewise, the objective is always predetermined by the judge's forensic enquiries as stipulated in the court-order or as requested by any of the parties in litigation, and should be clearly stated from the outset of the forensic report.

The conclusions, which are an indispensable part of the report, will explicitly refer to the forensic issues and objectives outlined in the first section of the report.

### **CHART 1: OBJECTIVES OF THE FORENSIC PSYCHOLOGICAL REPORT ON CHILD CUSTODY**

- To clearly respond to the forensic enquiry for court-ordered referral, and explicitly caution that the conclusion is circumscribed to the specific context and time in which it was undertaken.
- To provide judges relevant, comprehensible, and reliable data for judicial decision-making in relation to visitation schedules and child custody.
- To contribute to the wellbeing of children involved in parental separation or divorce by offering judges expert advice on the most appropriate living arrangements.
- To propose the most adequate steps, procedures and scenarios for the upbringing of children according to the criminal case sub judice.
- To ensure that under all circumstances and stages of the assessment the child's interests shall prevail above and beyond any other consideration in accordance with the current ethical and scientific principles of the profession.

Child custody reports must apply standard techniques in psychology, such as face-to-face interviews, behavioural observation, and other psychological instruments adapted to achieve this specific objective. It is crucial to have an updated theoretical-practical knowledge for undertaking this task to meet the highest standards and professional benchmarks.

### **3. ETHICAL PRINCIPLES REGULATING THE PROFESSIONAL PRACTICE OF THE FORENSIC PSYCHOLOGIST**

Psychologists who issue forensic reports in cases of intimate partner violence must abide by the ethical principles established in the *Ethics Meta Code* of the European Federation of Associations of Psychologists, and comply with the *Deontological Code* of the General Council of Official Colleges of Psychologists paying particular attention to the following articles:

#### **Article 6º**

*The profession of psychologist is regulated by principles common to all deontological psychologists: regarding the person, protection of human rights, commitment to responsibility, honesty,*

*and truthfulness with clients, prudence in applying instruments and techniques with professional competence, solidly grounded in objective and scientific professional interventions.*

#### **Article 12°**

*In particular in relation to written reports, the psychologist shall be extremely cautious, prudent, and critical to counter notions that readily degenerate into demeaning or discriminatory gender labelling such as normal/abnormal, adapted/unadapted or intelligent/deficient.*

#### **Article 15°**

*If faced with opposing personal or institutional interests, the psychologist will undertake professional practice with maximum impartiality. The commissioning of services by an institution does not exempt the psychologist from showing the consideration, respect, and attention to people who may be in conflict with the institution itself, and who the psychologist, in specific circumstances in which it is legitimately required, must act to safeguard their interests in relation to institutional authorities.*

#### **Article 17°**

*The professional authority of the psychologist rests on the skills and qualifications to undertake tasks. The psychologist shall be professionally qualified and trained in the application of methods, instruments, techniques, and procedures required for professional practice. The psychologist shall undergo continuous professional development, and should be aware of the limits to their competence, and the limitations of their techniques.*

#### **Article 24°**

*The psychologist shall refuse to lend services when there is a degree of certainty that these will be used or ill used against the legitimate interests of people, groups, institutions, and communities.*

#### **Article 25°**

*During the intervention on people, groups or communities, the psychologist is responsible for providing the relevant data on the essential characteristics of the relationship to be established, the problems to be overcome, the objectives to be achieved, and the method to be used. In cases of children or the mentally impaired, their parents or legal guardians will be informed.*

*Under all circumstance the psychologist will refrain from manipulating people, and shall strive to promote personal development and autonomy.*

#### **Article 29°**

*The psychologist shall not partake in ambiguous situations whereby their role or functions are misleading or vague.*

## Article 48°

*Psychological reports shall be clear, accurate, rigorous, and comprehensible for the party commissioning the report. They should state the purpose and limitations, the degree of certainty concerning the contents on the person under evaluation, the context, time, and techniques employed for assessment, and state the issuing psychologist's data and credentials.*

Besides the aforementioned deontological principles, the psychologists shall abide by the following ethical principles:

1. At all times, the psychologist shall ensure the interest of the child prevail over all other legitimate interests.
2. The psychological assessment involves the entire family unit, and should be undertaken with sufficient neutrality.
3. The members of the family unit should be informed of the aims and procedures prior to commencing the assessment, and informed consent must be obtained and the statutory limitations observed in accordance to age<sup>3</sup>.
4. The psychologist shall obtain informed consent from all of the parties involved in the assessment. In the case of children, the psychologist shall inform the parents or legal guardians. If any of the parties (that is, one of the parents still holding legal custody and without his/her parenting rights suspended or terminated) should object, the intervention with the child shall be halted, and may be renewed only under judicial authorization, which is considered implicit in the reports requested by the court.
5. If the psychologist is unable to finalize a psychological report on alternatives for child custody owing to the inability to evaluate all of the members of the family unit, the psychologist shall inform the commissioning agent of this limitation, shall state in the final report the type of report that is being issued, and caution the reader as to the limitations of assessment.
6. The findings of the psychological report on the behaviour and attitudes of the people under evaluation must rest on sufficiently substantiated and contrasted data.
7. The psychologist must be fully qualified and trained for the effective assessment of all the family unit. To pursue this end, the psychologist will partake in continuous professional development in competences, knowledge, and skills.
8. The psychologist shall refrain from gathering data superfluous to the needs and reason for referral, regardless of the referral source.

<sup>3</sup> Under the provisions of the Spanish law on the patient's rights and obligations regarding clinical data protection (Ley 41/2002, de 14 de noviembre, básica reguladora de la autonomía del paciente y de derechos y obligaciones en materia de data y documentación clínica, BOE nº 274 de 15/11/2002).

9. Although criminal proceedings are public in nature psychologists shall follow the deontological code and not reveal the data obtained out of the courthouse. The psychologist shall protect the confidentiality of data from access by the third parties, and from those whose knowledge may unnecessarily harm the interests, particularly of children. The psychologist shall inform on the limits to confidentiality ascribed to this type of assessment, and prevent any revelations of data unrelated to forensic assessment. Obviously, the professional's confidentiality duties are suspended during the judicial process. Nevertheless, this suspension only refers to the relevant object under forensic evaluation.
10. The psychologist shall clearly state the difference between a clinical professional relationship and forensic assessment.
11. The psychologist shall determine which data will be presented in the assessment report.

#### **4. METHODOLOGY FOR WRITING THE FORENSIC REPORTS ON CHILD CUSTODY**

The attainment of the primary objective of the forensic report on child custody (the best interests of the child) can be only safeguarded by employing the scientific methodology prevailing at any given socially historic moment of time and by controlling prejudices and biases.

The method proposed for forensic reports in this guide is the *empirical-analytical method* and the **deductive hypothetical method**.

This section is structured according to the following issues:

1. What is a method?
2. What are the aims or goals of the method of the forensic report?
3. What are the objectives of the assessment?
4. What stages does it cover?
5. What procedures are involved?

What tools and instruments are appropriate for achieving this objective?

**1. What is a method?** A method is the path or route to arrive at a destiny. The path or route is a concatenation of roughly defined or structured steps or movements that lead towards one direction, cardinal point or destiny.

The method of forensic reports, as in all professional practice, is grounded on the scientific

method. The basic components of the method employed in forensic reports on child custody are as follows:

- Strictly observe and register the greatest number of relevant events and circumstances for later analysis and prediction.
- Unbiased deduction of the causal relationships between these events.
- To check multiple data sources, repetitions or crosscheck data on the deduced relationships (in this case the predominant relationship is the development and wellbeing of the child).
- To arrive at a diagnosis (causal relationships of the events) or prognosis (evolution of this relationship) on parent-child relationships at the time of assessment, and how this is related to the child's wellbeing in the mid-term.
- To make recommendations for intervention to improve the prognosis (particularly visitation schedules, child custody, and in remodelling parental roles in the family schedule).

**2. What are the aims or goals of the method of the forensic report?** The aims or goals of the forensic report are to fulfil the aforementioned objectives.

**3. The objectives under assessment** are the child's circumstances and psychosocial surroundings, data should be gathered on the child's micro, meso and exo system of life (in relation to the enquiries outlined in the court-order)<sup>4</sup>.

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<sup>4</sup> «The appraisal of the functioning of the family system is completed with the ecological development perspective of Bronfenbrenner (1979). In short, this perspective suggests the psychological development process is closely linked to the surroundings or ecological environment in which development takes place, and that these surroundings or developmental environments are defined by a set of complex influences directly and indirectly affecting development, and are organized at different levels into a series of structures according to the degree of closeness to the child:

- The first and foremost is the level of the immediate microsystem, including the all of the roles, relationships, and phenomena present in the child's everyday settings: family, school, peer-group, etc. The relationships are bidirectional nature, and are often mediated in turn by the influence of third parties e.g., the interactions between brothers and sisters change according to the simple presence/absence of either of the parents, even when the adult does not participate in these interactions.
- The different microsystems in which the child develops not only entail their own specific internal dynamics, but these are also interconnected in important ways, connections that are sufficiently decisive to determine what happens in a given microsystem. For Bronfenbrenner this level of analysis is the mesosystem, a good example of which is the important relationships between family and school, relationships that significantly influence the child developmental adjustment at school.
- The third level proposed by the ecological model is the exosystem, that «distances» the subject in development including the relationships, roles, and dynamic functioning in contexts in which the child is not directly present: working conditions and/or type of job of one of the parents, may for example affect the frequency and the quality of the interactions with the child» Menéndez, S. (s.d.). Desarrollo psicológico en el contexto familiar. Tema 1. La familia como escenario de desarrollo psicológico. Recuperado de: [http://convivencia.educa.aragon.es/admin/admin\\_1/file/Materiales%20-Trab\\_investigaciones/tema1.PDF](http://convivencia.educa.aragon.es/admin/admin_1/file/Materiales%20-Trab_investigaciones/tema1.PDF) .



#### 4. There are three stages in the method of the forensic report:

- a. The commissioning of the psychological assessment report, and the agreement with the commissioning agent, parties involved, and users on the impossibility of knowing beforehand the results, and to specify the minimum requirements of the method outlined in this best practice for this type of report.
- b. Design and development of the assessment of the variables influencing the development and wellbeing of the child.
- c. To ensure the forensic report on the recommendations for child custody protect the child's best interests and minimize harm. Thus, the following options, among others, may be selected:

**CHART 2: OPTIONS THAT MAY BE INCLUDED  
IN THE PROFESSIONAL RECOMMENDATION**

1	2	3
Recommendation Child custody for the father	Recommendation Child custody for the mother	Recommendation Living with another family or when this is not possible with other people or institutions

Unlike chart 2 included in the previous *Best practice guide for drafting forensic psychological reports on child custody and visiting schedules*, we cannot include in the present guide the option of joint physical-legal custody as a recommendation, since the Civil Code expressly prohibits joint custody in cases of intimate partner violence, by stating in article 92.7 that: *“joint legal custody shall not apply when any of the parents is subject of criminal proceedings for attempting the life and endangering the physical integrity, freedom, moral integrity or sexual indemnity and freedom of his/her spouse or children living with them. Joint custody shall neither be awarded when the magistrate detects the existence of well-founded indications of intimate-partner violence”*.

When the recommendation is to grant child-custody to the mother and to establish a visitation scheme for the father, and if there is a risk situation, the psychologist shall take into account the social resources available at the time of making the recommendation.

**5. What procedures are involved?** The number and type of working sessions required to achieve the objectives of the forensic report depend on the specific circumstances of each child.

- Number of relevant others in the child's life: parents, brothers and sisters, step-brothers and sisters, other family, and other relevant caregivers.

- Accessibility to the data provided by other psychologists, doctors, social workers, teachers, educators...
- Complexity of the environment where the child lives, the possibility for change, and the impact and nature of this change.

**6. The tools and instruments** employed by the professional psychologist for achieving the objective, and issue the corresponding report are the psychological assessment and diagnostic techniques. Notwithstanding, these are simply the means which are subordinate to achieving the objective that should always be applied in accordance with the ethical criteria referred to in this guide, and should never be used abusively and/or unnecessary. The following are recommended techniques:

- Interview techniques;
- validated and standardized techniques: psychometric tests;
- descriptive, quantitative, and systemized techniques (scales, questionnaires, inventories, checklists), and
- ethnographic field techniques or self-concept techniques to appraise problems in the child's psycho-social reality from a multiple-perspective technique.

#### **4.1. ASPECTS TO BE IDENTIFIED, MEASURED, AND EVALUATED IN THE FORENSIC REPORT**

In this field, it is critical to assess the effects that a violent situation may have on a child, as a direct victim or witness of abuse. This previous assessment also determines the psychological intervention required in the custody evaluation process.

Bearing this in mind, The analysis of the forensic report on child custody should primarily evaluate the following points:

1. Family history and dynamics, regular family functioning patterns, prior and after the complaints of domestic violence.
2. Quality of the relationship with the children, with a special focus on the alleged maltreatment or violent family environment, minors' witnessing violence against the mother, severity and frequency, as well as the effects on the minor...
3. Detection of psychological disorders of any family member and their relation to the offense reported.
4. Personality dimensions of parents directly related to child care.

5. The adaptation level, emotional stability and risk factors of gender violence that may apply (The Official College of Madrid Psychologists has also collaborated in the development of the Good Practice Guide for a Forensic Psychological Evaluation of the risk of intimate-partner violence against women, see summary in Appendix 4 with these factors in italics).
6. Legal-physical custody options, practicability and consistency of each parent's life project.
7. Attitudes, motivation and expectations towards parenting.
8. Availability of time and personal, family and social resources.
9. Upbringing patterns and parenting styles, sensibility towards the minors' needs, evaluation of parenting skills.
10. Attitudes towards the children's bond and visits to the other parent.
11. The level of emotional, cognitive and behavioural adaptation of the child with each parent.
12. Assessment of the child's adaptation, any difficulties encountered within the family unit, and the manner in which parents intend to overcome these obstacles.
13. Disposition and receptiveness of the child towards each of the parents and how the child perceives them, conflicts in the organization of projects in the family.
14. Other characteristics of the parents such as physical health, degree of autonomy, place of residence, life expectations and projects, etc.

#### **4.2. IDENTIFICATION, MEASUREMENT, AND ASSESSMENT TECHNIQUES**

The following is a list of the most prominent techniques:

- Semi-structured interviews.
- Non-standardized instruments.
- Standardized instruments.
- Direct or simulated observational-interaction.
- Observing and registering areas of behaviour.
- Reports and/or interview with school staff responsible for the child.

- Medical reports.
- *Reports* on psychological and psychiatric treatment.

The sequence for applying the tests should begin with the interview. Examples of model interview for this objective are Fariña (2002), and Ramírez (2003). An outline of the interview for reports on child custody proposed by Marta Ramírez, which focuses especially on those aspects of family environment and the potential effects of the possible situation of violence, and the extent of these on the minors. can be found in Appendix 1.1.

Following or during the interview, it is advisable to use the following instruments for evaluating parental competence:

1. Questionnaires on each parent's attitudes towards education (see Appendix 1.2.).
2. Methods of analysis on the satisfaction and motivation towards child rearing tasks, and parental self-efficacy (see Appendix 1.2.).

Though most of these instruments have not been standardized, they evaluate aspects specific to the system of family relationships which are essential for the report on child custody<sup>5</sup>. Data obtained on the characteristics of the instruments to be applied should, on request, be conveyed to the commissioning agent. Furthermore, it is advisable that systematic-observation methods and designs be used for the objective recording with ecological validity of parent-child interactions, and to elucidate the nature and quality of these interactions.

Though the personality assessment of parents and children is not the objective of the report, under certain circumstances the results of the tests and interviews may attest to the need for applying personality assessment instruments<sup>6</sup>. A list of the most extensively used instruments is provided in Appendix 1.3. In these circumstances it is essential that the instruments to be used are adapted and validated for the population for which they are to be applied, and provide reliable and valid data.

Finally, the psychologist may consider employing a specific clinical test. As the tests may be intrusive, they are not to be used unless strictly necessary. Moreover, the results of the clinical, and personality tests should not be rigidly interpreted since the significance and predictive value are fairly limited in assessing parental competence, with the exception of cases with extremely high scores. Whenever these tests are used, the numerical values associated to each scale, and the interpretation, reliability and validity of the data should be made available, on request, to the party under evaluation and by the judicial body commissioning the report. Data obtained under court-ordered assessment must only be made available on petition from the competent judicial body.

<sup>5</sup> There is a questionnaire designed and essential in Spain, the CUIDA. This instrument assesses specifically those personality dimensions most closely related to the minors' welfare (Bermejo et al., 2007).

<sup>6</sup> In this jurisdiction, when assessing the accused's criminal aspects, personality evaluations are normally included and in this case, obviously, the relevant data can be used in civil procedures.

The psychologist shall ensure that no personality trait nor clinical symptom may on its own serve to exclude a parent from custody, unless justified in relation to parental competence and the impact on the child. In all case any clinical symptom should be interpreted in conjunction with the results obtained from the instruments that have been applied, and should never be interpreted on their own, since a clinical symptom may have diverse causes; from a simple reactive expression to a certain situation, such as the forensic evaluation itself, to be part of a wider and more relevant syndrome affecting parental competence.

Furthermore, to avoid any bias the same tests of parental competence and family environment should be applied to both parents unless there are justified grounds for not doing so that should be explicitly stated<sup>7</sup>.

### 4.3. PROCEDURE

Quality is understood as «the set of properties and characteristics of a service that comply with the technical specifications, and endorse the requirements and reason for court-ordered referral». The quality of a report on child custody should define its ability to achieve the objectives in a manner which is both fair and beneficial for all of the parties involved.

Given the particular difficulties and complexity encountered in these cases, forensic reports must strictly comply with the three dimensions of quality «CIR»: Cooperation, Impartiality, and Rigor.

The first characteristic of the quality of a report on child custody is that it fosters a cooperation strategy between the parties, bearing always in mind that, in this field, it is not possible in many cases to conduct this type of evaluations since they must include the whole family unit and the minor's real environment. This cooperation is vital for any rigours analysis designed to ensure the child's best interests prevail above any other interests, no matter how legitimate they may be. Therefore, psychologists should abstain from conducting child-custody evaluations in cases of alleged gender violence unless court ordered<sup>8</sup>, since in this circumstance it is not required parental authorization, and it is reasonable to expect an adequate level of collaboration. However, when requested by one of the parties in the proceedings, and due to the possible deontological derivations/implications from these situations, psychologists are advised to abstain from conducting custody evaluations and instead conduct parental competence reports, and even in those cases by complying meticulously with the precautionary measures court mandated in relation to the mother and the children.

The second characteristic on the quality of child custody reports is impartiality in the assessment of the child in relation to parental figures/settings (impartiality implies proportionality and no exclusion in the listening, observation, and experimentation of a varied series of stimuli relevant to the child's interaction with parents and social setting).

<sup>7</sup> It is considered to be essential, in the absence of a differential factor indicative of parental competence, certain personality profiles may have a significant incidence on parental competence.

<sup>8</sup> Although, in the procedure, reports from any of the parties involved are included.

The third characteristic of the quality of a report forensic on child custody is rigor in the design and development of the assessment to ensure an accurate appraisal of psychological development, alterations, the application of tests, to detect the needs of children and protect their interests and their future, and in specific cases to psycho-diagnose any alterations in the child, the other parties involved, or both.

In short, the quality of the forensic report is reflected in its ability to optimize decision-making on visitation schedules and child custody that ensure the positive development and psychological well being of the child. The report should protect the best interests of the child (recommending the environment that facilitates the greatest wellbeing), and minimizes any adverse impact on the child.

#### **4.3.1. What is a procedure?**

Two configurations of the procedure for forensic reports on child custody are shown below i.e., the flowchart, and critical activities.

The advantage of the flowchart is its precision and the absence of any ambiguity in indicating the steps to be put into practice, their order, and alternatives for a variety of decision-making contexts. Its success derives from its complete language integrated with a broad catalogue of symbols, and a detailed syntaxes describing precise rules for building the representation of any type of process or chain of events from input to output.

#### **4.3.2. Development of a common procedure: initial phase (1<sup>st</sup> order flow)**

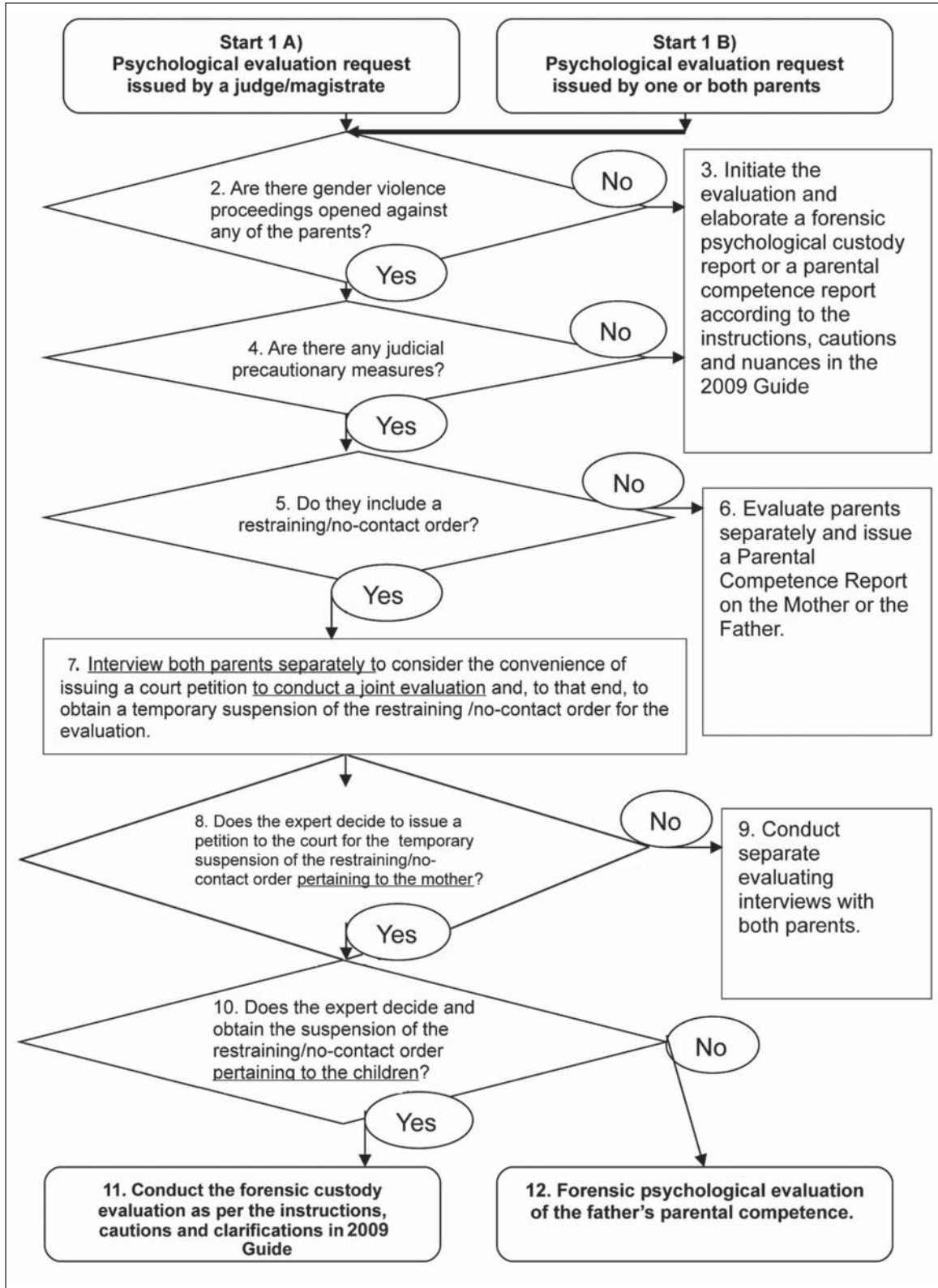
The Graph below illustrates the procedure for applying the tools and techniques with caution and in compliance with ethical principles. Appendix 2 shows the description of the ANSI code of the flow chart for the correct interpretation of the graphs.

In the case of family groups involved in gender violence proceedings, the evaluation process may be initiated with a court request or a request from one of the parties to a private psychologist. At court, the referral questions may be issued by the magistrate, by the attorney, or by one of the parties involved. Although in occasions the court designates private forensic psychologists to conduct the evaluations, in the vast majority of cases forensic psychologists from the administrative office of the courts are designated. When the forensic question is issued by the court, the psychologist must verify if there are gender violence proceedings opened in the judicial referral document (any judicial decision or procedure) requesting the evaluation.

The initial stage of the evaluation process is described in Figure 1.

Figure 1.

**A GOOD PROFESSIONAL PRACTICE ITINERARY FOR THE PSYCHOLOGIST WHEN CONDUCTING A FORENSIC PSYCHOLOGICAL CUSTODY EVALUATION (OR A PARENTAL COMPETENCE EVALUATION) IN CASES OF GENDER VIOLENCE (IPPGC-VG)**



However, when the referral question is presented by one of the parties to a private psychologist, this circumstance may not be clear and, therefore, the psychologist must clarify it with his client or his client's lawyer; if there are indications of gender violence, either at the beginning or during the evaluation process, the professional must verify it with all available means. If there is no case of gender violence, the psychologist may conduct the forensic custody evaluation or the parental competence evaluation, as per *Best practice guide for drafting forensic psychological reports on child custody and visiting schedules* previously mentioned.

Both with judicial requests and private requests, and after checking the existence of gender violence proceedings, it is essential to bear in mind the possible precautionary measures before starting the evaluation planning, since these may determine the evaluation process. In that instance, in view of the offense reported and the outcome of the speedy trial, joint interviews with both parents or interaction with the children, recommended and/or adequate at this stage 2, are decided not only by evaluating the convenience or justification of those interviews, but also by the court orders themselves.

When, after this verification, it is confirmed that there are no precautionary measures, the psychologist must conduct the evaluation as per the instructions included in the general guide above mentioned. Nevertheless, in these cases, the professional must take special measures when arranging joint interviews with both parents, and interviews of these with their children, and these may be cancelled altogether when circumstances so dictate. Moreover, the psychologist must justify his/her decision in the report (for example, when the professional decides not to interview the father and children due to the violent or tense situation detected, this circumstance must be stated and be taken into account in the final report).

When there are precautionary measures, the psychologist must verify if there is a restraining and/or no-contact order. If there is none, then a parental competence evaluation of the mother or the father (or both) can be conducted, or, if there is access to the whole family group, a child-custody evaluation, as per the procedure in this Guide.

When there is one of these judicial orders and, even then, the professional decides to make an exception because it is important to obtain the necessary information, a petition for the suspension of the restraining or no-contact order must be issued by the corresponding judge to adequately evaluate the family group. This petition must be always approved by the corresponding court. If not approved or due to other possible circumstances (defendant absence, at prison, etc.), the psychologist must inform about this limitation in the results obtained in their conclusions.

The decision to request a temporary suspension of the restraining/no-contact order to conduct these interviews must be justified by the psychologist after a meticulous decision-making process that should serve to evaluate thoroughly the family history and both parents' behavior, bearing always in mind the best interest of the minor. Likewise, it is important to emphasize the fact that, although the violent acts may not be suffered directly by the minors, these can be affected by them; thus, it is of the utmost importance to assess the level of implication of the minors in the conflict, and the context where the alleged violent situations take place, as well as their frequency, seriousness and duration. Other relevant data to be examined are the number of previous complaints and criminal record of violence offenses against other intimate partners. Therefore, the most adequate course of action seems to be weighing carefully the



decision of issuing a petition of temporary suspension of the judicial precautionary measures after both parties, the complainant and the defendant, are interviewed separately. Another circumstance to be examined is the possibility of the father condemned for gender violence to request a modification of the custody-visitation order after undergoing a psychological treatment, in which case the possible changes throughout the time and the minor's will in relation to the restraining/no-contact order suspension to protect the minor's emotional balance.

If the order suspension is granted by the court, the psychologist may conduct the forensic evaluation as per the Protocol included in this GUIDE. If the order suspension is not granted, two possible situations need to be differentiated:

- The order not suspended refers to the spouse,
- The order not suspended refers to the children.

If the restraining/no-contact order pertains to the wife, the psychologist may conduct parental competence evaluations of each parent, and legal-physical custody evaluations, but joint interviews with both parents cannot be arranged.

When the precautionary measures include children, the psychologist can only carry out a parental competence evaluation, since it is impossible to evaluate the father-child interaction.

The second phase is concerned with designing a rigorous assessment method that is neither excessively technical nor entails drawbacks that cannot be reasonably overcome. The procedure in this phase is identical to any other psychological assessment or psycho-diagnosis i.e., to proceed with rigor and insight. The main aim is to identify anomalous behaviour related to retardation in the child's evolution in specific environments, and parenting patterns and practices associated to one or both of the parents, or with social environments associated to anomalous behaviour.

Forensic reports on parental competence are different in several aspects to child custody reports as are clinical reports different to individual and/or family Psychodiagnosis. The most common differences are as follows (see Chart 3):

**CHART 3**

	<b>Clinical report</b>	<b>Psychodiagnosis</b>	<b>Parental competence</b>	<b>Custody report</b>
<b>Objectives</b>	Assessment by another professional	Psychological Treatment	Determine level of competence	Advise and motivate reasons for assigning child custody and visitation schedules
<b>Destined for</b>	Health-Education Professional	The therapist: be it one psychologist or another	The interested party	Judge and lawyers for both parties
<b>Conditionants</b>	Maximum cooperation	Maximum cooperation	Social desirability	Social desirability

Based on another similar proposal included in the *On-line Course on Psychological Reports* of the Official College of Psychologists of Madrid, the minimum common procedures are as follows:

1. Analysis of the reason for referral, be it from one of the parties in litigation or court-ordered.
2. Review and analysis of all court files and records, and the allegations from lawyers representing both parties in litigation.
3. Summoning of people under assessment and obtaining an agreement of collaboration for the benefit of the child.
4. Formulating hypothesis and designing the assessment instrument by determining and selecting which techniques and tests are to be applied.
5. Psychological assessment of parents in child custody litigation.
6. Contacting other professional working with the child and family.
7. Integrating results, and reformulating hypothesis if need be.
8. Psychological reports on the child, family, and surroundings.
9. Forensic findings on the assessment of the child's best interests.
10. Submitting the report to the commissioning judge.
11. If required, confirmation of assistance to trial.
12. Follow-up if required.

#### **4.3.3. Development of the common procedure: second phase**

In the common procedure, the appropriate objectives and techniques of the forensic psychological report on child custody (as mentioned before, in these cases it is advisable to accept the request only if referred by court) or parental competence have been outlined. Though the interviews should be conducted in the order that facilitates the gathering of data required for effective psychological assessment of the family unit (see Figure 2), the psychologist may alter this order if it negatively influences the assessment given that the objective of these interviews is to obtain the data required for adequately determining a specific psychological proposal.

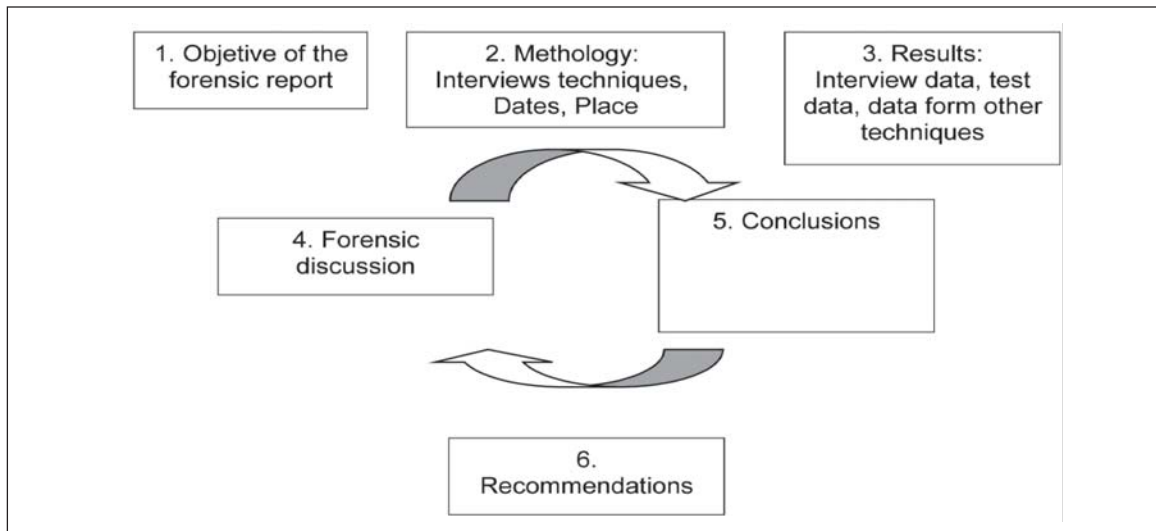
**FIGURE 2.**  
**PHASE 2<sup>nd</sup> THE PROCESS OF THE FORENSIC PSYCHOLOGICAL REPORT.**

	<b>Forensic courses of action</b>	<b>Techniques to select among the commented options:</b>	<b>Observations and support means.</b>
<p>1. Review secondary data: court records and/or criminal background check.</p> <p>2. Interviews with parents in the order determined in accordance with the circumstances</p> <p>3. Interview children individually and in group</p> <p>4. Observational interaction with parent-child , whenever possible.</p> <p>5 Interview child's relevant others</p> <p>6. Observational interaction parents + children Whenever possible unless contraindicated</p> <p>7. Information from significant others in the child's extra-family microsystem</p> <p>8. Information sufficient to formulate a hypothesis</p> <p>9. Hypothesis of the forensic report on child custody. Validation with others tests</p>	<p>1° The initial working hypothesis is "the child's best interests prevail".</p> <p>2° To make an inventory of the variables to be assessed in each case in the child custody report (Chapter 4.1.)</p> <p>3° Identify the variables relevant for custody by referring to court records.</p> <p>4° Identify variables related to parental competence that are not referred to in the records:</p> <ul style="list-style-type: none"> <li>– Parental skills</li> <li>– Parental attitudes</li> <li>– Parental habits.</li> <li>– Identify variables of the child's microsystem related to child custody.</li> </ul> <p>5° To take full account of all the stages of the alleged situation of violence in which the minor may have been involved.</p>	<p>Select from the techniques described in section 4.2 and reasoned the objective to be selected, any incidents during application, and the results. Apply questionnaires to evaluate personality traits related to the child's upbringing:</p> <ol style="list-style-type: none"> <li>1. Self-esteem.</li> <li>2. Problem-solving skills.</li> <li>3. Empathy.</li> <li>4. Flexibility.</li> <li>5. Reflection.</li> <li>6. Sociability.</li> <li>7. Tolerance to frustration.</li> <li>8. Ability to establish affective bonds.</li> <li>9. Ability to overcome bereavement.</li> <li>10. Anger expression</li> <li>11. Parenting style. To evaluate through similar questionnaires to evaluate other variables according to the period in the child's life.</li> </ol> <p>Moreover, the psychologist must assess the risk factors of intimate-partner violence which may apply (Best practice guide for the forensic psychological risk assessment of intimate partner violence).</p>	<p>Order of interviews is situational.</p> <p>Structure order of procedure according to the circumstances. Maintain affective neutrality with all of the persons under evaluation without neglecting the social skills and ethical values regulating forensic psychology. Detect dementias, incapacitating disabilities, etc. that incapacitate a parent from exercising child custody.</p>

## 5. THE FORENSIC REPORT

The **content of the forensic report** should have a well-defined structure such as the example in Figure 3.

FIGURE 3



The report, without losing rigor, should be written in clear language, free from technical jargon and, in cases where this proves to be impossible, include a translation into easily comprehensible language that is understandable but precise. The report should be succinct, not excessively long, but sufficiently detailed to provide the data required.

The forensic report must be addressed to the commissioning agent, (be it the judge or either of the defence lawyers representing the parties in litigation, prosecutors and attorneys).

A forensic psychological report on custody evaluation in cases of gender violence should include at least the following elements:

1. *Type of report: child custody or parental competence.*
2. *The author of the report: name and credentials. When there are several authors it is advisable to conduct separate reports by each author, but if it is a joint report the sections provided by each author must be clearly differentiated.*
3. *Name of the court of referral and trial number if required.*
4. *People evaluated.*
5. *Identifying the reason for referral: identify the initial applicant(s), the user, the commissioning agent's concerns and enquiries, and quote the actual wording of the judge or of the parties in litigation and their lawyers, stated exactly as it is formulated in the judicial order or file or*

in the request by the corresponding part. The section including the referral question is titled «Forensic objective» and this objective should clearly state the purpose of the forensic report, and not exceed the functions of the psychologist.

6. *Methodology-techniques* to be applied: interviews, other reports, court records, tests, questionnaires, simulated and real-life observations, home visits, etc. This section should also include the date of the commissioning report, and the date of assessments in chronological order. Other indirect data sources should be and consulted such as teachers, doctors, etc.

The child's preferences regarding different living alternatives should be explored, bearing in mind the possible external pressure they may be experiencing, but care should be taken in not asking direct questions that generate a conflict of loyalty as these preferences are not conclusive. Moreover, the psychologist must be able to explain the rationale underlying the forensic report and how preferences have been evaluated.

7. *Results* of the forensic tests. This section is further subdivided into two: the results obtained from interviews, and the results obtained from other psycho-technical and psychological techniques. The descriptions, diagnosis, and predictions referred to in the forensic report should be circumscribed to the context and time when they were undertaken.
8. *Conclusions*: responding to the judge's enquiries or those of either parents as to which is the best living arrangement for the best interests of the child, or parent's parental competence. The final assessment should directly address the reason for referral, and the report should substantiate its findings with a certain degree of conviction on the basis of the results. Should the conclusions be inconclusive or there be a degree of doubt, this should be explicitly stated in the report. The conclusions should be explicit and easily located in the text. They should explicitly formulate a proposal, and offer complementary recommendations for child custody or visitation schedules, and every conclusion or recommendation should rest on substantiated results. The reader of the forensic report shall be able to easily understand how the psychologist arrived at the conclusions in the report, and what data was used to reach the conclusions.
9. *Recommendations* (on the application and practical outcomes of the conclusions), and other relevant recommendations (therapy, further assessment, etc.).

Moreover, the report must appraise a previous history of gender violence, protection orders, and other court records at the disposal of the psychologist.

## **6. ASPECTS TO TAKE INTO ACCOUNT DURING THE ASSESSMENT PROCESS AND IN WRITING THE FORENSIC REPORT**

The report should be testable, since it is probative evidence in a judicial proceedings, and should underscore that assessment refers to a given moment and context.

Both in undertaking the forensic assessment and writing the forensic report, caution should be exercised in making statements as psychologist, and our conclusions must be sufficiently substantiated as well as showing respect for all those involved in the assessment. Special care should be taken to prevent:

- The invasion of privacy causing unnecessary distress (duplicity, superfluous questions...).
- The violation of a person's intimacy (with the presence of third-parties during assessment, except with written authorization, particularly for didactic purposes).
- Defamatory or derogatory remarks and/or insulting any of the parties.
- Conclusions concerning one of the parties based on data obtained exclusively from the other party, without contrasting it by using other means.
- Recording as fact, conclusion or argument the data obtained from only one of the parties.
- It essential that the statements of either party are well differentiated by using quotation marks, the sources and the context of assessment should be cited as well as the events and behaviour observed and/or recorded by the psychologist and judgements, evaluations, conclusions etc., but avoiding any type of ambiguity.
- A biased or partisan viewpoint.
- Unsubstantiated statements and value judgements with no foundations.

When a psychologist becomes aware of malpractice in a forensic evaluation, he/she must report it to the professional college Commission of Deontology. Reports that exclusively rely on the content of counter-reports of other expert psychologists either in favour or against, are an issue especially sensitive in relation to a deontological level, and so the psychologist willing to report must review carefully the deontological literature on this issue; if still in doubt, it is advisable to consult previously with the Commission of Deontology.

Additionally, when describing behaviors, attitudes and feelings, it is necessary to avoid categorical judgements and inflammatory statements. In general, and as Vázquez and Hernández (1993) propose, forensic psychological reports should employ the tactic of «maximum observation, medium description, and minimum inference».

Furthermore, any over-diagnosis either in terms of an excessive number of sessions or the number of tests applied should be avoided unless sufficiently justified. Though it may appear to be redundant, it would be convenient to under score once again that the report should strictly comply with the deontological principles and current legalisation in force, particularly in relation to those outlined in section 3.

The chart in Appendix 4 gives examples of best and malpractice in child custody reports.

## 7. OTHER RECOMMENDATIONS

It is recommended that the checklist of the tests employed in the report be completed (see Appendix 3).

In relation to the payment of the psychologist fees, when the evaluation is requested by one of the parties, it is recommended the psychologist request the provision of funds to guarantee the impartiality of the results of the report.

As to crucial questions as to who has the right to access and who is the recipient of the forensic report it would be convenient to point out that these reports (pertaining to the legal-physical custody or parental competence) are mostly requested ex-officio by the judge; therefore, the expert must deliver it to the judge, who, in turn, forwards it to the parties involved in case any of them considers necessary for the expert to attend the trial as expert witness in order to provide the clarifications or explanations required. The judge may request the presence of the expert at court or at trial to better understand and evaluate the forensic verdict provided<sup>9</sup>. In the evaluation is done on a private basis, the report must be delivered to the referral source; if it is admitted by the court, the parties may request access to the report.

To sum up, it is the judge's discretion to determine in which conditions and circumstances to grant the parties access to the report.

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<sup>9</sup> In relation to this, Civil Procedure Law articles 770.4º, 445, 339.5 and 346 shall apply.

Article 770 of the Civil Procedure Rules on matrimonial and minor proceedings: *separation-divorce lawsuits, except from the ones provided for in article 777, marriage annulment and other disputes provided for in Title IV in Book I of the Civil Code, are to be substantiated at the oral proceedings disputes and in accordance with the following rules:*

- 4th, second paragraph: *The court may request ex-officio the evidence deemed necessary to verify the concurrence of circumstances required by the Civil Code to order the annulment, separation or divorce, and evidence referred to offenses or facts that may determine the ruling on judicial orders that affect minors or incapacitated children.*
- 6º.- *In proceedings pertaining exclusively to physical-legal child custody or claims of food provision on the minor's behalf, the orders of precautionary measures shall comply with the procedures provided for in this law to resolve previous, simultaneous or final orders in annulment, separation or divorce processes.*

Article 445 of the Civil Procedure Rules, on evidence and conditions in oral trials. *In evidence and conditions matters, chapters V and VI from Title I in the present Book shall apply to oral trials.*

Article 339.5 of the Civil Procedure Rules, on Petitions for expert designation by the court, and judicial decision on the petition. Designation of experts by the court, without a petition by any of the parties involved: *The court may designate ex-officio an expert when the evaluation is deemed appropriate in processes of declaration or objection to personal data, maternity, paternity, individuals' capacity or in matrimonial procedures.*

Article 346 of the Civil Procedure Rules, on Issuing and Ratifying the forensic report by the expert designated by the court. *The expert designated by the court shall issue a written report, which shall be delivered to the court within the established deadline. Copies of the report shall be provided to the parties involved in case these consider necessary the expert's attendance to trial in order to provide the clarifications or explanations required. The court may resolve, in any case, that the expert's attendance to trial or hearing to better understand and evaluate the forensic report.*

## **APPENDIX 1. EXTENSIVELY USED INSTRUMENTS GUIDING THE FORENSIC PSYCHOLOGICAL REPORTS OF CHILD CUSTODY<sup>10</sup>**

### **1.1. OUTLINE OF THE INTERVIEW STRUCTURE**

List the aspects that are to be identified, measured or evaluated, for guidance on interviewing children and parents see section 4.1. There are different interview types and structures such as those proposed by Fariña et al. (2002). An example interview designed by Marta Ramírez (2003) is shown below consisting of the following subsections:

- Family history.
- Post-break-up interparental relationships evaluated by the parents.
- Post-break-up parent-child relationships evaluated by the parent with provisional custody.
- Post-break-up parent-child relationships evaluated by the parent with no custody.
- Eating habits.
- Sleeping habits.
- Habits on authority and discipline.
- Habits on autonomy / dependence.
- Leisure habits.

### **1.2. NON-STANDARDIZED INSTRUMENTS. QUESTIONNAIRES AND SCALES**

The psychologist must ensure that the techniques employed, especially in relation to personality or clinical traits, have been adapted and validated for the population to which they will be applied in order to explain clinical or personality traits, and to attest to the reliability and validity of data. Nevertheless, there may be no standardized and normalized instruments for evaluating very specific aspects that are not normally included in a forensic report on child custody, in which case the psychologist should employ the instruments most extensively used by the vast majority of psychologist. Below is a brief list of some of the most extensively used instruments (Marta Ramírez, 2003) in her book *Cuando los padres se separan. Alternativas de custodia. Guía Práctica*, edited by Pirámide Ed.

- Achenbach, T. (1997). Cuestionario CBCL. Cuestionario de conductas infantiles para padres

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<sup>10</sup> Obviously, this list is not exhaustive, and other instruments that meet the technical criteria may be required to fulfil the objective.



(adap. española). Asturias: Consejería de Sanidad & Servicios Sociales del Principado de Asturias. Unidad de Salud Mental Infantil de Avilés.

- Escala de apoyo social percibido de amigos. Translation of the original version of M. E. Procidano, & K. Héller (1983) by Marta Ramírez.
- Escala de evaluación de afrontamiento de problemas. Translation of the original version of Larsen, Olson, & Mc Cubbin (1982) by Marta Ramírez.
- Escala de creencias infantiles sobre el divorcio parental. Translated and modified version of Kurdek, & Berg (1987) by Marta Ramírez.
- Listado de tareas de cuidado infantil.
- Escala de comunicación padres-adolescentes. Formulario para hijos. Translation of the original version of D.H. Olson, & H.L. Barnes (1982) by Marta Ramírez.
- Escala de comunicación padres-adolescentes. Formulario para padres. Translation of the original version of D.H. Olson, & H.L. Barnes (1982) by Marta Ramírez.
- Listado de preferencias infantiles. M. Ramírez (2003).
- Instrumento sobre actitudes parentales. Modified version of de original of E.S. Schaefer & R.Q. Bell (PARI, 1995) by Marta Ramírez.
- Inventario de percepción de los padres.

Furthermore we can include:

- PEE Estilos Educativos Paternos de Magaz, & García (1988). Grupo ALBOR.

### **1.3. STANDARDIZED INSTRUMENTS. QUESTIONNAIRE SAND SCALES**

#### **1.3.1. Instruments for evaluating general personality traits**

- Cattell, R. B., Cattell, A. K. S., & Cattell, H. E. P. (2003). 16PF-5: Cuestionario Factorial de Personalidad (6ª ed. rev. & amp.). Madrid: TEA.
- Coan, R. W., & Catell, R. B. (1993). ESPQ: Cuestionario de Personalidad para Niños (6 a 8 años). Madrid: TEA.
- Costa, P. T., & McCrae, R. R. (2002). NEO PI-R: Inventario de Personalidad Neo Revisado. Madrid: TEA.

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- Eysenck, H. J., & Eysenck, S. B. G. (1997). EPQ-R: Cuestionario de Personalidad de Eysenck-Revisado. Madrid: TEA.
- Millon, T. (2001). MIPS: Inventario Millon de Estilos de Personalidad. Madrid: TEA.
- Porter, R. B., & Cattell, R. B. (1999). CPQ: Cuestionario de Personalidad para Niños (8 a 12 años). Madrid: TEA.
- Shuerger, J. M. (2001). 16 PF-APQ: Cuestionario de Personalidad para Adolescentes. Madrid: TEA.

### **1.3.2. Brief tests and screening**

- Goldberg, D., & Williams, P. (1996). GHQ-28: Cuestionario de Salud General [adap. española]. Madrid: Masson.
- Rivera, L. de, & Abuín, M. R. (2012). LSB-50: Listado de Síntomas Breve. Madrid: TEA.

### **1.3.3. Child adjustment tests**

- Hernández, P. (2002). TAMAI: Test Autoevaluativo Multifactorial de Adaptación Infantil (4ª ed). Madrid: TEA.
- Silva, F., & Martorell, M. C. (2001). BAS: Batería de Socialización 1, 2 & 3. Madrid: TEA.

### **1.3.4. Instruments for evaluating specific personality traits related to parental competence**

- Bermejo, F. A., Estévez, I., García, M. I., García, E., Lapastora, M., Letamendía, P. ... Velázquez de Castro, F. (2006). CUIDA: Cuestionario para la Evaluación de Adoptantes, Cuidadores, Tutores & Mediadores. Madrid: TEA.

### **1.3.5. Instruments to evaluate clinical traits**

- Butcher, J. N., Williams, C. L., Graham, J. R., Archer, R. P., Tellegen, A., Ben-Porath, Y. S., & Kaemer, B. (2003). MMPI-A: Inventario Multifásico de Personalidad de Minnesota para Adolescentes. Madrid: TEA.


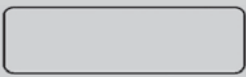
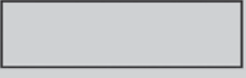




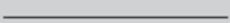
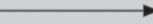


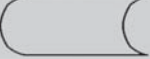


- Drug, S. E. (2005). CAQ: Cuestionario de Análisis Clínico (6ª ed.) [adap. española]. Madrid: TEA.
- Gillis, J. S. (1999). CAS: Cuestionario de Ansiedad Infantil (3ª ed.). Madrid: TEA.
- Hare, R. D. (2010). PCL-R: Escala de Evaluación de Psicopatía de Hare Revisada [adap. española]. Madrid: TEA.
- Hathaway, S. R., & McKinley, J. C. (2002). MMPI-2: Inventario Multifásico de Personalidad de Minnesota-2, (3ª ed. rev. & amp.) [adap. española]. Madrid: TEA.
- Kovacs, M. (2004). CDI: Inventario de Depresión Infantil [adap. española]. Madrid: TEA.
- Lang, M., & Tisher, M. (1997). CDS: Cuestionario de Depresión para Niños (5ª ed.) Madrid: TEA.
- Millon, T. (2004). MACI: Inventario Clínico para Adolescentes de Millon [adap. española]. Madrid: TEA.
- Millon, T., Davis, R., & Millon, C. (2007). MCMI-III: Inventario Clínico Multiaxial de Millon-III [adap. española]. Madrid: TEA.
- Murria, H. A. (1988). TAT, CAT-A, CAT-H & SAT: Tests de Apercepción Temática [adap. española]. Madrid: TEA.
- Ortiz-Tallo, M., Santamaría, P., Cardenal, V., & Sánchez, M. P. (2011). PAI: Inventario de la Personalidad. Madrid: TEA.
- Portuondo, J. M. (2007). La Figura Humana: Test Proyectivo de Karen Machover (2ª ed.). Madrid: Biblioteca Nueva.
- Rorschach, H. (1969). Psychodiagnostik. (trans. Hans-Huber Verlag, 1942) [trad. española]. Buenos Aires: Paidós (trabajo original publicado en 1921).
- Spielberger, C.D. (2001). STAIC: Cuestionario de Autoevaluación Ansiedad Estado/Rasgo en Niños (3ª ed. rev.). Madrid: TEA.
- Tous, J. M., Pont, N., & Muiños, R. (2005). IA-TP: Inventario de Adjetivos para la Evaluación de los Trastornos de la Personalidad. Madrid: TEA.

### **1.3.6. Other Instruments**

- Barraca, J., & López-Yarto, L. (2003). ESFA: Escala de Satisfacción Familiar por Adjetivos. Madrid: TEA.

- García, F., & Musitu, G. (2001). AF-5: Autoconcepto. Forma-5 (2ª ed.). Madrid: TEA.
- Lluís-Font, J. M. (2006). Test de la Familia: cuantificación y análisis de variables socioculturales & de estructura familiar. Barcelona: Davinci.
- Melero, R., & Cantero, M. J. (2008). Los estilos afectivos en la población española: Un cuestionario de evaluación del apego adulto. *Clínica y Salud*, 19, 83-100.
- Musitu, G., & García, F. (2004). ESPA-29: Escala de Estilos de Socialización Parental en la Adolescencia. Madrid: TEA.
- Sánchez-Cánovas, J. (1998). EBQ: Escala de Bienestar Psicológico. Madrid: TEA.

## APPENDIX 2: ANSI CODE FOR THE FLOWCHART ON THE FORENSIC REPORT ON CHILD CUSTODY

Name	Symbol	Function
Entering – leaving the process		Represents any operation for introducing data in the memory or to register in the INPUT system (triggering), and OUTPUT (final product).
Start – Finish of the process		To indicate the start and finishing times of a process.
Activity of the process		Includes any defined operation or activity fostering a change of values during the process.
Check process and/or decision-making		Identify each issue for decision-making at a given moment of time. According to the response, one of the alternatives options is chosen; whenever possible, use the binary YES – NO option.
Connector		Connects two parts of the flowchart within the same page of the diagram.
Connector		Connects two parts of the flowchart when the drawing extends onto another pages.
Subroutine		This is a routine independent of the main flow receiving input from the said flow, a specific routine is performed prior to returning to the main flow.
Line of connection		This is an element linking two symbols.
Indicator of direction		Indicates the order in the execution of the activities.
Comments		Adding other symbols to the flowchart to qualify comments.
<b>Technical equipment</b>		
Documents		Indicate if one or more documents are being issued.
Data storing		Indicate if an activity has data bases
<b>Specific operations</b>		
Manual data input		Indicate if data input is manually fed.
Automatic storing		Hard drive of data/documents.



## APPENDIX 4: EXAMPLES OF GOOD AND MAL PRACTICE IN THE PROCESSING OF FORENSIC REPORTS

PHASES	Good practice	Mal practice
<p>Phase initial: RECEPTION OF THE PSYCHOLOGICAL EVALUATION REQUEST</p>	<ol style="list-style-type: none"> <li>1. Verifying the existence of criminal records when there are indications of gender violence.</li> <li>2. Examine and specify the reason for referral in the report: the what, for what, why, for whom.</li> <li>3. Caution as to the characteristics of the forensic report: state the best option and conditions for the child's upbringing with impartiality, complex data, rigor of data, and replicability of conclusions.</li> <li>4. Informing the applicant that the evaluation follows the child's best interest principle. Due to this, the report conclusions may go against the applicant's own interests, and it is advisable to request a provision of funds to protect professional independence.</li> </ol>	<ol style="list-style-type: none"> <li>1. Deeming as truthful all the information included in an initial complaint of domestic violence.</li> <li>2. Accepting to conduct a clinical report to be used as a concluding assessment in a physical-legal custody evaluation or a parental competence report.</li> <li>3. Omitting the existence of criminal records filed in the same or another procedure and/or court.</li> <li>4. Giving instructions or advice to both parental figures, as if it were a therapeutic intervention.</li> </ol>
<p>Development phase: UNDERTAKING THE ASSESSMENT.</p>	<ol style="list-style-type: none"> <li>5. Evaluate all family, school, and social settings.</li> <li>6. Examining specific indicators and/or aspects related to gender violence (emotional blockage or disconnections, fantasies, seeking help, calls for attention, efforts to predict, explain and prevent aggressive behaviors, etc.).</li> <li>7. Evaluate the psychological development and well being of the child, the degree and aetiology of disorder(s), (if any), the alleged maltreatment, and the incidence in each member and their respective social settings.</li> <li>8. Use all types of observational tools and prioritize registration instead of diagnosis categorizing.</li> <li>9. Evaluate the prognosis on the development and wellbeing of the child according to the modes of interaction of the child in each environment.</li> <li>10. Examining both parents without prejudging the mother as the victim nor the father as aggressor.</li> </ol>	<ol style="list-style-type: none"> <li>5. Deeming not necessary to evaluate both parents when it is a gender-violence case.</li> <li>6. Evaluate the parental competence of only one parent in the forensic psychological report.</li> <li>7. To consider without contrasting the opinions of one of the parents or third parties the data as objective and as grounds for doubting parental competence.</li> <li>8. Overlooking the possible effects of the criminal matters of the procedure on the civil matters.</li> <li>9. Not considering all the possible options just because of a previous complaint of gender violence.</li> </ol>

PHASES	Best practice	Bad practice
<p>Judgement phase: ELEMENTS SPECIFIC TO THE FORENSIC REPORT</p>	<p>11. Describe the «pros and cons» of each option for awarding custody to either parent or family. Include pros and cons of the visitation schedules and specifications.</p> <p>12. Recommend a specific option on the basis of the results of the evaluation.</p> <p>13. Make recommendations to both parties on the child's upbringing and welfare and agree on the dates for further follow-up.</p>	<p>10. To make erroneous attributions and exaggerate normal alterations in the child's adaptation to the process of divorce.</p> <p>11. Considering the maternal option as the only possible option for the minor, or always assessing positively this option because there is irrefutable evidence of intimate-partner violence against the mother.</p> <p>12. To make unqualified statements not supported by the data available.</p> <p>13. Complicating unnecessarily the report with irrelevant data not related to the conclusions.</p> <p>14. Recommend the banning of visits or contacts with a parent not submitted to evaluation.</p> <p>15. Consider as factual all of the child's claims or statements on the premise that the child «always tells the truth».</p> <p>16. Recommending unworkable or contradicting measures.</p>





