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**The Decision-Making Process in Child Custody Cases After Parental Separation:
A Cross-Cultural Study Between Brazil and England**

By

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Abstract

When separated parents cannot reach a settlement regarding child custody and access/contacts, it can become a judicial matter. Despite being a small part of the total number of parental separations, these cases pose a challenge to family courts as they tend to be complex and involve different factors that will impact the decision-making process and the child's best interests. The current literature has not yet examined, under a naturalistic decision-making approach, how uncertainty is structured in child custody decision-making and what strategies legal actors might apply to cope with that uncertainty. Adopting a naturalistic decision-making approach and a cross-cultural perspective between Brazil and England, this thesis aims to: (1) describe the decision-making process in child custody cases after parental separation; (2) identify strategies used by legal actors (judges, prosecutors, lawyers, psychologists and social workers) during the decision-making process; and (3) understand how the best interests of the child are affected during the decision-making process. The thesis is divided into three parts. The first one comprises a theoretical framework concerning the judicial process in child custody cases in Brazil and England. It also addresses a systematic-narrative review of the best interests of the child in English and Portuguese literatures. A brief review of naturalistic decision-making approach and its appropriateness to child custody cases is also addressed. The second part presents the data collection and data analysis. There was an exploratory mixed-methods approach, with three studies: (1) a pilot study addressing a child custody decision-making task with 530 'naïve' participants (law, psychology and social work undergraduate students); (2) a reflexive thematic analysis with 73 experts (judges, prosecutors, lawyers, psychologists and social workers); and (3) a child custody decision-making experiment using verbal protocol analysis – 45 experts took part. The results indicate ways in which uncertainty can affect the decision makers' performance as well as cognitive strategies used to cope with uncertainty. The main source of uncertainty was the family's developmental struggles regarding parental separation. The legal actors' coping strategies had the effect of reducing, acknowledging or ignoring uncertainty. All strategies seemed to have an impact on decisions and the child's best interests. Based on this, this thesis proposes the FESFS (Familiarisation, Evoking experience, Selection, Forestalling and Suppression) model for coping with uncertainty in child custody cases. The third part of the thesis comprises some conclusions and presents a Child Custody Decision-making System (CDMS), which assembles factors concerning the child custody context and custodial decision-making. This CDMS interacts with other systems to support decision-making regarding with whom a child should live and/or the contact/access they should have with the non-custodial or residential parent.

Key-words: uncertainty; child custody; child arrangements; naturalistic decision-making; the best interests of the child; thematic analysis.

Declaration

I hereby declare that this thesis has not been, and will not be, submitted in whole or in part to another University for the award of any other degree.

16th January 2022.

Josimar Antônio de Alcântara Mendes

Epigraph

INVICTUS

*Out of the night that covers me,
Black as the pit from pole to pole,
I thank whatever gods may be
For my unconquerable soul.*

*In the fell clutch of circumstance
I have not winced nor cried aloud.
Under the bludgeonings of chance
My head is bloody, but unbowed.*

*Beyond this place of wrath and tears
Looms but the Horror of the shade,
And yet the menace of the years
Finds and shall find me unafraid.*

*It matters not how strait the gate,
How charged with punishments the scroll,
I am the master of my fate,
I am the captain of my soul.*

William Ernest Henley

Dedication

*Eu dedico esta tese a Dennys Guilherme dos Santos Franco, 16 anos, morador da Vila Matilde, Zona Leste de São Paulo, Brasil. No dia 01 de dezembro de 2019, Dennys (e outros oito adolescentes) morreu pisoteado por conta de uma ação desastrosa da polícia militar de São Paulo para coibir um baile funk. Em um dos seus posts nas redes sociais, Dennys escreveu: “vou ser um dos favelados que vai conquistar o mundo, vou ser pra minha mãe o motivo de tanto orgulho”. Dedico esta tese a Dennys como forma de honrar a sua existência e seus sonhos interrompidos. Dedico esta tese a ele como sinal da promessa inquebrável de que **nós, os favelados, seguiremos conquistando o mundo e sendo motivo de orgulho para as nossas mães, pais, familiares e comunidades!***

I dedicate this thesis to Dennys Guilherme dos Santos Franco, 16 years old, from Vila Matilde, East Side of São Paulo, Brazil. On 1 December 2019, Dennys (with other eight teenagers) was trampled to death as a result of a disastrous police operation in São Paulo. In one of his posts on social media before the event, Dennys wrote: “I’m going to be one of the *favelados* (slum-dwellers) who will conquer the world, I’m going to make my mother proud”. I dedicate this thesis to Dennys, to honour his existence and his interrupted dreams. I dedicate this thesis to him as a sign of the unbreakable promise that **we, the *favelados*, will continue to conquer the world and continue to make our mothers, fathers, families and communities proud!**

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List of Abbreviations

BIC	The Best Interests of the Child Principle
BNR	Child's Basic Needs/Rights
BR	Brazil
CA	Conflicted Alternatives
CAFCASS	Children and Family Court Advisory and Support Service
CAO	Child Arrangements Orders
CDMS	Child Custody Decision-making System
CCO	Child Custody Context
CDP	Custodial Decision-making
CFA 2014	Children and Families Act 2014
CFR	Child's Family Reality
EDP	Educating Parents
EJI	Extra-judicial Information
EN	England
EXP	Experience
FESFS	Familiarisation, Evoking experience, Selection, Forestalling and Suppression model
FLC	Family Life Cycle
FMT	Familiarity
FPI	Focusing on Parents' Interests
FTA	Family-tailored Arrangement
GPB	Gender bias & Personal beliefs
HST	High Stakes
IDDTA	Integrative Data-driven Thematic Analysis Method

JCP	Joint Custody as the Prime Arrangement
JDM	Judgement and Decision-making
LAB	Law-abiding
LEP	Legal Procedures
LI	Lack of Information
LIC	Listening to the Child
MCT	Mediation, Conciliation and Treatment
NDM	Naturalistic Decision-making
NLC	No need to Listen to the Child
PA	Parental Alienation
PEN	Child's Psychosocio-emotional Needs
RUB	Rhetorical use of BIC
SCO	Self-composing
TA	Thematic Analysis
TDO	Trading-off
UA	Unit of Analysis
UC	Unit of Coding
UI	Inadequate Understanding
UK	United Kingdom
UNCRC	Convention on the Rights of the Child

Introduction

Like any other crisis moment, divorce¹ can either potentially enhance an individual's or family's development/growth or impair it (Greene et al., 2012; Mendes & Bucher-Maluschke, 2017a). In this sense, the outcomes of a parental separation will depend on protective (enhancing the family's resilience) and vulnerability (impairing adjustment) factors regarding family members' idiosyncrasies, family interactional patterns (e.g., roles, functions, boundaries) and ecological systems surrounding the family such as extended family, friends, community and workplace (Greene et al., 2012).

These factors can also impact the parents' ability to establish functional and child-focused coparental interactions and communication after the divorce. For instance, some separated parents manage to reach a settlement regarding child custody² and/or contacts/access without any sort of legal mediation.³ Other separated parents might need to go to the family court and seek a decision regarding these matters – this is expected to occur in about 5% of all divorce cases (Baker, 2012; Kelly, 2002, 2007; Wallace & Koerner, 2003). Despite being a small number of cases when compared to the total, judicial disputes concerning child custody and contacts/access after parental separation are very challenging to professionals involved in decision-making. They tend to require considerable amounts of resources, especially because some parents apply to the court multiple times, even until the child reaches legal adulthood (Antunes et al., 2010; Cano

¹ Throughout this thesis, despite legal and definitional differences, 'divorce' and 'parental separation' will be referred to as the same thing: the relationship breakdown between two people who had a child together.

² Within English Law concerning private law cases, 'custody' is not referred to anymore. Since the Families Act 2014, the correct term is 'child arrangement' and it addresses issues regarding the child after the breakdown of the parental relationship. Thus, we are using 'custody' as a general and uniform term to designate in both countries: a) where the children will live; b) how much time they will spend with each parent; and c) access to the child: arrangements for parents to visit/see their children after parental separation.

³ From here on, whenever we mention 'custody', it can be assumed it is in the context of parental separation.

et al., 2009; Mendes & Bucher-Maluschke, 2017a; Juras & Costa, 2011; Hashemi & Homayuni, 2017; Rosmaninho, 2010; Souza, 2007).

Alongside developmental and coparental matters, cultural and legal issues are relevant to the decision-making process. The two countries addressed in this thesis, Brazil and England, have contrasting cultural and legal systems – the former has a civil law system and the latter a common law system. Taking all of these into account, one could wonder:

- how the dynamics that the family displays after the parental separation can impact the performance of legal actors (judge, prosecutors⁴, lawyers, psychologists and social workers) during a child custody decision-making process;
- how the decision-making process is shaped in child custody cases;
- how the child's best interests are weighed during the decision-making.

Adopting a cross-cultural design and a naturalistic decision-making approach, this thesis aims to explore the questions above and discuss the decision-making process in child custody cases and how the child's best interests are addressed. To achieve that, this thesis is divided into three parts:

- *Part I – Theoretical framework*: this part outlines cultural, legal and theoretical issues. Chapter I compares parental separation, child custody and legal decision-making steps in Brazil and England; Chapter II contains a narrative-systematic literature review addressing the best interests of the child in Portuguese and English literatures; Chapter III outlines the naturalistic decision-making approach and its implications for child custody cases;

⁴ Only in Brazil. Further discussion on this is addressed in Chapter I.

- *Part II – Investigating processes of decision-making in child custody cases:*
this part presents empirical studies that explored decision-making processes and their constraints. This part encompasses: Chapter IV with a pilot study concerning a child custody decision-making task and was carried with law, psychology and social work undergraduate students; Chapter V presents a qualitative study with a reflexive thematic analysis that pictured the decision-making process in child custody cases; and Chapter VI that presents a verbal protocol analysis based on a child custody decision-making experiment carried by experts. One of this chapter's outcomes is a model for coping with uncertainty in child custody cases;
- *Part III – General discussion:* encompasses Chapter VII with a general discussion that assembles the main points raised by previous chapters and summarises the thesis and its contribution to a better understanding of the child custody decision-making process. Also, this chapter presents a model for the decision-making process in child custody cases: Child Custody Decision-making System.

PART I – THEORETICAL FRAMEWORK

Chapter I

A Comparative Look at Divorce Laws and the Best Interests of the Child in Brazil and England^{5,6}

Defining and evaluating the best interests of the child (BIC) after parental separation is a complex task for legal actors (judges, prosecutors,⁷ lawyers, psychologists and social workers) working with cases in which the parents have separated and a decision regarding with whom a child is to live has to be made. It is complex because ensuring BIC in child custody and access/contacts cases involves moderators that can vary according to two interdependent layers: (1) legal constraints; and (2) legal processes. The main constraints in such cases are the BIC itself (what it is; what encompasses it) and the context (child's idiosyncrasies; family development; legal actors' personal views on 'legal practice', 'divorce', 'family' and 'child'). On the other hand, the legal process is related to the legal system (civil or common law) and how legal actors evaluate BIC in each case (assessing; analysing).

This chapter presents a narrative literature review that aims to: (1) address context issues that can affect the decision-making process in child custody cases; (2) underline how both countries legally frame BIC; (3) compare legal processes regarding child custody in both countries; and (4) compare how Brazil and England legally understand and process child custody cases after parental separation.

⁵ The content of this chapter has been adapted and published in a peer-reviewed journal: Mendes, J. A. A., & Ormerod, T. (2021). A comparative look at divorce, laws and the best interests of the child in Brazil and England. *Revista da Faculdade de Direito UFPR*, 66(2), 95-126. <http://dx.doi.org/10.5380/rfdufpr.v66i2.74001>.

⁶ This chapter has benefited from comments made by professor Craig Lind (School of Law, University of Sussex, England), His Honour Judge Clifford Bellamy (England), Her Honour Judge Sirlei Martins da Costa (TJGO, Brazil) and Heros Martins Neto (Brazil, family lawyer).

⁷ Only in Brazil as British prosecutors do not act in such cases. For further discussion, please see the section 'The Brazilian Civil Law and English Common Law Systems'.

Family Life Cycle, Divorce and Crisis: (un)fitting the child's welfare

The Family Life Cycle (FLC) is a normative developmental model proposed by Carter and McGoldrick (1988) that encompasses divorce as a phase in some families' developmental course. The way a family goes through this phase will shape the divorce outcomes that impact the family's and the child's welfare. The authors established some expected stages throughout the family developmental course. Each stage represents a crisis moment for the whole family because it requires changes, reorganisation and re-shaping within the family's interactional dynamics and roles. There are seven stages of family development: (a) leaving home – emerging as young adults; (b) the joining of families through marriage/union; (c) becoming families with young children; (d) being families with adolescents; (e) being families in midlife – launching children and moving on; (f) families' late middle age; and (g) families nearing the end of life (McGoldrick et al., 2014).

Those expected stages present challenges to the family experiencing them. There are also unexpected stages that comprise FLC and are part of family development. One of these is divorce. It is an unexpected stage that deviates from an expected developmental course and destabilises the family system (like any other stage) due to changes, gains, and losses throughout the process of overcoming that stage (Mendes & Bucher-Maluschke, 2017a).

The biggest challenge for the ex-couple is to put efforts towards accepting and adapting their changed interactional patterns and roles. During the stage 'families with young children', the main challenge for parents is to balance marital roles with new parental ones (McGoldrick et al., 2014). Before children, parents were used to living as a couple; they had their own routines, activities and responsibilities. After children arrive, those aspects must harmonise with routines, activities and responsibilities

regarding the children. This is a common tension point amongst recent parents that they need to overcome to go to their next step of development. In a parental separation, that challenge comes back but marital roles now can be associated with hatred, anger, frustration and sometimes revengeful feelings. Therefore, during a divorce, the biggest challenge is to separate marital issues (e.g., frustrations, bitterness, disappointments, cheating, financial issues such as division of assets) from parenting ones (e.g., affection, protection, upbringing, support, parental control and looking after children in general: Hameister et al., 2015; Juras & Costa, 2017; Ponciano & Féres-Carneiro, 2017). When marital and parental issues overlap, litigation may arise at the point the family face a destructive divorce (Mendes & Bucher-Maluschke, 2017a).

A destructive divorce occurs when the former couple engages in conflicting and highly litigious interactions and dysfunctional communication. This dynamic arises when the ex-couple is not able to overcome the relationship breakdown and keep engaging in fights after the separation, in an unconscious attempt to stay connected with one another (Antunes et al., 2010; Cano et al., 2009; Hansen & Shireman, 1986; Mendes & Bucher-Maluschke, 2017a; Juras & Costa, 2011; Hashemi & Homayuni, 2017; Rosmaninho, 2010). Usually, it happens when the ex-couple, after the formal divorce, cannot go through a process of ‘emotional digestion’ and reorganisation of their lives, roles, identity and feelings regarding the ex-partner and the breakdown itself. If they cannot have an ‘emotional divorce’, they engage in a destructive divorce.

When an ex-partner cannot emotionally divorce themselves from the other, it is likely that they may stay stuck to that relationship for years, even decades (Antunes et al., 2010; McGoldrick et al., 2014). In child custody cases, ‘emotionally *undivorced* parents’ can be recognised as highly aggressive towards the other, disregarding interventions and/or reflections with inflexible or stubborn positions, and a

communication framed by the ‘adversarial game’ (Antunes et al., 2010). Those parents then unconsciously engage themselves in intractable disputes to remain emotionally connected to the ex-partner (Antunes et al., 2010). These issues can cyclically lead the family to dysfunctional and unstable developmental transactions that increase the chances of conflict, violence and disruptions (Greene et al., 2012; McGoldrick & Shibusawa, 2012). This dynamic can lead to ‘endless’ cases with multiple applications to the family court. This reveals an important layer of uncertainty in child custody cases: unconscious motivations. We believe that neither parents nor legal actors are fully aware of this phenomenon.

This scenario can lead to expressions of violence (e.g., physical, psychological, verbal, financial) between the ex-couple, which can also affect children (Costa et al., 2009). The former couple cannot recognise their responsibilities in the conflict, and both tend to lay blame and look for allies (Juras & Costa, 2011). Their first target for alliance is often children, who can be ‘triangulated’ and/or ‘parentified’ in parental conflicts, as described below.

A child is triangulated when the stress, anxiety and anguish caused by the parental conflict reaches an unbearable level and leads the children to get involved in the conflict, to mediate to reduce tension between the parents and within the family system (Juras & Costa, 2011; Mendes & Bucher-Maluschke, 2017a). The common outcome of triangulation is to have the child allied to one parent and against the other. Hence, a high level of parental conflict tends to lead the child to pick one side. A child is parentified when they display behaviours that would be expected from parents. Usually, it happens when siblings must look after each other because parents are so involved in their conflict that they cannot properly parent their children. Both situations can impair the child’s interests and psycho-emotional welfare (Mendes & Bucher-

Maluschke, 2017a). These dynamics can make parents blind to their child's needs and welfare, especially when they over-focus on the conflict and litigation, even using children to increase and keep the dispute going.

The Best Interests of the Child

The BIC principle is a tool commonly used to measure and weigh outcomes in any legal situation concerning children. But BIC is associated with a lot of other subjects and fields that deal with children and their rights and interests. For example, it has been applied by healthcare providers to make decisions regarding a child's medical treatment⁸ (Snelling, 2016). BIC also has been applied in teaching and pedagogical scenarios to help address what is the best for the child (Prunty, 2011). However, the most frequent use of BIC is within the children-related justice system.

The BIC principle is encapsulated by the *Convention on the Rights of the Child* (UNCRC) 3rd article, which broadly shelters all rights within the UNCRC itself. This article states that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. However, neither the article nor the rest of the UNCRC offers any further definition for BIC, its application nor the factors for evaluation, which is the main target for the BIC critics.

The United Kingdom (UK) and Brazil are both signatories to the UNCRC. In the UK, the BIC is mostly represented by the Children Act 1989, which clearly refers to the UNCRC 3rd article in its first sections and items:

(1) When a court determines any question with respect to—

(a) the upbringing of a child; or

⁸ The requirement to use ‘the best interests of the child’ as a factor in medical decisions regarding children is a legal one. Indeed, all decisions addressing a child's upbringing (which include things like health and education) must be made with the best interests of the child as the paramount consideration (in English law).

(b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

The Children Act 1989 also has a so-called welfare checklist which the court is required to take into account. This includes, for example, the child's wishes, biopsychosocial needs, age and degree of understanding and physical safety – this checklist will be discussed later.

In Brazil, the BIC is expressed in its Constitution, 227th article:

It is the duty of the family, the society and the State to ensure the child's right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom, family coexistence and community life, and to safeguard them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression.

Following the UNCRC, Brazil also enacted, in 1990, the Child and Adolescent Statute, which defines the child and adolescents' rights.

The Brazilian Civil Law and English Common Law Systems

Legal systems' characteristics and their legislation shape the legal actors' practice. Civil and common law systems have different ways to address child custody throughout their legal traditions and proceedings. These differences can affect how the family, children and their 'best interests' will be seen and managed within family courts and the decision-making process.

There are three types of legal systems: 1) civil law; 2) common law; and 3) socialist law. These systems carry specific legal traditions that locate each of them in a

cultural perspective (Cruz, 1995/2007). Brazil adopts a civil law system and England follows a common law system. To classify differences between those systems, Konrad and Hein (1998) proposed some juristic-style criteria, such as viewing the system's: a) historical background and development; b) emblematic mode of thought; c) typical institutions; d) types of legal source (and how it treats them); and d) ideology.

The English common law system is based on “unwritten customary law evolved and developed throughout the centuries with pragmatism, strong monarchs, an unwritten constitution and centralised courts being its typical features” (Cruz, 1995/2007, p. 38). In this sense, some classical definitions tend to assert that common law does not have a legislative tradition as it was developed in and by courts highlighting the judges' role in making laws.⁹ Common law works in a concrete, court-based way that looks for pragmatic answers when problems are presented before the court, according to a ‘case by case’ procedure and, in this system, the main source of law tends to be case law or judicial precedent (Cruz, 1995/2007).¹⁰

The civil law system is also known as ‘Roman-Germanic’ because its historical background reflects Roman and Germanic law origins. Due to its inheritance, civil law contrasts with common law by presenting substantive law principles. Civil law was “formulated, compiled and refined in the universities, later codified and then given statutory force by the legislature” (Cruz, 1995/2007, p. 38). It tends to be more abstract, conceptual and symmetrical, being governed by specific rules that try to foresee and

⁹ Some authors and legal practitioners dispute that assertion by acknowledging that, within the common law, quite often some statutes (written law) tend to amend, adjust and refine the customary law – see Pojanowski (2015).

¹⁰ In the history of the Common Law, there were few statutes and much of law was being developed by judges in decisions in specific cases. But that is almost certainly no longer true of the Common Law tradition in England. Nowadays, there are complex statutes with which judges interact in their case by case decision-making.

solve problems before they reach the court and, it is operated by a ‘principle to principle’ procedure. In this system, the main source of law is codified or enacted law.

The differences between those two systems impact the way legal actors, within each system, understand and operate the law, especially in child custody and access/contact cases. Both systems address public law and private law in the same way, the latter regarding relations between private citizens and organisations, the former referring to disputes involving the State as a party. In Brazil and England, divorce is a private law matter. However, in Brazil, there are some cases in which the State is seen as an interested (and public) party and non-criminal prosecutors can be involved.

In any judicial parental separation, Brazilian prosecutors¹¹ can take part in the decision-making process, highlighting the state’s interests and roles as well as the observance of the law. A Brazilian prosecutor only takes part in cases that involve children who are considered ‘incapable’¹². Hence, children would have what Brazilian civil law calls ‘unavailable rights’. These refer to rights that, due to their specific nature, do not allow the person to relinquish them, because they are irrevocable, inalienable and non-transferable, such as the right to life, health and dignity (Venturi, 2016). These rights are ‘unavailable’ because the person cannot dispose of them in any type of transaction and/or agreement. They are, then, non-negotiable rights and, therefore, must be protected, especially by the State. Thus, in post-parental separation disputes involving children, prosecutors would act on behalf of the BIC. This is according to Article 227^o of the Brazilian Constitution and the Child and Adolescent Statute.

¹¹ They are, likewise, English crown prosecutors. However, their performance and duties go beyond criminal matters and extend to the safeguarding of children’s rights, environmental protection, protection of minorities’ rights and so on. Thus, in non-criminal cases, their role is to evaluate how people’s rights and the State’s interests (as expressed in the Constitution) are, or are not, being taking into account. In general, the role of prosecutors in Brazil is to act as a *custos legis* (‘guardian of the law’) by making sure that people’s rights and the law itself are not being jeopardised. For further discussions regarding the general role of Brazilian prosecutors, please see Mueller (2010, p. 106-107)

¹² Meaning: due to their developmental stage, they are incapable to legally dispute and to ensure their own interests, so Brazilian prosecutors would be their best interests’ guardians.

Table 1 presents a summary of both systems' main characteristics:

Table 1

Main Characteristics of Brazilian and English Legal Systems

Legal System Characteristics	
<i>Brazilian Civil Law System</i>	<i>English Common Law System</i>
- substantive law principles	- unwritten customary law
- abstract and conceptual	- pragmatic
- written constitution	- unwritten constitution
- codified rules (through legislation)	- no legislative tradition → court-based
- principle-driven	- 'case-by-case' driven

Divorce and Law: the Brazilian Civil Law and English Common Law Systems

Basic Concepts and Proceedings

Before addressing how each country approaches children's welfare, it is important to discuss how each of them understands the child's residence and contact issues whenever the separated parents cannot reach a settlement. In Brazil, when there is a judicial parental separation that involves children, one of the decisions to be made is to define and then award what in Brazil is called as the child's '*guarda*'. The standard translation for *guarda* would be 'custody', but its meaning is closer to 'guardianship'. *Guarda* is an arrangement that considers with whom and where the child will live as well as how the non-custodial/non-residential parent will have contact/access and visit the child. Applications for *guarda* can be made until the child is 18 years old. In England, all the matters regarding who a child is to live with, and the contacts (direct or indirect) are dealt with as 'child arrangements orders' (CAO). A CAO application can

be made until the child is 16 years old and, exceptionally, until they are 18 years old – all CAO are regulated by Section 8 of Children Act 1989.

The current English legislation regarding children in private and public laws has abolished the word ‘custody’ and uses ‘child arrangements’ to designate a court order concerning “(a) with whom a child is to live, spend time or otherwise have contact, and (b) when a child is to live, spend time or otherwise have contact with any person” (Section 8(1), Children Act 1989). The legislation has abolished the ‘custody’ concept regarding a child, meaning that this change was not a mere substitution. The aim of the legislator was to clarify that the child is not an object to be under custody.

‘Child arrangements’ is a generic term that leads the courts to evaluate each case and set orders according to their idiosyncratic characteristics. That is a significant contrast between Brazilian and English systems, as Brazil not only refer to *guarda* (meaning custody) but also only offers two types of custodial arrangement: sole custody and joint custody (with or without shared care). Moreover, the latter is a default arrangement bound by law that should be applied to every and each case, especially in those in which parents cannot reach an agreement. Therefore, in theory, sole physical custody would be awarded only when and if one of the parents does not show interest in the child custody¹³.

In Brazil, the payment of child maintenance is referred to as *alimentos* (close to the North American notion of ‘alimony’) and can only be legally enforced by going to the court so both judge and prosecutor can testify that the arrangement is on behalf of the child’s interests. The calculation regarding how much maintenance shall be paid is not fixed and can vary from case to case, according to the court’s judgment. However, it

¹³ Stating a default decision for child custody can potentially hamper the decision-making and it is a very controversial issue – that won’t be addressed in this chapter as it is not its goal. Also, in England, some authors and legal practitioners understand that Section 1(2A) of the Children Act 1989 indicates a presumption of shared parenting, i.e., shared care arrangements would be optimal – see Kaganas (2018).

is based in a threefold principle: (1) necessity (the child's specific needs); (2) possibility (the financial possibilities of the other parent); (3) proportionality (a fair amount according to the parent's income) (Rosa, 2015). Depending on how the solicitor applies to the court, *guarda* and child maintenance can be judged at the same time, which can have the adverse effect of prolonging litigation and harming the child's best interests. In its Art. 5º, item LXVII, the Brazilian Constitution enacts the possibility of incarceration for parents who do not pay child maintenance. Other codes have enforced it to the point that, in Brazil, not paying *alimentos* will lead to prison.

In England, separated parents are strongly encouraged to set the level of child maintenance by themselves, which is called 'family-based agreement'. In this case, there is no official involvement or legal approval, and the information and support to set up that agreement is provided by the Child Maintenance Options (Herring, 2019a). If this initial attempt fails, the 'parent with care'¹⁴ can apply to the Child Maintenance Service. This agency will try to sort out any issues that are impeding the agreements of child maintenance. To gain the assistance of these services, parents must pay a fee (victims of domestic violence and parents under 19 years old are exempt). These two services have a general formula to calculate how much maintenance shall be paid. If the non-custodial/residential parent's weekly income is between £200 and £800, the amount to be paid is as follows: 12% of gross income for one child; 16% of gross income for two children; 19% of gross income for three or more children. If the weekly income is higher than £800: 9% of gross income for one child; 12% of gross income for two children; 15% of gross income for three or more children (Herring, 2019a). In some rare

¹⁴ The parent responsible for 'day-to-day care' (Herring, 2019a).

cases, parents can apply for a court ‘consent order’ to top up the maintenance.¹⁵ In England, child custody and child maintenance are decided as separated matters.

In Brazil, child maintenance obligations last until the child reaches 18 years old and 21 years if they are in a full-time training or educational course up to A level or equivalent. However, the Brazilian supreme court has decided recently that it shall last until the person graduates, regardless of their age. In England, these obligations last until the child is 16, or 20 years old if they are in full-time education (Herring, 2019b).

These different characteristics and policies regarding child maintenance highlight an important contrast between Brazil and England in child custody matters. The English system tends to discourage, as much as possible, legal disputes and altercations between the parents by stimulating self-composition¹⁶ and non-judicialisation of the family’s conflicts. The Brazilian New Code of Civil Proceedings, enacted in 2015, created specific routes to promote mediation and consensual settlement within Family Law. However, the reality is that the Brazilian system tends to stimulate judicial litigation. That happens not only due to the judiciary’s litigation mindset but also by the creation of legislation that, not only judicializes the family’s private life, but also fails to comprehend the interrelated processes inside a family. This tends to increase family litigation and incomprehension. Also, in Brazil, child maintenance disagreements and/or the failure in paying usually impairs the custodial arrangements and especially the contacts between the child and the non-custodial/resident parent. This dynamic is also seen in England (Skinner, 2002). However, it tends to be less frequent

¹⁵ For further information regarding Child Maintenance in England, please consult the Child Maintenance and Other Payments 2008 act; the reader can also check the work of Skinner (2012).

¹⁶ This is related to processes in which both parties (parents) find a functional way to communicate their differences, interests and goals regarding the matter under dispute and to thereby reach an agreement by themselves, without judicial mediation.

due to the separation of custody and child maintenance matters and the non-litigating nature of child maintenance in England.

Table 2 presents a summary of both legal systems' approach to parental separation and children's welfare:

Table 2

Approach to Divorce and Children's Welfare of Brazilian and English Legal Systems

Child Arrangement Conception	
<i>Brazilian Civil Law System</i>	<i>English Common Law System</i>
<ul style="list-style-type: none"> - 'guarda' → understood as guardianship → custody - there are only two possible types of arrangement: i) sole custody, ii) joint custody (with or without shared care) - custody applications until the child is 18 years old 	<ul style="list-style-type: none"> - arrangements regarding residence and contacts with the child - child arrangements ('custody') applications until the child is 16 years old (exceptionally until 18 years old) - there are no arrangements pre-set. All arrangements are made in consideration of each case (family and children) and its needs
Child Maintenance	
<i>Brazilian Civil Law System</i>	<i>English Common Law System</i>
<ul style="list-style-type: none"> - involves court proceeding - until the child is 18 years old and 21 years if they are in a full-time training or higher education course – it can be extended until the person has graduated - parents can be incarcerated if they do not pay child maintenance 	<ul style="list-style-type: none"> - dealt with by extrajudicial agencies: Child Maintenance Options and Child Maintenance Service - until the child is 16 years old and 20 years if they are in a full-time training or higher education course

The Law Regarding Child Custody

The Brazilian Civil Code has a specific chapter in its Family Law Book named ‘Protecting the Offspring’. It is aimed to ensure that children will be protected after parental separation. The first article of this chapter says that:

Art. 1,583. The *guarda* shall be sole physical custody or joint custody.

§1º Sole physical custody is a guardianship awarded to just one of the parents or someone else that replaces them, and joint custody concerns the shared responsibility, rights and duties towards the family power that both father and mother, that do not cohabit, have regarding their children.

§2º Regarding joint custody, contacts with the child must be divided in a balanced way between the mother and the father, taking into account factual conditions and the child’s interests.

§3º Under joint custody, the city in which the child will reside shall be the one that best fits the interests of the child.

The second article provides guidance for applications, contacts with the child, and guidance to parents regarding joint custody:

Art. 1,584. The sole-physical or joint custody will be:

I – required by the father and the mother, consensually, or singularly by either of them, in an application for separation, divorce, dissolution of a stable union, or as a precautionary measure;

II – decreed by the judge, according to the child’s specific needs, or due to the need to balance the child’s contact with the father and mother.

§1º During the conciliation hearing, the judge will explain joint custody, its importance, the respective duties and rights of both parents and the penalties for noncompliance with its terms.

§2º When there is no agreement between the mother and the father regarding the child custody, and both parents are able to exercise the family power, joint custody shall be applied, unless one of the parents declares to the court that they do not wish be awarded child custody.

With the enactment of Act 13,058/2014, that altered Art. 1584, § 2º, joint custody became ‘compulsory’ to every case in which parents cannot reach an agreement, unless one of the parents does not want custody. Hence, joint custody should be awarded regardless of the parental conflict level portrayed. This alteration was due to jurisprudence from superior courts that understood:

the focus is on the best *interest* of the minor, which is the driven-principle of the relationship between parents and children. It does not make sense to understand that joint custody is impossible when parents cannot reach a consensus. [...] Hence the assumption that joint custody impairs this principle is questionable, as this perception only highlights the parental conflict, ignoring the best *interest* of the child. [...] The end of conflicts between the former couple is not the aim, but rather the overcoming of obstacles that prevent joint custody to be set.¹⁷

This judgment seems unconcerned with the child’s interests, as it clearly states that the most important thing is to secure joint custody, regardless of any other issue. In other words, the main concern is with the arrangement and how it secures both parents’ rights to have the child’s companionship. Another issue regarding the Brazilian joint custody model is its obsession with time, meaning contact. It is referred to three times (Art. 1,583 § 2; Art. 1,584, II, § 3) always alluding to ‘a balanced division of time’, implying that the quantity of time overlaps with its quality.

¹⁷ Brazilian Superior Justice Tribunal. Special Appeal nº 1,251,000 - MG (2011/0084897-5). Rapporteur: Nancy Andrichi. Judged on: Aug. 23 2011. Available at: https://bdjur.stj.jus.br/jspui/bitstream/2011/100798/Julgados_marcantes_Nancy_Andrichi.pdf.

§5º from Art. 1,584 highlights the role of prosecutors and, more importantly, the role of psychosocial staff to help the decision-making process:

§3º – In order to establish the attributions of the father and the mother and the periods of contact under joint custody, the judge, *ex officio*¹⁸ or at the request of the Public Prosecutor's Office, may be based on professional or interdisciplinary team's orientation, which should aim at the balanced division of time between father and mother.

In England, disputes over a child's upbringing are governed by the Children Act 1989, Children and Adoption Act 2006 and amendments from Children and Families Act 2014. A child arrangement order is what parents are seeking in a child custody case. This order is instructed by the Children Act 1989's Section 8, which determines who and where the child should live with and how much time the child will have with each parent. Although this order can apply until the child is 18 years old, the court will rarely institute an order when the child is over 16 years old; only in exceptional circumstances (Herring, 2019b). Before the Children and Families Act in 2014, child arrangement orders were referred to as either 'residence' or 'contact' orders. Now there is just a 'child arrangement order'. It is important to highlight that, in contrast with Brazilian law, English law does not specify or limit the type of custodial arrangement that should be set or even specifically mentions 'time balance', like in Brazil. English law makes clear that orders concerning child arrangements can be framed by detail and conditions.

Whenever judging a child arrangements case, English courts primarily apply the welfare checklist illustrated at Section 1(3) of the Children Act 1989, which displays the following weighing factors: a) the ascertainable wishes and feelings of the child

¹⁸ Latin expression that means 'for duty of office, for obligation and regimint'. It is said of an official act that takes place without an application from the parties. In sum, it refers to prerogatives that the judge has.

concerned (considered in the light of his/her age and understanding); b) his/her physical, emotional and educational needs; c) the likely effect on him/her of any change in circumstances; d) his/her age, sex, background and any characteristics which the court considers relevant; e) any harm which he/she has suffered or is at risk of suffering; f) how capable each of his/her parents, and any other person in relation to whom the court considers the question to be relevant, are of meeting his/her needs; g) the range of powers available to the court under this act in the proceedings in question. Another tool the court has is to nominate a guardian *ad litem*, who will represent the child's interests before the court. This guardian is usually employed in very complicated and intractable cases. Hence, their role is to represent the child's interests in court by gathering the child's wishes, feelings and welfare and then report them to the judge, but always weighing what is the best for the child. Sometimes, the guardian can also appoint a solicitor to represent the child in the case – if the child is 'Gillick competent', they can ask for a lawyer by themselves¹⁹.

The enactment of the Children and Families Act 2014 (CFA 2014) was also meant to foster less hostile parental disputes over a child's upbringing (Herring, 2019a). One of the actions with this purpose is in Section 10(1), which states that before making a relevant family application, a person must attend a family mediation information and assessment meeting. In Section 11, CFA 2014 stated that the involvement of both parents in the child's upbringing would be fundamental, unless the contrary is shown. In contrast with Brazilian law, when it addresses joint custody, CFA 2014 says that involvement "means involvement of some kind, either direct or indirect, but not any

¹⁹ 'Gillick competence' emerged in the context of medical treatment involving children under 16 and consent. A child is Gillick competent if they present enough maturity and intelligence to understand the nature and implications of the situation. It has been extended to any legal matters in which the child's views and feelings might be important for the decision-making process. For further discussion, see Griffith (2015).

particular division of a child's time".

Table 3 presents a summary of both legal systems' approach to parental separation and child custody:

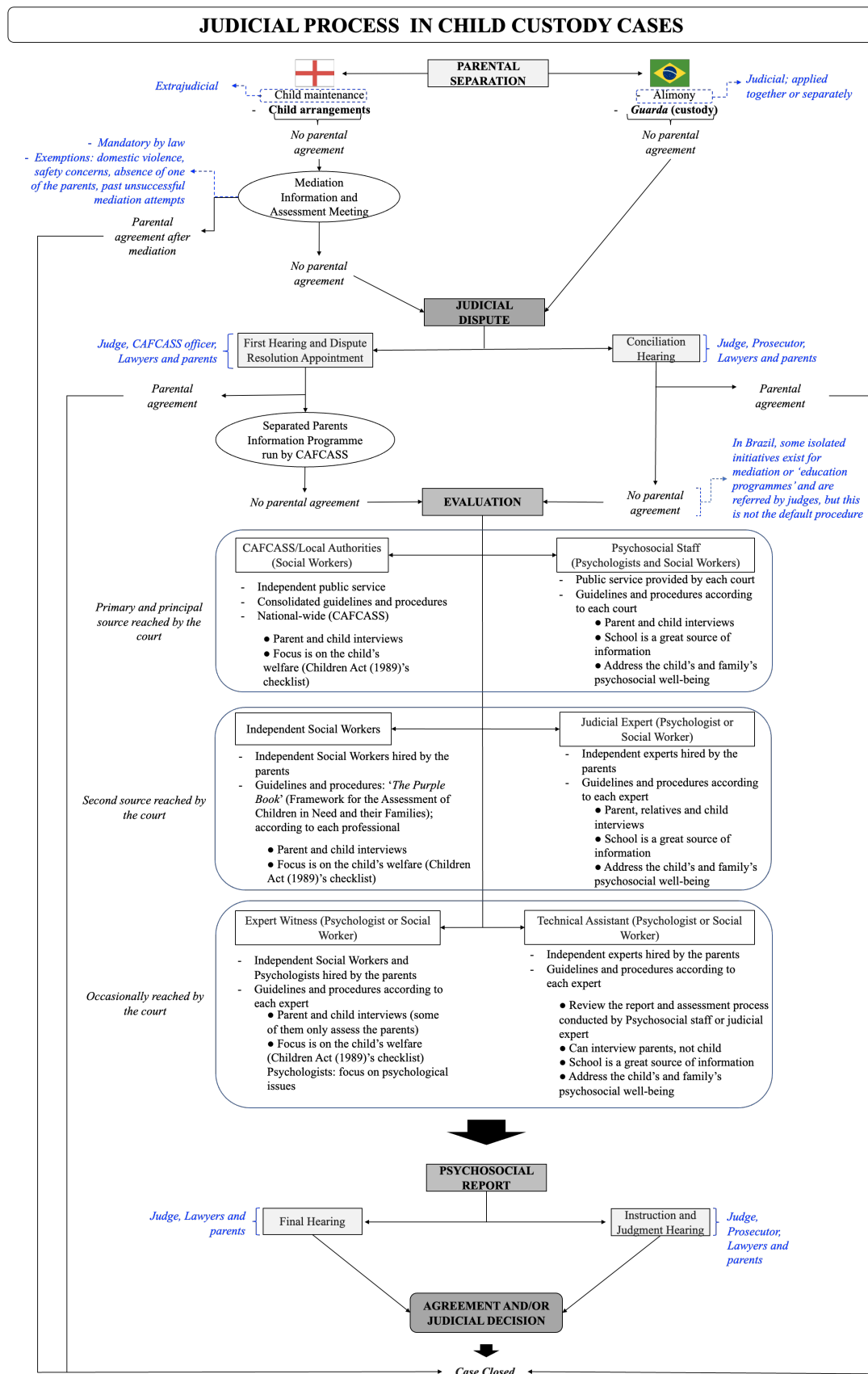
Table 3

The Law Regarding Child Custody in Brazil and England

The law regarding child custody	
<i>Brazilian Civil Law System</i>	<i>English Common Law System</i>
<ul style="list-style-type: none"> - ruled by Civil Code (Arts. 1,583, 1,584, 1,589) - no clear decision-making tool - tries to balance the rights/power between parents - applications until the child is 18 years old 	<ul style="list-style-type: none"> - ruled by Children Act 1989, Children and Adoption Act 2006 and Children and Families Act 2014 - clear decision-making tool: welfare check-list from Section 1(3), Children Act 1989 - tries to make parental disputes less hostile - applications until the child is 16 years old (exceptionally until 18 years old)

Child Custody and Legal Decision-making flow in Brazil and England

In both countries, the judicial process regarding child custody involves these basic steps: 1) parental separation/divorce; 2) judicial dispute; 3) evaluation; 4) psychosocial report; and 5) judicial decision. The flow of that process is triggered by the occurrence, or not, of parental agreement. Whenever the parents reach an agreement, the case is closed; when they do not, the process keeps flowing until it reaches the final judicial decision that will close the case. Figure 1, below, presents a comparative flowchart demonstrating the judicial custody process in Brazil and England.

Figure 1*Judicial Process in Child Custody Cases in Brazil and England*

As seen in Figure 1, after parental separation, if there is no agreement, a judicial dispute regarding child custody may arise. In England, before applying for a child arrangement order, the parents must attend a Mediation Information and Assessment Meeting – introduced in English law by the Children and Families Act 2014. In an analogous way, in 2015, the Brazilian New Code of Civil Proceeding created, throughout its Arts. 694 to 696, the need to have a ‘Mediation & Conciliation Hearing’ before the court proceedings – but this occurs only after one of the parents has made an application to the court. However, there is not a consensus regarding if this hearing would be compulsory, or not, or even if a ‘forced mediation’ would be of much use (Tartuce, 2014). Some judges dismiss that hearing and start the proceedings; others proceed with it because the law says so – also, it is unlikely that the court will set a hearing if acrimony between parents is too high.

In both countries, parents (either claimant or defendant) must present their arguments, proofs and facts in the application, but also in a first hearing. ‘First Hearing and Dispute Resolution Appointment’ (EN) and ‘Conciliation’ (BR) hearings intend not only to gather arguments, proofs and facts but also to help parents reach an agreement. In Brazil, the court can designate conciliation hearings as much as the judge thinks is needed. In England, this first hearing has an officer from the Children and Family Court Advisory and Support Service (CAFCASS) present to assist the court on behalf of the child’s best interests. In Brazil, this role will be held by public prosecutors.

In England, if at the First Hearing Dispute Resolution Appointment no agreement is reached, then the court will issue proceedings with some specific directions. Those directions could include a direction for the appointment of a CAFCASS officer to prepare a report under section 7 of the Children Act 1989. In preparing such a report, the CAFCASS officer must take account of the fact that the

child's welfare will be the court's paramount consideration. The CAFCASS officer must consider factors set out in the welfare checklist in section 1(3)²⁰. In Brazil, the evaluation process is conducted by psychologists or social workers who belong to the court. The evaluation is carried by the Psychosocial Service, and their rules, guidelines and procedures vary drastically from one state court to another – there are 27 in total. The psychosocial staff will interview the children, the family and relatives or any other person that might be relevant. The Brazilian evaluation process considers input from schools as a great source of information, and constantly address this in their reports. They also tend to address both the child's and family's well-being.

Other actors can be involved in the evaluation process. For instance, in England, independent social workers can be hired by parents to conduct the evaluation – if the court has agreed to it and granted permission. Usually, they use *The Purple Book* (Framework for the Assessment of Children in Need and their Families) but also focus on the welfare checklist and interview the children and their family²¹. There is also the possibility of expert witness participation (by psychologists or social workers). In this case, every professional has its own guidelines and procedures. In Brazil, there is the figure of *perito* (i.e., a judicial expert that can be a psychologist or a social worker) who is chosen and designated by the court and paid by the parents. They interview the child, the family, go to the school and address the child's and family's psychosocial well-being. There are also technical assistants (psychologist or social worker); their work is similar to an expert witness but they only review the assessment conducted by psychosocial staff or judicial expert and they rarely interview the child or the parents.

²⁰ For further information about the Section 7 report, please see: <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/section-7-report/>.

²¹ You can access the Purple Book [here](#).

After the evaluation, a report is made. In England, it is guided by Section 7 of the Children Act 1989 – as mentioned before. In general, the report addresses any specific issues pointed out by the court, the child's wishes and feelings and what the CAFCASS officer understands is the BIC in that case. In Brazil, the report format and content can vary according to the typical practice of each state court and/or professional. The report will guide the 'Final Finding Hearing' (EN) and the 'Instruction and Judgment Hearing' (BR), which can lead, or not, to an agreement between the parents. If they cannot agree, then the judge will make a judicial decision regarding the child custody and/or access/contact.

Final Considerations

This review shows that each country has its own way of understanding and addressing BIC during the judicial process – especially with regard to their type of legal system and their family law characteristics. There are clear differences in the way each country understands access to the child after parental separation – the Brazilian legal system refers to the child's right to keep coexisting with both parents, while the English system refers to maintaining contact. Taking these issues into account: do legal actors reflect those issues in their practice? How do they address them? How do they process these issues and how they may impact the legal actors' practice in child custody cases?

Another important issue for the decision-making process is frequently underestimated by legal actors in both countries: context, such as the family's crisis moment. Such dynamics can result in decision making becoming less effective, not only in the move towards a solution but also in the intention to safeguard the BIC. How do decision makers take that into account? How do they understand and manage this constraint, and how does it impact on their practice and their attitudes towards BIC?

Chapter II

The Best Interests of the Child: A Narrative Systematic Review of English and Portuguese Literatures²²

The ‘best interests of the child’ principle (BIC) is a tool commonly used in any legal situation concerning children, to decide and evaluate outcomes. However, there is uncertainty regarding its definition and application. The most frequent use of BIC is within the children-related justice system, mainly in family courts regarding child custody cases, where BIC has its main application.

Decision makers working in cases regarding children often refer to BIC to weigh, evaluate and justify their decisions. However, BIC faces some criticism. For instance, it is seen as a complex construct, and its concept is difficult to define in an objective way, making it difficult to put into practice (Bobar, 2016; Funderburk, 2013; Mendes & Bucher-Malushcke, 2019; Sund & Vackermo, 2015). Furthermore, BIC critics argue that this doctrine has a lack of clear content, is directionless, individualistic, and marginalises parents’ rights. Hence, this lack of clarity makes its application difficult, which can lead to biased actions or judgements on the part of the courts and family court professionals. It is argued that the decision makers’ personal views tend to come into play, and that the assurance of BIC should be less discretionary (Funderburk, 2013; Moyo, 2012; Pimentel, 2016; Pomerance, 2013; Salter, 2012).

Most of the publications concerning BIC, both in English and Portuguese, tend to approach its conception or definitions and application in a superficial fashion. This chapter presents a systematic-narrative literature review that aims to retrieve definitions,

²² The content of this chapter has been adapted and published in a peer-reviewed journal: Mendes, J. A. A., & Ormerod, T. (2019). The best interests of the child: an integrative review of English and Portuguese literatures. *Psicologia em Estudo*, 24, 1-22. <https://doi.org/10.4025/psicolestud.v24i0.45021>

characteristics and application strategies regarding BIC. The review offers a cross-cultural comparison between English and Brazilian Portuguese literatures.

Method

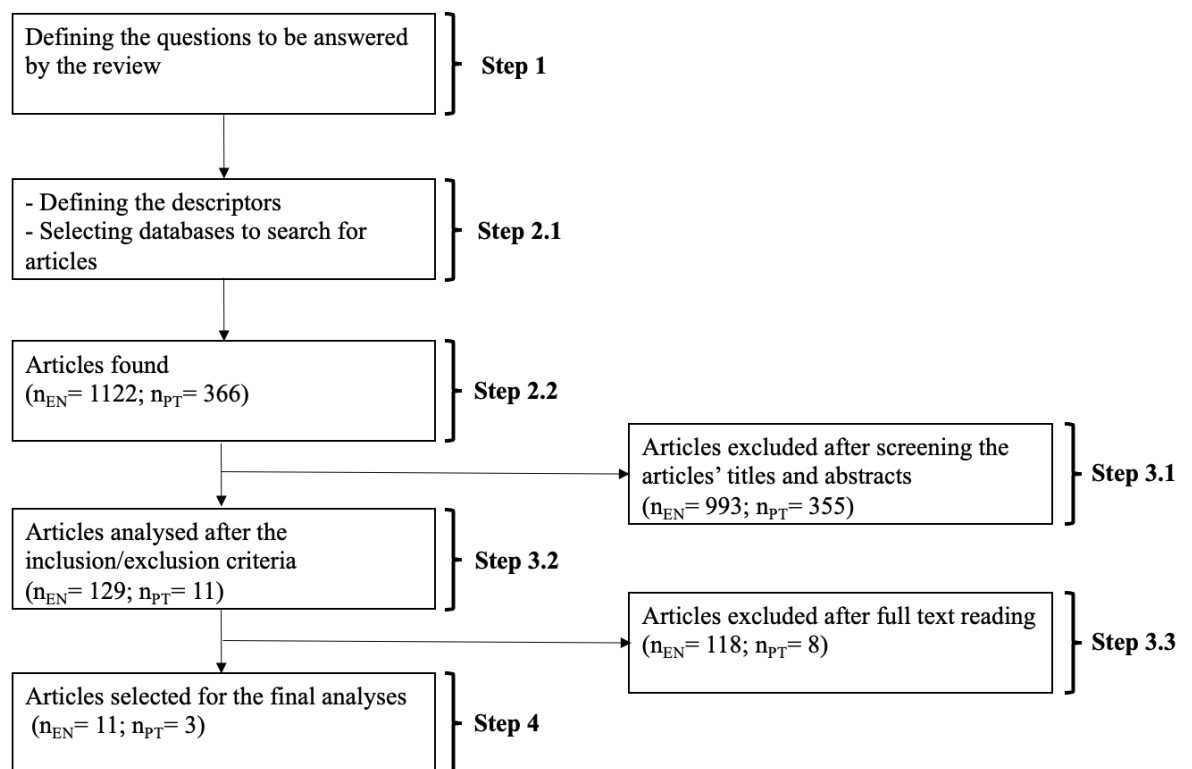
A systematic review is based on a rigorous and transparent methodology that aims to synthesise scientific evidence, and it usually contains some basic characteristics: a) having clear and feasible research questions; b) having a previously planned and structured process to retrieve and synthesise the evidence – i.e., clear criteria for inclusion or exclusion, and steps to analyse the evidence found (Munn et al., 2018). A systematic review can present different procedures to retrieve and synthesise the evidence. It will depend on the research questions outlined by the researcher (Kitchenham, 2004). We applied a narrative systematic review approach, characterised by rigorous methods to identify and evaluate the literature towards the synthesis of the scientific evidence concerning a specific topic or theme (McFadden et al., 2012). This review is narrative because it does not perform a meta-analysis nor does it use inferential statistics to analyse and report a synthesis of evidence. Instead, this type of systematic review is very useful to deliver a snapshot of how the current literature approaches a certain topic, theme or phenomenon (Best et al., 2014).

This systematic narrative review had four steps. The first was to establish a set of research questions: 1) how is BIC understood and defined? 2) what are the guidelines used to evaluate and apply BIC? 3) what are the main determinants for promoting BIC? 4) are there significant differences between English and Brazilian sources?

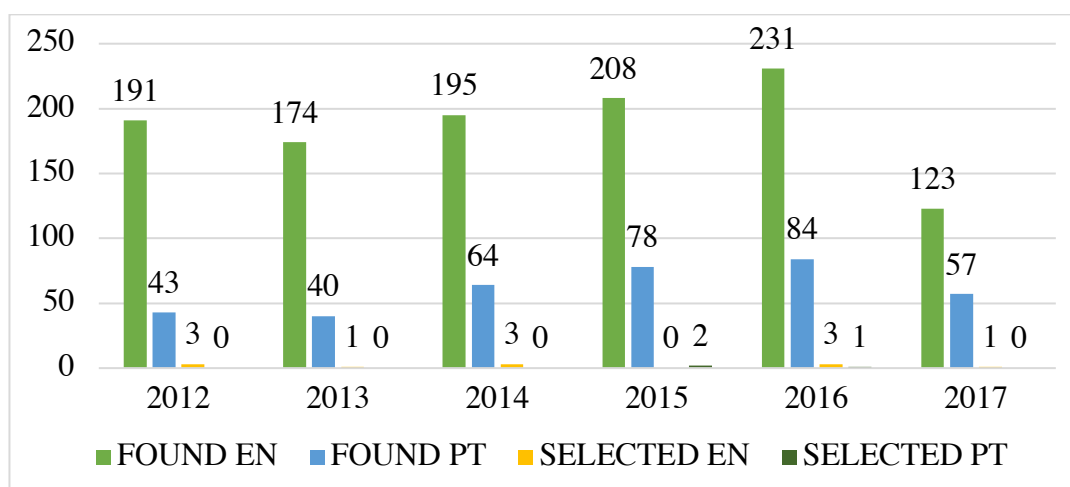
The second step concerned the search for articles using descriptors based on the questions from step one. The descriptors were set in English and translated into Portuguese. The translation was not literal because of variations in Portuguese, but the core idea was preserved during translation. Thirty-six descriptors were searched on the

following terms: 1) “best interests”, “best interest” → “of the child”, “of the children”, “of the infant”, “of the youth”, “of the adolescent/teenager” + “family court”, “custody”; 2) “child’s welfare”, “children’s welfare”; “adolescent’s welfare” + “family court”, “custody”. The English databases were: ASSIA, PsychARTICLES, PsychInfo, Scopus, Web of Science and Google Scholar. For Portuguese they were: LILACS, PePsic, Redalyc, Periódicos CAPES and Google Scholar. These databases were chosen because they index articles from psychology, law and social sciences.

In the third step, titles and abstracts of identified articles were screened using inclusion/exclusion criteria: a) published between 2012 and 2017 – to present the most current approaches regarding the searched topic/theme (Adams, 2016; Mendes et al., 2021; Morgan-Rallis, 2014; Pautasso, 2013; VCU, 2018); b) article addresses a BIC definition, characteristic and/or application, going beyond a brief mention of BIC or UNCRC 3rd Article; c) only results from scientific journals (we excluded masters or PhD theses, books, internet articles, newspapers, book reviews, etc.). Finally, we analysed the selected articles and constructed four categories that synthesise findings. Figure 2 summarises the process:

Figure 2*Literature Review Process***Results**

The search retrieved 1,488 results. Of these, only 14 passed the inclusion/exclusion criteria. The database with the largest number of results (n_{EN}= 344; n_{PT}= 256) and articles selected was Google Scholar, representing 45.5% (n= 5) of the English articles selected and 100% (n= 3) of Brazilian Portuguese. PsychInfo (n_{EN}= 145) and Scopus (n_{EN}= 74) had 18.2% (n= 2; 2) of the selected articles each. Web of Science (n_{EN}= 224) and ASSIA (n_{EN}= 274) were third with 9.1% (n= 1; 1) each. LILACS, PePsic, Periódicos CAPES, Redalyc and Scielo did not yield any results.

Figure 3*Number of Articles Found and Selected by Year and Language*

Note: EN = English; PT = Portuguese.

Results in English represent more than 75% (n= 1122) of the articles found and more than $\frac{3}{4}$ (n= 11) of the selected ones. The range 2015-2016 yielded the higher number of results in English and Brazilian Portuguese literatures (n= 601), representing 40.4% of the total. During the third step (screening of and selection of potential articles), the titles and abstracts were analysed and computed to identify the most common subjects associated with BIC. Results are shown in Table 4.

Table 4*The Most Common Subjects Associated with BIC Amongst the Found Articles*

Category	ENGLISH		PORTUGUESE		TOTAL	
	n	%	N	%	n	%
Divorce & Child Custody	335	27.15	91	22.52	426	26.01
Adoption & Vulnerable Children/Youth	109	8.83	42	10.40	151	9.22
Violence & Maltreatment	130	10.53	15	3.71	145	8.85
Healthcare	109	8.83	30	7.43	139	8.49
Children's Rights, Policies & Legislation	129	10.45	7	1.73	136	8.30
Refugee, Asylum & Immigration	76	6.16	2	0.50	78	4.76
Parental Alienation	15	1.22	62	15.35	77	4.70
LGBTI Parenting	49	3.97	21	5.20	70	4.27
Mental Health & Disability	59	4.78	8	1.98	67	4.09
Joint Custody	13	1.05	47	11.63	60	3.66
Development & Pedagogy	37	3.00	16	3.96	53	3.24
Artificial Reproduction & Surrogacy	49	3.97	3	0.74	52	3.17
Legal Actors' Practice	24	1.94	25	6.19	49	2.99
Abduction & Human Traffic	33	2.67	15	3.71	48	2.93
Parenting & Parenthood	43	3.48	3	0.74	46	2.81
Mediation & Reconciliation	11	0.89	12	2.97	23	1.40
Child Testimony/ Witness	13	1.05	5	1.24	18	1.10
TOTAL	1234*	100	404*	100	1638*	100

*The totals are bigger than the number of articles found (nEN= 1122; nPT= 366) because some subjects had more than one occurrence in the same article.

Regarding Table 4, 'Divorce & Child Custody' was the subject most associated with BIC, representing more than 25% of occurrences. 'Adoption & Vulnerable Children/Youth' was second, at 10%. 'Violence & Maltreatment' and 'Healthcare' were third and fourth, respectively, at 9%. 'Violence & Maltreatment', 'Children's Rights, Policies & Legislation', 'Refugee, Asylum & Immigration', were six times more frequent in English than in Brazilian Portuguese articles. 'Mediation & Reconciliation' was more than three times more frequent in the English than in the Brazilian Portuguese articles. In contrast, 'Parental Alienation' and 'Joint Custody' were eleven times more frequent in the Brazilian Portuguese articles than in the English ones.

Characterisation and Analysis of the Selected Articles

As shown in Table 5, Google Scholar had the highest number of selected articles ($n = 8$) representing 57.1% of the total. PsychInfo and Scopus had 1/10 ($n = 2$; 2) of the selected articles each, followed by ASSIA and Web of Science with less than 1/10 ($n = 1$; 1) each. The 'Healthcare' and 'Law' fields represented more than half ($n = 4$; 4) of selected articles, although 'Psychology' represented 2/3 ($n_{PT} = 2$) of the Brazilian Portuguese articles selected. Regarding the focus, 'BIC Concept/Assessment' and 'Custody/Divorce' represented $\frac{3}{4}$ ($n = 10$) of the articles' focus. Among each language the same pattern was observed, however 'Custody/Divorce' represented 2/3 ($n_{PT} = 2$) of Brazilian Portuguese articles' focus. 'Theoretical' was the most common type of study among all selected articles ($n = 8$), but 'Empirical-qualitative' represented 66.7% ($n_{PT} = 2$) of Brazilian Portuguese articles.

Table 5

Selected Articles and its Information Regarding Database, Language, Authors, Year and Journal of Publication, Related Field, Focus and Type of Study

DATABASE	LANGUAGE	AUTHORS	PUBLICATION	JOURNAL	FIELD	FOCUS	TYPE OF STUDY	REFERENCE CODE
ASSIA	English	Ryrstedt	2012	International Journal of Law, Policy and the Family	Law	Custody/Divorce	Empirical - Quantitative	A1
PsychInfo	English	Zawati, Parry & Knoppers	2014	BMC Medical Ethics	Healthcare	Returning genetic results	Theoretical	A2
PsychInfo	English	Van Os, Kalverboer, Zijlstra, Post & Knorth	2016	Clinical Child and Family Psychology Review	Psychology	BIC Concept/Assessment	Empirical - Systematic Review	A3
Scopus	English	Kalverboer, Beltman, Van Os & Zijlstra	2017	Journal of Children's Rights	Policies	BIC Concept/Assessment	Theoretical	A4
Scopus	English	Snelling	2016	Cambridge Quarterly of Healthcare Ethics	Healthcare	BIC Concept/Assessment	Theoretical	A5
Web of Science	English	Schües & Rehmann-Sutter	2013	Topi	Philosophy	BIC Concept/Assessment	Theoretical	A6
Google Scholar	English	Salter	2012	Theoretical Medicine and Bioethics	Healthcare	Medical Decision-making	Theoretical	A7
Google Scholar	English	Supaat	2012	South East Asian Journal of Contemporary Business, Economics and Law	Law	Human Rights	Theoretical	A8
Google Scholar	English	Toros, Valma & Tiko	2014	Journal of Social Welfare and Human Rights	Policies	Custody/Divorce	Empirical - Documental	A9
Google Scholar	English	Hamper	2014	Ohio Northern University Review	Law	Human Rights	Theoretical	A10
Google Scholar	English	Nevondwe, Odeku & Raligilia	2016	Bangladesh Sociological Society	Law	Custody/Divorce	Empirical - Documental	A11
Google Scholar	Portuguese	Ribeiro & Costa	2015	Revista de Psicologia	Psychology	Custody/Divorce	Empirical - Qualitative	A12
Google Scholar	Portuguese	Kipper	2015	Revista Bioética	Healthcare	BIC Concept/Assessment	Theoretical	A13
Google Scholar	Portuguese	Mendes, Bucher-Maluschke, Vasconcelos, Souza & Costa	2016	Nova Perspectiva Sistêmica	Psychology	Custody/Divorce	Empirical - Qualitative	A14

BIC Definitions, Characteristics, and Application Amongst the Selected Articles

Four categories, qualitatively extracted from the selected articles, express prescriptive ideas towards BIC and its operationalisation: *definitions* (any statement regarding BIC meaning, its nature, scope and/or distinctness); *characteristics* (any typical, unique and/or particular BIC description and/or attribute); *application* (any statement regard putting BIC into practice and/or its process of assessment and evaluation) and *pro-BIC context* (any statement regarding an ideal context in which BIC would be promoted and/or preserved). The results are presented in charts with two columns. The first column presents the summarisation of the articles' content throughout main aspects (in italic) and its explanation, according to each category stated above. The second column lists the articles which were used to set the summarisation. They are identified by the reference code utilised in Table 5. Appendix A shows the proportion in which each area has contributed to each category and its aspects.

Table 6*BIC Definition Based on the Content of Selected Articles*

BIC DEFINITION	REFERENCE
<i>BIC as a primary consideration</i> : it is a primary consideration in all actions concerning children, above any other concerns or interests, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies. ¹	1. A1, A2, A3, A4, A5, A6, A7, A8, A10, A11, A13, A14.
<i>Protect the child's physical and mental welfare</i> : BIC is related to the protection of the children's physical and mental well-being, and their development. ²	2. A1, A3, A4, A6, A8, A9, A10, A11, A12, A13, A14.
<i>Basic children's rights</i> : BIC is based on civil, political, economic, social, and cultural rights of the children. ³	3. A7, A9, A11.
<i>Temporality-orientation</i> : the children's interests can be either 'present-oriented' or 'future-oriented'. ⁴	4. A2, A7.
<i>Physical and non-physical interests</i> : these can be physiological interests, psychosocial interests, psycho-emotional interests, relational/bonding interests, and cognitive-developmental interests. ⁵	5. A2, A4, A5, A6, A7, A10, A11, A12, A14.
<i>Physical and non-physical needs</i> : all those interests listed in the last aspect are related to needs such as: need for happiness; love; understanding; stable living conditions; secure familial bonding; good nutrition; healthcare; protection and support against physical and social harms – physical or emotional violence, or economic and sexual exploitation. ⁶	6. A2, A3, A4, A6, A9, A10, A11, A12, A14.
<i>Individuality & Identity</i> : BIC is also part of a child's interests, including the need for knowledge, education, and experience – in order to achieve selfhood, to become a mature individual with a social identity, a responsible member of the community. ⁷	7. A3, A4, A5, A6, A14.
<i>BIC aims</i> : overall, BIC is intended to help the child to enter adulthood freely and autonomously without any disadvantage. ⁸	8. A6, A10.

As seen in Table 6, *BIC definitions* tend to contain an understanding of 'best interests' as a primary consideration in all actions concerning children. This idea is based on the UNCRC 3rd Article, and only two selected papers (Toros et al., 2014; Kipper, 2015) did not refer to this article. The selected articles define BIC as related to the protection of the child's physical and mental well-being as well as their development. The BIC's main goal would be to help with the upbringing of a capable and (socio-emotional) functional adult.

Table 7*BIC Characteristics Based on the Content of Selected Articles*

BIC CHARACTERISTICS	REFERENCE
<i>Family coexistence</i> : BIC is related to the family's integrity (relationship with parents and siblings). ¹	1. A2, A3, A4, A9, A10, A11, A12.
<i>Child's idiosyncrasies</i> : determined by the child's individual characteristics such as age, sex, ethnicity, cultural identity, religious beliefs, personality. ²	2. A2, A3, A4, A10, A11. 3. A1, A3, A8.
<i>Legal indeterminacy</i> : cannot be [strictly] defined by law. ³	4. A1, A5, A8, A12, A13, A14.
<i>Not given</i> : BIC is vague, wide, undetermined → it is relative. ⁴	5. A1, A13.
<i>Adults' views</i> : based on adults' and society's views on children and childhood. ⁵	6. A3, A4, A5, A12. 7. A1, A11, A12, A14.
<i>Plurality</i> : BIC is plural and varies towards different children, families and cultures. ⁶	8. A5, A8.
<i>Multi-dimensional</i> : has multiple dimensions. ⁷	9. A7.
<i>BIC guardians' biases</i> : BIC can be biased by those that are entitled to protect and/or safeguard the child's interests. The biases relate to the views, ideas, and values of the guardians (e.g., caregivers, child protectors, legal actors). ⁸	10. A4, A5, A8. 11. A2, A3, A4, A6, A7, A14.
<i>Parents' interests moderation</i> : anecdotally BIC is related to the parents' interests, positively or negatively. ⁹	12. A9.
<i>Temporality-sense</i> : BIC is related to temporality (present or future). ¹⁰	
<i>Multidetermined</i> : determined by the child's relational contexts and social network, which can moderate the assurance of BIC. ¹¹	
<i>Indelible</i> : a basic right which must be observed and applied all the time. ¹²	

Most articles state that BIC Characteristics are strongly related to the maintenance of the family's integrity (relationship with parents and siblings, mainly) and are also determined by the child's personal characteristics. Thus, BIC is dialectical (denoting a dialogic, interpersonal and socially dynamic construct), because it is wrought by the child's relationships. A current characteristic attributed to BIC in the selected articles, but often in other BIC-related literature, is its indeterminacy, especially regarding the law. Some articles state that this is because BIC is vague and

with wide remit due to being relative, particular and contextualised to each child and his/her context (family, social network, school, friends, community, public policies, cultural issues, etc.). Thus, BIC is pluralistic and has multiple dimensions, varying according to each child, family and culture. In addition, BIC is also related to the parents' interests: they can promote (positively) or harm (negatively) the child's interests. BIC usually also has a sense of temporality (located in the present or in the future).

Table 8

BIC Application Based on the Content of Selected Articles

BIC APPLICATION	REFERENCE
<i>Flexibility</i> : must be flexible and assess the singular issues of each case, based on knowledge and evidence. ¹	1. A1, A3, A9.
<i>Child as a subject of rights</i> : must see the child as an individual with rights and, thus, 'hear' them and their thoughts, wishes, needs, fears and expectations, trying to understand their perspective regarding the situation, addressing their age and maturity, and integrating this into the decision-making process. ²	2. A1, A2, A3, A4, A8, A9, A10, A11, A12. 3. A2, A7. 4a. A5, A6, A7, A8. 4b. A7.
<i>Range of benefits</i> : must determine the option with the widest range of benefits amongst the available options, assigning different weights of interest that the child has in each option and minimising inherent risks or harms for the child. ³	5. A3, A4, A5. 6. A3, A4, A8, A12, A14. 7. A6.
<i>Non-individualistic</i> : cannot be seen and applied in an individualistic fashion ^{4a} . Must integrate the children's interests with their family's and interactional contexts → BIC is relational. ^{4b}	
<i>Temporality</i> : must identify the temporality of the interests to be evaluated and assured. ⁵	
<i>Multi-professional evaluation</i> : due to its multi-determined factors, BIC must be promoted by multiple professionals and their knowledge. ⁶	
<i>Holistic approach</i> : one has to figure out and integrate what children need (basic needs), what they want (their will) and what they are entitled to (children's rights) ⁷ .	

Lastly, the BIC application process must identify the temporality of the interests to be evaluated and assured, which relates to the ‘temporality’ BIC characteristic already identified. In other words, during the process, BIC promoters should identify whether the interests to be assessed and evaluated are short-term (e.g., should the child go on a trip? What type of clothes should they have?) or long-term (e.g., type of residence, type of school, religious beliefs). In addition, they should also look for any civil or criminal charges relevant to the child’s safety, security or well-being.

For the pro-BIC context, the articles reveal three contexts. The first refers to ‘parent-filial’ interactions in which parents should put the children and their physical, psychosocial and emotional needs first, understanding that the child is not their property but has rights. In addition, parents’ communication should avoid children’s psychological suffering and harassment. The second context is ‘justice-child’, in which legal actors should make every effort to be unbiased and listen to children and their thoughts, wishes, needs, fears, and expectations. The third context is the ‘state-child’, in which the State provides laws and policies to guarantee and promote the BIC.

Table 9*Pro-BIC Context Based on the Content of Selected Articles*

PRO-BIC CONTEXT	REFERENCE
<i>Parents</i>	1. A3, A5, A11.
<i>Parent-child relationship</i> : always put first or, at least, consider a priority what is best for the child → good parent-child relationship. ¹	2. A5, A8, A12. 3. A1. 4. A5, A8.
<i>See the child as a rights holder</i> : understand that the child is not a parent's property. ²	5. A1, A2, A6, A8, A9, A12.
<i>Conflict-free communication</i> : relatively conflict-free cooperation between the parents, and ability to minimally dialogue their differences (as persons and as parents), thus avoiding children's suffering. ³	6. A2. 7. A3, A4, A8, A12, A14. 8. A2, A11. 9. A9
<i>Legal actors</i>	10. A2, A13.
<i>Avoid bias</i> : do not act according to any bias. ⁴	11. A2, A3, A8, A13.
<i>Listen to the child</i> : their thoughts, wishes, needs, fears and expectations. ⁵	
<i>Search for parents' criminal charges</i> : look for any relevant civil or criminal proceeding that could harm the child's safety, security or well-being. ⁶	
<i>Multi-professional work</i> : BIC evaluation actors should articulate their work with each other. ⁷	
<i>Continuity</i> : ensure that any disruption and intrusion to a child's rights will be kept to a minimum – and based on a reasonable motivation. ⁸	
<i>Promoting the best scenario for the child</i> : create the best and most suitable conditions for child's living and development. ⁹	
<i>Complex evaluation process</i> : the evaluation and level of scrutiny shall be as high as the complexity of the decision to be taken with regard to its potential impact on children's well-being. ¹⁰	
<i>State</i>	
<i>Promote and guarantee child's rights</i> : will provide laws and policies to guarantee and promote the BIC. ¹¹	

Discussion

Regardless of definitions, characteristics, application or pro-BIC context, the core of the articles' BIC approach is development. Hence, a reference to BIC is, in fact, a reference to child development. The child's development leads to needs or interests which lead to rights. For instance, to be congruent and functional, the child's development must address their physical and mental health needs, which leads, for example, to the right to education, play and familial coexistence.

Based on the literature, we identified two development domains associated with BIC: material-physiological needs and contextual (social, psychological and emotional) needs. The material-physiological domain is mainly referred to in BIC Definition (Table 6) which points to the child's physical needs, interests and welfare. The contextual domain is referred to in all four BIC categories highlighting the child's mental health needs, interests and welfare, their idiosyncrasies, need for familial coexistence, BIC's plurality and its multidimensional characteristics.

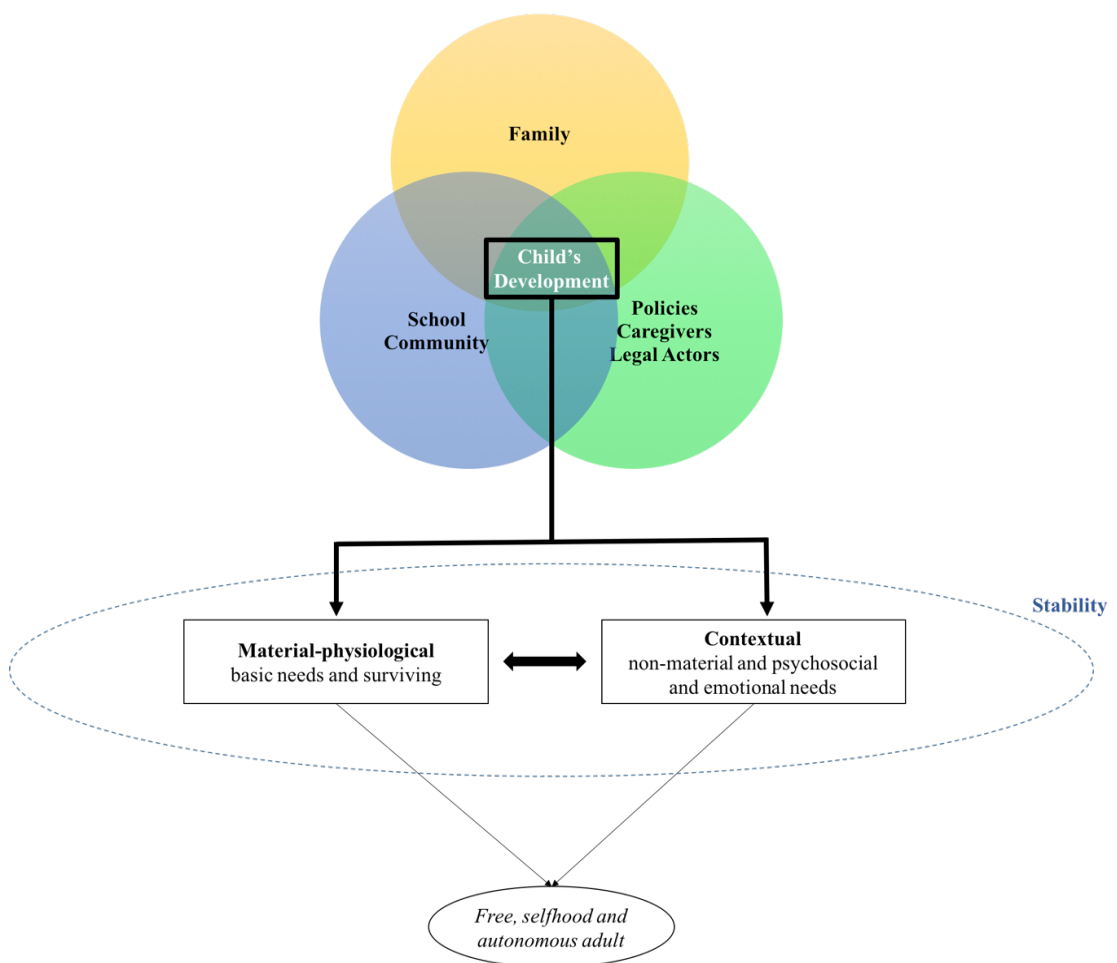
Another frequent issue addressed by the articles, mainly regarding BIC characteristics (Table 7) and Pro-BIC context (Table 9), is the need for stability, which represents the continuity, regularity, and maintenance of physical and psycho-emotional well-being. A child will feel stable when they have food, shelter, clothing and physical protection. The same is valid for the need for love, affection, understanding, and so on. Moreover, for the perception of stability, all those needs should be provided together. Figure 4 presents a model that summarises those ideas and points out BIC as a developmental issue divided in two domains.

The material-physiological domain refers to material, objective, quantifiable and measurable elements needed to ensure the child's basic needs and survival, such as: nutrition, housing, physical integrity, clothing, etc. The contextual domain refers to

social, psychological and emotional contexts representing non-material, abstract, subjective, unquantifiable and unmeasurable (or hard to measure) elements needed to ensure the child can develop their personality, identity and good mental health, such as: love and affectional bonds, understanding, culture, religious beliefs, learning (academic and other social abilities).

Figure 4

A BIC Model Based on Concepts within the Selected Articles



These dimensions are complementary. For example, a child can have all their material-physiological needs fulfilled, but if the psychosocial and emotional ones are not addressed, or vice-versa, the child's best interests might not be achieved. Moreover, both domains are interdependent. For example, if a child does not have the minimum maintenance of their material-physiological needs, they would be very unlikely to

achieve psychosocial-emotional ones. This rationale follows Maslow's 'Hierarchy of Needs Theory', which states that psychological needs cannot be achieved while physiological (basic) ones are in deficit (Block, 2011).

The results indicate that BIC is pluralistic and emerges in a unique way for each child. If BIC is related to development, and if development is particular, unique and distinctive for each individual (Mendes et al., 2021; Rossato & Martínez, 2013; Zago & Ribeiro, 2017), then determining, evaluating and promoting BIC is going to be equally particular, unique and distinctive with regard to each child. Moreover, the child's relational contexts that set up their development will vary from child to child.

The literature indicates that the contextual domain has been neglected by BIC stakeholders during decision-making processes (Toros et al., 2014). This neglect probably occurs because it is hard to access – therefore to recognise, evaluate and promote – psychosocial and emotional elements that compose BIC. This is especially critical for judges and lawyers, as the law has some difficulty evaluating non-objective and abstract phenomena (Mendes et al., 2016a). Furthermore, this limitation can lead legal actors to face emotional distress when they perceive that their tools and practice cannot help the child or the family (Mendes & Bucher-Maluschke, 2017b).

Regarding differences between Brazilian and English articles, there were few Brazilian articles addressing BIC, referring only to BIC as primarily concerning protection of the child's physical and mental welfare, alongside physical or non-physical interests and needs. Aspects related to child's rights, temporality and growth (becoming a capable and functional adult), idiosyncrasies, legal indeterminacy, BIC promoters' biases and parents' interests were not addressed by Brazilian articles. Regarding BIC application (Table 8), Brazilian articles approached only two of the eight aspects raised: '*child as a subject of rights*' and '*evaluation by multi-professional*

staff'. Regarding the pro-BIC environment (Table 9), they addressed only two requirements: '*child is not a property*' and '*listen to the child*'. In summary, Brazilian articles focused on the need to protect the child's physical and psycho-socioemotional well-being, highlighting the child as a subject of rights and guaranteeing the maintenance of the child's familial bonds. English articles broaden the BIC perspective, approaching the child's characteristics, the role of the parent's interests, and the difficulty in evaluating and promoting BIC according to each child.

Another interesting trend amongst Brazilian articles was their almost exclusive focus on parental alienation and joint custody (Table 4). Brazilian legal literature related to family law tends to be restricted to those two topics (Mendes et al., 2016b) – the proportion of Brazilian articles on these topics was almost twelve times higher than in English papers. After thirty years since its creation, parental alienation theory has not been proven to be a genuine problem, syndrome, or even a scientific matter (Barbosa et al., 2021; Barnett, 2020; Bruch, 2001; Kelly & Johnston, 2001; Maciel et al., 2021; Mackenzie et al., 2020; Meier et al., 2019; Meier, 2020; Mendes, 2019; Mendes et al., 2016b; Mendes & Bucher-Maluschke, 2017a; Neilson, 2018; Pepiton et al., 2012; Shaw, 2016). Despite this, Brazil is the only country that has created and maintained a specific act to fight 'parental alienation'. Also, most Brazilian legal literature points to joint custody as the most efficient solution to parental alienation and family litigation – regardless of the family dynamic, the level of conflict or any other characteristics concerning the child or the family (Barbosa et al., 2021; Maciel et al., 2021; Mendes et al., 2016b). A superficial use of BIC results in more damage than gain. Unfortunately, this is common not only in Brazil's legal literature but also in legal practice, law and policy-making.

Final Considerations

The literature reviewed suggests that the main understanding of BIC is to determine a balance between material-physiological and contextual needs that impact on the child's development. The articles reveal that material-physiological and contextual domains are the most frequent aspects used to address the child's development, and therefore their best interests. Neither of those domains should be neglected for a holistic use of BIC; both domains should be fostered and seen as interdependent elements. Stability ensures a congruent development process (Bornstein, 2017), so stable living conditions (material-physiological and contextual) for the child appear to be the most effective way to promote BIC. This is especially important in child custody cases after parental separation, in which the family crisis can make the environment very unstable and harmful to the child's development.

One of the most frequent critiques made of BIC is that it is a complex construct, difficult to define and put into practice. BIC is indeed complex, but it is not a problem *a priori*, if BIC promoters apply an equally complex and systemic approach to weigh and trade-off the child's development needs. Defining BIC requires a careful look at the child's personal, contextual and relational characteristics in each case. Another critique is that BIC has a lack of clear content and has no clear direction (especially referring to the UNCRC's 3rd Article) and thus leads to bias. If one's perspective on BIC is restricted to the UNCRC's 3rd Article, perceived lack of clarity and direction might occur. However, BIC is sustained by the whole UNCRC; the 3rd Article only emphasises the 'primary consideration' principle. Regarding this principle, the argument that BIC is individualistic and harms parents' rights is problematic. BIC is multidimensional, plural, and relies on the child's relational context. Prioritising the

child's interests does not mean neglecting or ignoring the parents' rights but rather contextualising them according to the child's needs and perspective.

The results of this review generated issues that shall be further explored in this thesis, such as:

- do decision makers recognise and weigh the child's material-physiological and contextual needs?
- how does the interaction between these two domains, alongside family issues (e.g., level of litigation; mutual allegations) and legal constraints, impact the decision-making process?
- is nationality (Brazilian or English) a factor in how material-physiological and contextual needs influence the decision-making?

Chapter III

Naturalistic Decision-making Theories and Child Custody Decision-making

A decision is a reaction to a situation that is composed of three essential elements (Hastie & Dawes, 2001): 1) there will always be more than one option available to choose; 2) the person who is going to make a decision can have expectations about the future outcomes of each option available; and 3) there will be consequences for each choice related to the possible outcomes – this is related to the decision maker's values and their current goals. Regarding child custody cases, decision makers can face a lot of options concerning residence and contacts/access between the children and their parents, for example. All options can lead to different outcomes, and expectations that can also vary according to each family and child.

In general, decision-making is a cognitive process within which one must decide the course of action to be taken from several options (Schneider & Parente, 2006). It tends to be a complex process, especially in real-life situations. Thus, ideally one should be aware of flexibility, characteristics and consequences of the present and future contexts of the decision to be made (Palmini, 2004). This task seems to be even more challenging in child custody cases, as there are multiple context and legal issues that constrain the decision-making process.

There are two main approaches in studies of the decision-making process: Judgment and Decision-making and Naturalistic Decision-making. This chapter will address each decision-making theoretical framework and discuss its potential application in child custody cases.

Main Approaches to Decision-making Research

Behavioural decision-making is a field in psychology with huge potential, because people are making decisions all the time and everywhere, and this field has increased during the last few decades (Boven et al., 2013; Dawes, 1998; Kahneman, 1991). It started from the middle of the 20th century when scientists began to test and observe people's choices through experiments and models. The first to develop was Judgment and Decision-making (JDM). This approach performs experiments in well-controlled and structured situations and, based on theoretical models, tries to identify better ways of making decisions through probabilistic and statistical methods aiming at optimal choice (Beach & Lipshitz, 1993; Klein, 2008). JDM brings together behavioural decision theories, economics, mathematics and statistics, all of which serve to create and test hypotheses and models regarding non-natural environments or situations, and unfamiliar tasks (Boven et al., 2013; Klein, 2008). Its background is in theories of perception (probabilistic functionalism), methods of psychophysical measurement, and associationism (Pitz & Sachs, 1984). JDM has three main research areas and goals (Fischhoff, 2010): a) *normative* – the best choice regarding the state of the world and the decision makers' values and perspectives; b) *descriptive* – how people make decisions when compared with common standards; and c) *prescriptive* – how to diminish the space between the normative ideal and the reality. These areas are interconnected and play complementary roles.

The second approach was Naturalistic Decision-making (NDM), developed in the late 1980s. Its main goal is to understand and describe how individuals make their decisions in the real world (Hoffman & Klein, 2017; Klein, 2008). This approach tends to highlight “how expert practitioners perform cognitively complex functions in demanding, real-world situations characterized by uncertainty, high stakes, and team

and organizational constraints” (Patterson et al., 2016, p. 229). It began within military contexts, but spread to many areas such as medicine, engineering, healthcare, police, sports, and labour relations (Patterson et al., 2016; Gore et al., 2015; Klein, 2008).

The NDM approach is somewhat opposed to JDM. Assumptions from the former tend to deconstruct principles and universal laws derived from the latter. For example, in contrast to JDM, NDM asserts that when one decides, one does not create alternative options or compare all options at the same grade of evaluation. Also, one does not think about probabilities, utilities or estimates for possible courses of action available. This is the main critique of JDM’s decision trees (Klein, 2015; Klein, 2008) – a decision tool that tries to predict the possible decisions available and their consequences, linearly setting the decision-making process out like a flow chart.

One of NDM’s main criticisms of JDM is that, by testing hypotheses statistically and in non-natural situations, its outcomes cannot offer explanations or solutions for complex real-life decision-making (Klein, 2015). NDM demands that “the static notion of decisions as gambles, which portrays people as passively awaiting the outcomes of their bets” does not fit the reality of society’s needs (Klein, 2008 p. 457).

Guided by those criticisms, NDM researchers focus on natural field observations and use qualitative interviews with and ethnographies of individuals to gather information and build up models of decision-making (Klein, 2008). Researchers are concerned to capture and analyse decision makers’ strategies, including how these strategies are used to make tough decisions in chaotic, uncertain, ambiguous, disorganised and stressful environments (Hoffman & Klein, 2017; Klein, 2008).

Models of Naturalistic Decision-making

There are two categories of naturalistic decision-making models: *process* and *typological*. The first describes stages by which a decision is made, and the second

qualifies the process of decision-making and contingencies within each process (Lipshitz, 1993a).

The first process model is *situation assessment* (Noble, 1993). It refers to the way in which the decision-making context is assessed. For instance, in a context of air traffic control, concrete information (e.g., from radar) is combined with the context and the decision maker's knowledge regarding elements involved in that context. A second process model is *recognition-primed decision-making* (Klein, 1993). This model assumes that a proficient decision maker does not compare and choose an option amongst alternatives; instead, they assess the situation's nature and, based on this evaluation, they pick the option that is cued by the situation. Recognition can lead to two situations: typical (known and 'well-rehearsed') events and novel (unknown or non-expected) events that challenge the decision maker's repertoire. The steps beyond this are 'serial option evaluation' (evaluation of alternatives aiming to find the most satisfying one) and 'mental simulation' (trying out the alternatives through the decision maker's imagination). A third process model is *explanation-based decisions*, coming from research on jurors' decision-making (Lipshitz, 1993a). This model assumes three stages: processing the evidence (making sense of the evidence – organising it into a narrative of events); defining the verdict options (possible verdicts applicable to the case); and determining the verdict (which verdict has the best match with the story told in court, based on the evidence). A fourth process model is *search for dominance structure* (Lipshitz, 1993a). This refers to the way in which one decides when there are multiple options available. This model assumes that one will try to find a dominant alternative – the most attractive option, considering all relevant attributes, when compared to others. A fifth process model is *image theory* (Beach, 1993). It refers to the ways in which people make decisions in real-life situations such as childbearing,

commuting, job selection, etc. This model prescribes four stages: images (principles [why?], goals [what?], plans [how?]); adoption decisions (addition of compatible goals and plans throughout the process); progress decisions (micro-decisions or actions to analyse and provide the achievement of goals); and frames (proclivity towards the status quo). Table 10 summarises and compares all five process models:

Table 10

The Five 'Process Models' of Naturalistic Decision-making

Model	Main Assumption	Phases	Context Applied
<i>Situation assessment</i>	Decision-making depends on how the situation is assessed	Two: 'combining concrete and contextual information'; 'retrieving general knowledge from previous decisions'	Military forces; firefighting
<i>Recognition-primed decision-making</i>	Decision makers assess nature of the situation and select appropriate actions stored in memory	Three: 'situation recognition'; 'serial option evaluation'; 'mental simulation'	Command-and-control performance
<i>Explanation-based decisions</i>	Decision makers frame knowledge and values of certain decisions into form of stories	Three: 'processing the evidence'; 'defining verdict alternatives'; 'determining the verdict'	Trials and jurors
<i>Search for dominance structure</i>	Facing several alternatives, decision makers tend to look for a dominant one	Four: 'pre-editing'; 'finding a promising alternative'; 'dominance test'; 'dominance structuring'	Daily life (e.g., buying a vehicle or property)
<i>Image theory</i>	Decision-making relies on decision makers' principles (their personal values and ideals)	Three: 'adoption decisions'; 'images'; 'progress decisions'	Real-life decisions (e.g., pregnancy, commuting)

The first typological NDM model is *cognitive control of decision processes* (Lipshitz, 1993a). It refers to the decision-making process related to the human operation of automated systems. This model prescribes three cognitive behaviours: skill-based (i.e., sensorimotor performance), rule-based (i.e., rules and know-how) and knowledge-based (i.e., symbols and mental models). A second typological model is *task characteristics and human cognition* (Lipshitz, 1993a) in which the decision-making is constrained by changes in the environment on a cognitive continuum that can vary from intuitive (i.e., executed under low control or unconscious awareness) to analytical (i.e., under high control and conscious awareness) approaches according to the context. Context changes can also trigger the need to find patterns or functional relationships in the situation. A third typological model is *decision cycles* (Lipshitz, 1993a), in which real-life decision-making is dynamic and cannot be seen in isolated instances, a cyclical interaction that incorporates situation assessment, evaluation of alternatives and action. A fourth typological model is *decision-making as argument-driven action* (Lipshitz, 1993a). It assumes that decisions go beyond choosing amongst some options (which would be an overgeneralisation) because they involve two recursive processes: a) matching (selecting actions according to ‘goodness of fit’ to the situation); and b) reassessment (revaluation of actions’ ‘goodness of fit’ according to feedback from the situation). Table 11 summarises these typological models.

Table 11*The Four ‘Typological Models’ of Naturalistic Decision-making*

Model	Main Assumption	Cognitive Processes	Context Applied
<i>The cognitive control of decision processes</i>	Behaviours are controlled by different cognitive mechanisms	‘skill-based; ‘rule-based; and ‘knowledge-based’ behaviours	Operators of automated systems
<i>Task characteristics and human cognition</i>	Decisions are intuitive or analytic, based on patterns or relations	Intuitive vs analytical decisions; ‘pattern vs functional relations seeking’	Meteorology
<i>Decision cycles</i>	Decisions are dynamic; cannot be analysed as isolated instances.	Three: ‘situation assessment’; ‘evaluation of alternatives’; ‘action’	Information processing; Organisations
<i>Decision-making as argument-driven action</i>	Decision-making is an argument-driven action	Three: ‘consequential choice’; ‘matching’; ‘reassessment’	Military forces

Process and typological models of NDM have common features (Lipshitz, 1993a): 1) *situation assessment*: a cognitive process that sizes up the situation to construct a mental picture. This process involves either a selection of possible actions, or a prior stage in which one evaluates the alternatives before any concrete action is chosen. Therefore, “making decisions in realistic settings is a process of constructing and revising situation representations as much as (if not more than) a process of evaluating the merits of potential courses of action” (Lipshitz, 1993a p. 133); 2) *use of mental imagery*: it is a process of categorisation as well as the use of knowledge and the

construction of scenarios employed in an attempt to depict a situation in naturalistic settings; 3) *context dependence*: the context plays a significant role in real-life decisions and determines the level of familiarity with it, the context's nature (i.e., social system or mechanical) and the type of decision-making process (intuitive or analytical); 4) *dynamic processes*: decision-making is not an isolated process, it has concurrent and integrated environmental aspects and cognitive processes associated with it.

Child Custody Cases and Naturalistic Decision-making

The literature reviewed in Chapters I and II poses a complex scenario for making a decision in child custody cases, which cannot be easily approached by lab-based study. Decisions in child custody cases belong to an NDM setting, because they present eight factors that characterise a decision-making process in such settings.

According to Orasanu and Connolly (1993), these factors are:

- 1) *Ill-structured problems*: real-life decisions are not well organised or well-presented. The decision maker must generate hypotheses and select options for responses among multiple viable solutions. There are also multiple features and goals that can be tangled by complex causal links, making decision-making even more ill-structured. In post-parental separation situations, non-organised and poorly presented traits are mainly related to contradictory allegations that can be made by parents – e.g., “I should have the custody of the child because their mother does not take care of them properly”; “their father is the one who neglects their needs so I am the one who should have the custody”. In such scenarios, there might be equally good options to be considered before awarding child custody – should it be granted to the mother, father or shared care? Which is the best custodial arrangement for the child? In any of these arrangements, there are intrinsic

decisions to be made, such as: which is the best arrangement to assure contacts between the child and both parents? Will each parent have free access to the child? What should be the terms of that arrangement?

- 2) *Uncertain dynamic environments*: real decisions are constrained by incomplete, uncertain and imperfect information in a dynamically changing environment. Post-parental separation context is already complex, and changing interactions within the family, as well as parents' motivation and the child's specific needs, make it more so. The family's developmental stage (e.g., divorce) can display an erratic, confusing, dysfunctional, non-assertive or disorganised picture. Key understandings can appear ambiguous (e.g., a parent can look after and neglect a child in the same context, such as by not directly asking a child to pick a side but nonetheless making negative comments about the other parent); simplistic (e.g., legal actors can see high parental litigation as a demonstration of love and attachment towards the child [Mendes & Bucher-Maluschke, 2017b]); or poor quality (e.g., 'if the child does not want to see their father, it is because the mother is displaying parental alienation'). The time between a child custody application and the final decision is another issue, as the family dynamic can significantly change (sometimes getting worse) in the interim;
- 3) *Shifting, ill-defined, or competing goals*: in naturalistic settings, the decision-making process is driven by more than one purpose, and these might not be very clear and can even be opposed. After parental separation, multiple purposes surround decisions regarding child custody, such as: arrangements for the custody itself; safeguarding the child's welfare, the child's rights and best interests; solving a legal issue; resolving parental conflict; and finding a

solution that avoids future court applications. The shaping of each goal can vary from case to case. An example is the definition and application of the BIC, which is essentially idiosyncratic, as seen in Chapter II. Best interests can be conflicting – e.g., the child’s rights can oppose the parents’ ones, or solving a legal issue might not safeguard the child’s rights and welfare;

- 4) *Time*: decision-making in naturalistic settings is made under time pressure, leading to high levels of stress and exhaustion. As a coping strategy, decision makers may make poor decisions using less complex reasoning. For instance, in post-parental separation, time pressure can lead to burnout and rationalisation (a psychological defence mechanism) amongst legal actors in child custody cases (Mendes & Bucher-Maluschke, 2017b);
- 5) *High stakes*: the stakes related to naturalistic decisions may be very significant for the decision makers. In post-parental separation, the main stake is BIC, which is paramount (Mendes et al., 2020);
- 6) *Multiple players*: naturalistic decision-making usually involves multiple decision makers or intermediate parties who help them. There might be discrepancies in understandings of the problem and the strategies available to solve it. In post-parental separation, legal actors work cooperatively to instruct the judge to make the best decision regarding child custody;
- 7) *Action/feedback loops*: solving a naturalistic problem involves a series of events and actions throughout time. It might form a ‘generate and test’ process in which “outcomes are tightly... [or] ... loosely coupled to actions” (Orasanu & Connolly, 1993, p. 9). In post-parental separation, individual and cooperative actions are performed by legal actors throughout a case, such as applications made by lawyers on behalf of parents, evaluations carried out by

social workers and psychologists, and the court's intermediate decisions and actions. All these comprise an iterative loop that feeds back into the decision-making process, constantly and systemically;

- 8) *Organisational goals and norms*: in naturalistic settings, organisational issues play an important role in moderating actions and decisions. In post-parental separation, the organisational issues are: the judiciary's and court's values and goals; legal rules, guidelines and standard procedures related to the hearings, mediation or evaluation processes; 'service or field doctrine' towards the family, the child and assumptions regarding 'child custody'. These organisational issues vary according to legal actor and their field.

Final Considerations

Both process and typological models, as well as the eight factors that characterise decision-making in a naturalistic setting, seem to fit child custody and contact/access decision-making. However, there has been no published work addressing decision-making process in child custody cases using a naturalistic approach. Hence, it is unknown how these models will fit in such cases. The studies that follow examine:

- how an NDM process or typological model frames such cases: are there common activities/phases or specific cognitive processes in such cases?;
- how legal actors carry out a 'situation assessment' and organise and apply their values and knowledge?; and
- how context dependence and dynamic processes feature?

**PART II – INVESTIGATING PROCESSES OF DECISION-MAKING IN CHILD
CUSTODY CASES**

Chapter IV

Student Decision-making regarding Child Custody: A Cross-nation Study

The results in Chapter II revealed two domains of needs associated with the child's best interests: (1) material-physiological; (2) contextual. However, Chapter II examined the literature without framing these domains within child custody cases. Taking this into account, we ran a pilot study with naïve participants to understand how those domains are addressed during child custody decision-making. To explore the use of a vignette method prior to a study with domain experts, we recruited undergraduate students and ran the study that follows.

Goals and Hypotheses

Aims of the study:

- 1) To understand the kind and extent of knowledge students have regarding BIC;
- 2) To explore how naïve decision makers consider material-physiological and contextual needs in their decision-making process; and
- 3) To explore factors naïve decision makers deem essential to weigh the cases.

Hypotheses

- 1) The type of need (material-physiological, contextual) is associated with the decision-making outcome (i.e., who will be awarded the child custody);
- 2) Interactions between types of need are associated with decision outcome;
- 3) Participants' field (law, psychology, social work) is associated with decision outcome; and
- 4) Participants' nationality (Brazilian and English) is associated with decision outcome.

Method

Participants

Five hundred and thirty undergraduate students from law, psychology and social work were recruited online from Brazil and England by posting invitations on their universities' Facebook groups – 59% were from Brazil, 85.5% were female, 61% were from the field of psychology, 24% were from law and 15% were from social work (see Table 30, Appendix F). Their mean age was 19.4 years old ($SD = 11.1$). We recruited students from those fields because they represented professions relating to the survey's content.

Design

Based on the inputs from Chapter II, 8 factors concerning children's needs were presented in 12 vignettes, 4 per domain and four combining needs from the other 2 domains. Table 12 illustrate this design:

Table 12

Vignette Design

Domain/Factors		
<i>Contextual</i>	<i>Material-physiological</i>	<i>Both</i>
C1(child's mental health)	MP1 (child's nourishment)	C1 + MP1
C2 (child's identity)	MP2 (housing issues)	C2 + MP2
C3 (child's affectional bonds)	MP3 (child's physical integrity)	C3 + MP3
C4 (child's cultural/religious beliefs)	MP4 (child's clothing)	C4 + MP4

Assuming that that uncertainty is common in decision making regarding child custody, and that this uncertainty is revealed in incomplete, ill-structured and conflicting information (cf. Lipshitz et al., 2001), the vignettes did not contain details

about the case or parents' gender. They also presented the parents in an adversarial way (e.g., with allegations and counter-allegations). Each vignette is shown in Appendix B.

Procedure

The survey was hosted by the online platform Qualtrics. After reading the Information Sheet (Appendix C), participants gave their consent to take part in the study (Appendix D) which was approved by University of Sussex's Sciences & Technology C-REC under Certificate of Approval ER/JA454/2. Participants gave demographic information then answered questions regarding knowledge of the BIC principle, before receiving study instructions. Each participant was randomly given three vignettes, one per each domain. Participants read the vignettes, then made a decision regarding custody – a) sole physical custody to Parent A (non-custodial parent); b) sole physical custody to Parent B (custodial parent); c) joint custody; d) custody to a relative (siblings, aunt/uncle, grandparents, etc.); or e) other (they had to justify this choice). Then they selected factors deemed important to understanding the case and were asked to make a decision, selecting from a list shown in Table 13 (group information was not shown to participants). Appendix E presents demographic data and responses regarding BIC, and study instructions.

Data Analysis

All responses were exported to a SPSS file. Incomplete or inconsistent cases were excluded from the database – e.g., some students just gave incomplete answers such as marking 'other' for whom they would award the custody to, and then typed 'blah, blah, blah' to justify their choice of 'other'. All valid cases were then analysed via descriptive and inferential statistics (chi-square test of independence).

Table 13*Decision-making Factors by Group*

Group	Factors
<i>Psychosocio-emotional Needs</i>	Child's wishes and feelings
	Child's social network
	Child's psycho-emotional bonds
	Preserving the child's routine
<i>Basic Needs and Rights</i>	Financial issues
	Child's nourishment
	Housing issues
	Child's health
	Child's clothing
<i>Family Reality</i>	Level of coparental conflict
	The mother's "natural right" to have the custody
	Parents' gender
	Signs of "parental alienation"
<i>Coparenting Issues</i>	Past events (e.g., marital disinterest, child neglect, leaving home, infidelity, etc.)
	Cooperation between parents

Results

As Table 14 shows, 63% of participants had not heard about the BIC principle before the survey. 81% had never had any academic experience (e.g., lecture, practical, seminar, workshop, symposia) that included a reference to BIC.

Contextual Needs and Decision-making

Table 15 shows that participants were divided between awarding joint custody or keeping it with the current custodial parent. Also, the child's health and psychosocio-emotional bonds were dominant when weighing the decisions.

Table 14*Participants' Acknowledgement of the Best Interests of the Child (BIC)*

Country	Field	<i>Have you ever heard about BIC?</i>		TOTAL
		YES	NO	
Brazil	Law	28	28	56
	Psychology	67	142	209
	Social Work	11	35	46
England	Law	32	40	72
	Psychology	34	78	112
	Social Work	26	9	35
TOTAL		198	332	530
Country	Field	<i>Academic activity that referred to BIC?</i>		TOTAL
		YES	NO	
Brazil	Law	22	34	56
	Psychology	33	176	209
	Social Work	3	43	46
England	Law	15	57	72
	Psychology	8	104	112
	Social Work	18	17	35
TOTAL		99	431	530

Table 15*Decision Made and Most Important Factors to Weigh the Case – Contextual Vignettes*

Vignette	Most Frequent Decision Made²³	Most Important Factors to Weigh the Case²⁴
<i>Vignette C1</i> <i>Child's Mental Health</i>	Joint custody (n = 63; 45%)	1°) child's health 2°) child's wishes and feelings 3°) child's psychosocio-emotional bonds
<i>Vignette C2</i> <i>Child's Identity</i>	Joint custody (n = 51; 34%)	1°) child's health 2°) child's nourishment 3°) child's psychosocio-emotional bonds
<i>Vignette C3</i> <i>Child's Affectional Bonds</i>	Joint custody (n = 81; 58%)	1°) child's health 2°) child's psychosocio-emotional bonds 3°) child's wishes and feelings
<i>Vignette C4</i> <i>Child's Cultural/Religious Beliefs</i>	Sole physical custody to the custodial parent (n = 66; 48%)	1°) child's health 2°) child's nourishment 3°) child's psychosocio-emotional bonds

²³ See Tables 31, 32, 33 and 34 in Appendix F to check the frequency for all decisions.²⁴ See Figures 23, 25, 26 and 27 in Appendix F to check the frequency for all factors.

A significant association was found between ‘contextual vignettes’ and ‘decision made’, $\chi^2(12, N = 530) = 127.723, p < 0.001$. This was a moderate relationship ($V = 0.283$; Cohen, 1988) – see Table 35, Appendix F for the interactions with ‘field’ and ‘country’. Awarding custody to parent B (custodial parent) was associated with all contextual vignettes. Awarding joint custody or custody to a relative was more associated with the child’s mental health needs (vignette C1). Choosing ‘other’ was more associated with the child’s identity (vignette C2).

Material-physiological Needs and Decision-making

Table 16 shows that participants either decided to change the current custodial arrangement (by swapping custody or awarding it to a relative) or to award joint custody. Important factors were child’s health and nourishment. There was a significant association between ‘material-physiological vignettes’ and ‘decision made’, $\chi^2(12, N = 529) = 265.045, p < 0.001$, a strong relationship ($V = 0.401$; Cohen, 1988) – see Table 40, Appendix F to check the outcomes for the interaction with ‘field’. Awarding custody to parent A (non-custodial parent) was more associated with the child’s nourishment (vignette MP1). Awarding custody to parent B (custodial parent) was more associated with housing issues (vignette MP2). There was also an association between awarding joint custody and the child’s clothing (vignette MP4) as well as housing issues (vignette MP2). Another association was between awarding custody to a relative or choosing ‘other’ and the child’s physical integrity (vignette MP3). A significant association was found between the participant’s country and ‘decision made’, $\chi^2(4, N = 529) = 13.286, p < 0.010$, a weak relationship ($V = 0.158$; Cohen, 1988). Both countries were associated with awarding custody to the custodial parent.

Table 16*Decision Made and Most Important Factors to Weigh the Case – Material-Physiological Vignettes*

Vignette	Most Frequent Decision Made²⁵	Most Important Factors to Weigh the Case²⁶
<i>Vignette MP1</i> <i>Child's Nourishment</i>	Sole physical custody to the non-custodial parent (n = 56; 44%)	1°) child's health 2°) child's nourishment 3°) child's psychosocio-emotional bonds
<i>Vignette MP2</i> <i>Housing Issues</i>	Joint custody (n = 79; 59%)	1°) housing issues 2°) cooperation between parents 3°) preservation of the child's routine
<i>Vignette MP3</i> <i>Child's Physical Integrity</i>	Award the custody to a relative (n = 76; 57%)	1°) child's health 2°) child's nourishment 3°) level of coparental conflict
<i>Vignette MP4</i> <i>Child's Clothing</i>	Joint custody (n = 78; 58%)	1°) child's health 2°) child's nourishment 3°) cooperation between parents

²⁵ See Tables 36, 37, 38 and 39 in Appendix F to check the frequency of all decisions available.

²⁶ See Figures 29, 30, 32 and 33 in Appendix F to check the frequency of all factors available.

Contextual + Material-physiological Needs and Decision-making

Table 17 shows that the interaction between the two sets of the child's needs also led participants to completely change the current custodial arrangement (by swapping the custody or awarding it to a relative) or to award joint custody. Regarding the factors being weighed, the child's health and nourishment were predominant.

A significant association was found between material-physiological + contextual vignettes and decision made, $\chi^2(12, N = 522) = 232.345, p < 0,001$, a strong relationship ($V = 0.385$; Cohen, 1988) – see Table 45, Appendix F to check the outcomes for the interaction with 'country'. There was an association between awarding the custody to parent A (non-custodial) and the combination of the child's mental health and their nourishment (vignette C1 + MP1). Another association was between awarding custody to parent B, and the combination of the child's cultural/religious beliefs and their clothing (vignette C4 + MP4). There was also an association between awarding joint custody, and the child's identity and housing issues (vignette C2 + MP2). The last association was between awarding custody to a relative and the child's affectional bonds and physical integrity (vignette C3 + MP3). A significant association was found between the participant's field and decision made, $\chi^2(8, N = 522) = 17.639, p < 0.024$, a weak relationship ($V = 0.130$; Cohen, 1988). There was an association between psychology and social work students, and awarding custody to a relative.

Table 17*Decision Made and Most Important Factors to Weigh the Case – Contextual + Material-physiological Vignettes*

Vignette	Most Frequent Decision Made²⁷	Most Important Factors to Weigh the Case²⁸
<i>Vignette C1 + MP1</i> <i>Child's Mental Health & Nourishment</i>	Sole physical custody to the non-custodial parent (n = 49; 45%)	1°) child's health 2°) child's nourishment 3°) past events (e.g., marital disinterest, child neglect, leaving home, infidelity, etc.)
<i>Vignette C2 + MP2</i> <i>Child's Identity & Housing</i>	Joint custody (69%; n = 90)	1°) child's health 2°) child's nourishment 3°) child's psychosocio-emotional bonds
<i>Vignette C3 + MP3</i> <i>Child's Affectional Bonds & Physical Integrity</i>	Award the custody to a relative (38%; n = 49)	1°) child's health 2°) child's nourishment 3°) child's psychosocio-emotional bonds
<i>Vignette C4 + MP4</i> <i>Child's Cultural/Religious Beliefs & Clothing</i>	Joint custody (n = 63; 48%).	1°) child's health 2°) child's wishes and feelings 3°) child's nourishment

²⁷ See Tables 41, 42, 43 and 44 in Appendix F to check the frequency of all decisions available.²⁸ See Figures 35, 37, 38 and 39 in Appendix F to check the frequency of all factors available.

Discussion

The child's needs presented in the vignettes impacted the decision-making of naïve participants. For vignettes with contextual needs, the most frequent decision was to maintain custody with the custodial parent (parent B). With contextual needs, participants were conservative and maintained the current custodial arrangement if there was no sign of harm, risk or vulnerability with regard to the child. Participants avoided any course of action that would leave them uncertain about positive or favourable outcomes. In a similar study that addressed public law cases and students from social work and psychology, Carvalho et al. (2020) found that, when compared to professionals, undergraduate students tend to not make decisions that lead to drastic change, such as removing a child from their family. A predisposition to not change the *status quo* arises because they foresee disadvantages as greater than advantages – a bias akin to loss aversion (Kahneman et al., 1991; Samuelson & Zeckhauser, 1988).

We suggest that conservative decision-making arises with non-specialists because of incomplete and contradictory information (mirroring the uncertainty that is common in real-life child custody cases). Participants did not feel secure enough to change the current custodial arrangement. This view is confirmed by written comments: “the child [should] remain where they are and continue routine while additional health checks and feelings and wishes of the child are ascertained” (English participant n° 18, vignette C1); “until we can listen to the child and also have further information regarding the depression symptoms and its causes, I cannot make a decision” (Brazilian participant n° 03, vignette C1).

In contrast, for vignettes with material-physiological needs, participants awarded custody to either the non-custodial parent (parent A) or to a relative. This pattern was likely triggered by the quality and quantity of information in the vignettes.

Material-physiological issues made participants concerned enough to change current arrangements. For instance, one participant supported “remov[ing] the child from the situation, [as] neither parent is taking responsibility and it is an unsafe situation. Move [the child] to foster care/relatives until both parties improve” (English participant n° 19, vignette MP1); and another argued, “one should award a provisory custody to a child’s relative to preserve the child’s best interests” (Brazilian participant n° 24, vignette MP1).

These examples illustrate two distinct decision patterns: a conservative approach triggered by concerns about decisions that would lead to major changes that could affect the child’s welfare; and an active approach triggered by concerns about the child’s welfare. These patterns might reflect a ‘pseudocertainty effect’: avoiding risky choices when the outcome of inaction might be positive, but accepting risks when the outcome of inaction might be negative (Liu et al., 2014; Tversky & Kahneman, 1989).

The combination of contextual and material-physiological needs also impacted decision making. For instance, half of the decisions for these vignettes awarded joint custody. The larger the number of needs involved, the higher the case uncertainty (and therefore, complexity). By awarding joint custody, participants reached a mid-point in which they were neither completely maintaining the custodial arrangement nor drastically changing it. For instance, some said they “would try joint custody. However, if the abuse allegations are proven, [the responsible parent] would lose custody” (Brazilian participant n° 111, vignette C3 + MP3); others said they would award “joint custody but I need to listen to the child first” (Brazilian participant n° 217, vignette C4 + MP4).

These decision patterns are constrained by two typical factors: level of uncertainty and decision makers’ high stakes. Uncertainty is common in such decisions,

prompted by contextual factors that can blur the perception of the problem or its possible solutions (Lipshitz, 1993b; Lipshitz & Strauss, 1997). As seen in Chapter III, high stakes refer to how important a decision and its consequences are to the decision maker (Orasanu & Connolly, 1993). Legal cases that involve children are very important to decision makers, especially when cases involve possible risks, harm and/or vulnerability with regard to the child. In child custody cases, one of the biggest stakes is BIC.

Regarding factors that participants deemed as important, they tended to equally choose ‘psychosocio-emotional’ and ‘basic needs and rights’ factors in contextual vignettes. ‘Basic needs and rights’ was selected five times more often than ‘psychosocio-emotional’ factors for material-physiological vignettes, as well as combined contextual and material-physiological vignettes. In all vignettes, ‘family reality’ was selected least. The dominance of ‘basic needs and rights’ compared with the ‘family reality’ is unexpected, as the literature reviewed in Chapter II recommends that the child’s basic needs/rights and psychosocio-emotional needs should be balanced and that family issues should be considered during a BIC decision-making process. Perhaps undergraduate students are unaware of this, due to lack of knowledge of the BIC principle. This is concerning, as Frankel et al. (2015) argue that the involvement of students in academic activities addressing BIC can lead to a bigger participation of children at all societal levels, and the safeguarding of that paramountcy principle.

Chapter V

Child Custody Decision-making: a Thematic Analysis of Expert Interviews²⁹

This chapter presents interviews with legal actors involved in child custody cases. The study had three main goals: 1) to understand how the decision-making process is structured in terms of its context dynamics and constraints; 2) to understand the role of legal actors in the decision-making process; 3) to understand how BIC is understood and applied in the child custody decision-making process.

Thematic Analysis

This study adopted Thematic Analysis (TA) as its theoretical framework to understand and analyse the qualitative data gathered. TA is designed for the analysis of audio, text and visual information sources (Guest et al., 2012; Riessman, 2008). TA is one of the most used qualitative analysis methods within fields such as health, medicine, sociology, history, physics, anthropology and psychology (Boyatzis, 1998; Braun & Clarke, 2006, 2013). It is a highly flexible methodology and does not prescribe procedures of data collection or limit the theoretical or epistemological perspectives possible within it (Braun & Clarke, 2006, 2013; Braun et al., 2019; Nowell et al., 2017). Boyatzis (1998, p. 1) refers to TA as a “way of seeing”, meaning that different people can see different things looking and analysing the same data. Moreover, different people can conceive and use TA in different ways (Braun et al., 2019).

In TA, “observation precedes understanding” (Boyatzis, 1998, p. 1), hence recognition of a meaningful moment (seeing) comes before it is coded (seeing it as something); both processes lead to interpretation, the core of TA (Guest et al., 2012;

²⁹ This chapter has benefited from comments made by professors Julia Bucher-Maluschke (UnB/Brazil), Liana Fortunato Costa (UnB/Brazil), Silvia Lordello (UnB/Brazil) and Rebecca Ribeiro (forensic psychologist at the Brasília’s Court of Law).

Boyatzis, 1998). Therefore, the main task behind TA is the search for patterns within the data presented, leading to analysis and final reporting on those patterns, using ‘themes’ (Boyatzis, 1998; Braun & Clarke, 2006, 2013). This whole process is organic and interactive, going beyond the first round of coding, and extending throughout the whole analysis (Braun et al., 2019). Coding is a dynamic and evolving process in which codes can be reinscribed (by dividing, renaming, and/or combining them) according to data conceptualisation and the researcher’s perspective.

TA requires the ability to assess the ‘codable moment’, those pieces of raw data (units of coding) that potentially carry significance and that form patterns in relation to one another; recognising these helps to understand the phenomenon under research. The next step is to interpret those patterns and to build up thematic categories – *themes*. A theme reflects “a *pattern* of shared meaning, organized around a core concept or idea, a central organizing concept” (Braun et al., 2019, p. 845). A theme “captures something important about the data in relation to the research question, and represents some level of *patterned* response or meaning within the dataset” (Braun & Clarke, 2006, p. 82); it is meaningfully and semantically wider than a code. A theme can be seen as a ‘wall’ composed of a lot of ‘bricks’ (codes) connected by a strong ‘cement’ (meanings).

Every theme has two tiers of approach (Boyatzis, 1998, p. 4): a) the *manifest level* (clearly observed within the information gathered); b) the *latent level* (underlying the phenomenon itself). These approaches shape two ways of identifying patterns and building up themes: i) inductive; and ii) theoretical (Braun & Clarke, 2006). The manifest level is inductive because patterns found and themes built are strongly linked to the data gathered for the research (e.g., interviews). The latent level is theoretical because those patterns and themes are driven by analytic interest and present detailed

analysis rather than descriptive content. Additionally, themes develop via analytic inputs (interpretation starts at the very beginning of the coding process, boosted by previous data familiarisation) or by analytic outputs (interpretation starts after the coding process: Braun et al., 2019). TA can be enacted in three ways (Boyatzis, 1998): 1) theory-driven, based on existing theory; 2) previous-data-driven, based on existing data; and 3) data-driven (induction), based on new data. All three approaches allow development of theory, especially the data driven (Boyatzis, 1998).

Integrative Data-driven Thematic Analysis Method

For this study, an *integrative data-driven thematic analysis method* (IDDTA) is proposed, combining inductive and abductive theoretical approaches³⁰; manifest and latent levels of analysis; analytic inputs and outputs. IDDTA assumes that:

- 1) neither data nor meanings derived from it are given. At the beginning, they are merely comprised of information to be distinguished by an observer as ‘data’ and ‘meaning’. We adopt the assertion given by Second-order Cybernetic³¹ theorists Maturana, Varela (1991) and Von Foerster (2003) that ‘things’ only become *things* when observed, distinguished and pointed out by an observer – it is the observer and their active perception that gives meaning to things. Thus, reality and its contents emerge as meaningful constructs from an observer’s perspective. In IDDTA, this is an essential principle that leads the observer to discriminate, interpret, classify and analyse codes and themes;

³⁰ A similar approach was proposed by Urquhart (2013) for Grounded Theory. She referred to the ‘middle-range’ coding process in which the coding would emerge from the raw data and the literature, thus combining induction and abduction processes.

³¹ Cybernetic theory is an epistemology that, amongst others, integrates the so-called Systemic Thinking. See Flood (2010) for further information.

- 2) according to González Rey's³² (2000, 2005, 2011) assertions, in qualitative data analysis, the researcher's subjectivity, in a dialogic interaction with the data (for extension, with the research participants' subjectivity too), drives the process of interpretation (building up meanings and themes). Hence, no knowledge is produced outside of historical, social and cultural contexts; neither is it removed from the researcher's subjectivity, previous knowledge or experiential framework. Therefore, no knowledge is totally neutral, pure or inductive;
- 3) when dealing with people exchanging complex and recursive meanings with each other and their respective contexts (the plain field for any qualitative research addressing interpersonal and social relationships), the major contribution that psychological expertise can offer is to go through these transactional structures and analytically organise, interpret and reveal them;
- 4) researching is a complex, systemic and dynamic process involving stages and procedures that, despite being conceived as linear, are part of a circular 'back and forth' movement that integrates analytic inputs and outputs in a recursive way;
- 5) describing the data's idiosyncratic aspects (characteristics, concepts, structures, processes, etc.) is fundamental to qualify the data itself and the research conducted;
- 6) describing and analytically interpreting the data are equally important steps in the research process, thus both are necessary and complementary.

Taking those assumptions into account and based on the assertions of Braun et al. (2019), IDDTA can be considered as a reflexive TA approach as it assumes and

³² Fernando González Rey was a Cuban psychologist based in Brazil who postulated the so-called 'Qualitative Epistemology' approach. This is a qualitative data analysis method derived from his 'Theory of Subjectivity' epistemology which has its roots in a sociocultural approach. His main work was within education and health fields but many qualitative researchers from other fields in Brazil have acknowledged and incorporated Gonzalez Rey's postulates.

highlights the researcher's active role in the process of outlining the resulting knowledge; also, IDDTA highlights the information's meaning more than its quantity.

Instruments, Participants and Procedures

This study used qualitative semi-structured interviews with open-ended and close-ended questions (Appendix G). These questions were inspired by the BIC model presented in Chapter II, and addressed the participants' knowledge, attitudes and practices regarding BIC and the decision-making process in child custody cases. The sources of information (units of analysis) were experts (i.e., legal actors) from the following categories: judges, prosecutors³³, lawyers, psychologists and social workers. Inclusion criteria were : i) Brazil and England: at least two year's experience in child custody cases; ii) Brazil: be located in Brasília, Porto Alegre or São Paulo.³⁴

This study gathered data from 73 participants (48 Brazilian and 25 English). Of these, 64% were female. The mean years of experience in Brazil was 14 ($SD = 9.7$) and 16.5 ($SD = 8.9$) in England. Appendix H presents more participants' basic sociodemographic information and their 'ID reference' – used to set up the themes' data anchoring, presented in Appendix N. The interview's length of time varied between 35 minutes and 90 minutes and the average amount of words per transcript was 5,478 – varying from 1,440 to 11,552 words.

³³ As stated in Chapter I, only Brazilian prosecutors play a role in child custody cases.

³⁴ In Brazil, participant recruitment was undertaken in three ways: a) through the researcher's previous network; b) by sending research participation invitations via email and letter; and c) snowball recruitment – see Sadler et al. (2010) for further information. Judges and prosecutors sitting on family courts in three Brazilian cities were invited either by email or printed invitation. All psychosocial evaluation units (comprising of psychologists and social workers) from each city's family court were invited to take part. Participant recruitment in Brazil achieved good numbers of diverse participants (as shown in Appendix H). Participant recruitment proved to be more difficult in England. An application to the Research Governance Committee of CAF/CASS (Children and Family Court Advisory and Support Service – already addressed in Chapter I) to access social workers was refused, and no response was received from the Umesh Mistry HMCTS (to access magistrates). Instead we sought participants through: i) LinkedIn; ii) inviting eligible lawyers by email based on the list available at <http://www.resolution.org.uk/>³⁴; iii) inviting eligible psychologists by email from the list at <https://www.bps.org.uk/lists/EWT/search>³⁴; iv) emailing authors with papers published on child custody cases and/or BIC. Snowball recruitment was also used. Nevertheless, due to the circumstances described, the number of participants in England was smaller compared to Brazil, but as diverse as the Brazilian group.

Before being interviewed, all participants received the Information Sheet (Appendix I) and Consent Form (Appendix J). The study was approved by University of Sussex's Sciences & Technology C-REC under the Certificate of Approval ER/JA454/1. After any clarifications requested and signing of the Consent Form, the interviews were conducted either in person, via Skype or by telephone in both countries, and recorded with a Sony ICDBX140 Digital Voice Recorder.

Data Analysis Process

All interviews were transcribed, and those held in Brazil were translated from Brazilian Portuguese to English. The *unit of coding* (UC) was the basic segment of raw data eliciting meanings that helped to identify patterns related to the studied phenomena. In this study, a sentence was considered a UC.³⁵ Also, the *unit of analysis* (UA) refers to the entity that was the information source upon which interpretation was focused. In this study, each participant was considered a UA.

The IDDTA process was inspired by and adapted from models in Braun and Clarke (2006, 2013), Braun et al. (2019) and Nowell et al. (2017). Six phases were set: Phase I – Familiarisation; Phase II – First Level of Analysis: open coding; Phase III – Second Level of Analysis: searching for themes; Phase IV – Reviewing & Setting the Themes: definitions and relationships; Phase V – Anchoring Themes & Thematic Map; and Phase VI – Ensuring Trustworthiness: credibility and dependability.

In Phase I, the researcher immersed himself in the data by reading the interview transcriptions, intending to get closer to the data, its depth and breadth. This familiarisation was an active process that looked for meanings and patterns by speed-reading the whole dataset, at least once, before moving on to Phase II (open coding).

³⁵ The level of analysis can be 'line-by-line', 'sentence-by-sentence', 'paragraph-by-paragraph' or 'incident-by-incident'. The researcher will choose the level of analysis according to their objectives and the data characteristics.

During this initial phase, the researcher used the *memoing tool* (Appendix K) to take notes regarding any ideas, insights or interpretations arising. This technique was applied throughout the analysis, and it was important to identify links that pointed out the patterns and resulting themes. The notes were also important to embody the latent (interpretative) character of the process.

Phase II was composed by means of open coding. This was a coding process inspired by the conceptions of ‘open coding’ by Urquhart (2013), and also ‘initial coding’ by Charmaz (2014). This process aimed to organise, describe, sort and synthesise the dataset in an open way without restraint, by analysing the data and trying to extract *what it was saying, what was the main idea, and/or what was the meaning*, by analysing data segments (UC) and creating labels (codes) accordingly. This coding process was supported using the qualitative data analysis software NVivo 10 for Mac OS.

The previous phase generated a total of 62 codes engendered by the dataset (Appendix L). Phase III analysed these initial codes and created candidate themes and features. This was done by focusing on meanings expressed by Phase II’s codes and their connections (patterns), leading to the construction of candidate themes and their features. In this phase, some codes led to potential themes, others to features. The outcome for this phase was a set of 21 candidate themes and 72 features (Appendix M). During this phase, candidate themes and features started to be linked to the units of analysis (participants) to achieve the ‘anchoring’ task required in Phase V.

Phase IV consisted of reviews of candidate themes and features from Phase III. The aim was to refine those candidate themes and features and try to set them in a broader context alongside meaningful themes that also highlighted their connections. During this process, some themes were split and/or combined with others in order to

compose other more meaningful themes and/or features. After that, a dedicated analysis took place to review theme and feature descriptions from Phase III and to set up refined descriptions for final themes and features. The outcome of Phase IV was 15 final themes, 53 features and 31 highlights.

Phase V had two steps. The first was to compile a table (Appendix N) showing how each theme reflected the dataset according to each participant (UA). This was based on outcomes from Phases II, III and IV, to check how the final themes and their features were anchored in the data gathered. This outcome should not be seen as a quantitative measure in which the larger the number of supporters (participants) for a particular point, the more significant it is. As a complex and integrated process, the data analysis assured the meaningfulness of all themes regardless of the number of UA they are anchored in. The method of analysis is a means to ensure credibility – i.e., that the results reflect the participants' accounts. The second step consisted of building a thematic map to present an explanatory model showing how each theme was connected to others. The table and the map are presented in the results and discussion sections.

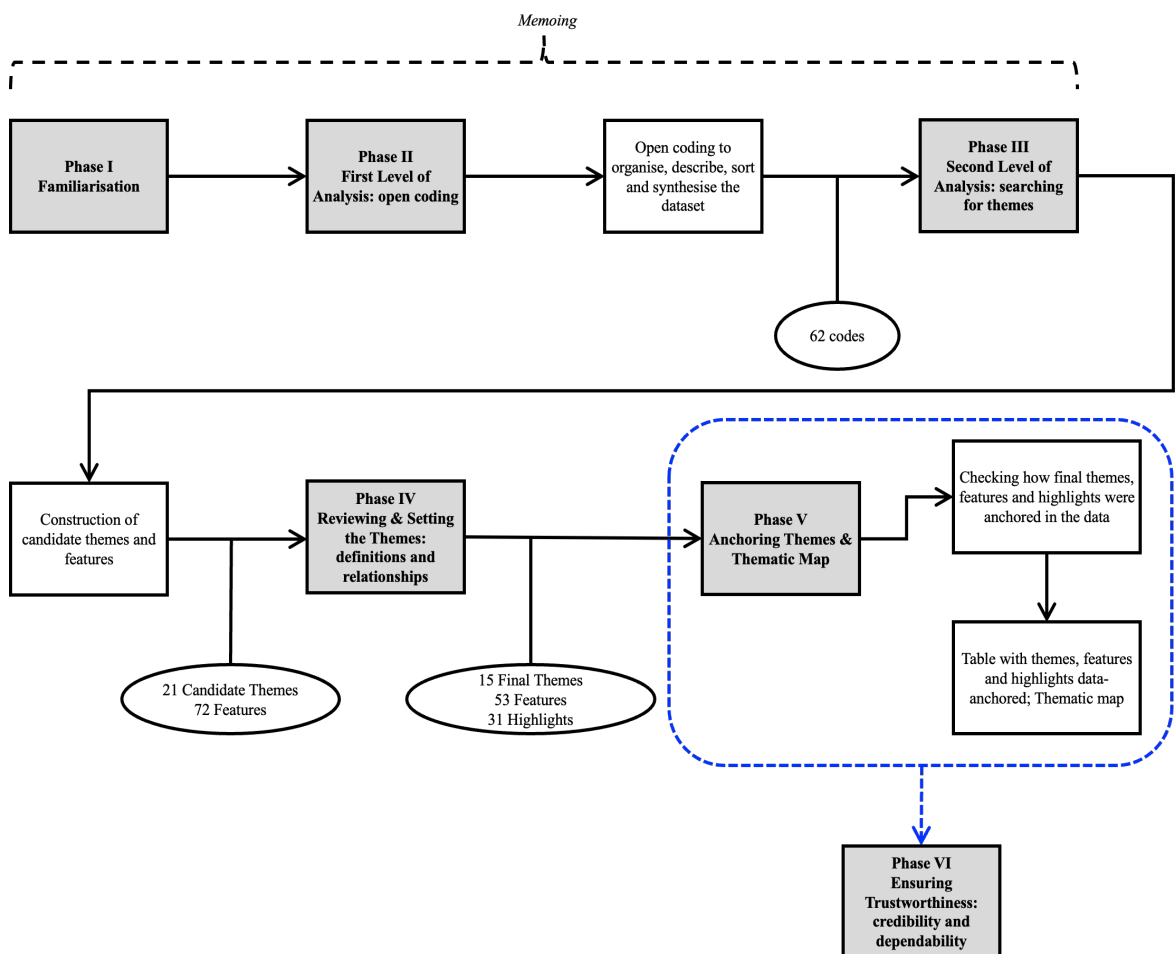
Phase VI was designed to ensure the results trustworthiness through credibility, confirmability and dependability, as asserted by Creswell and Poth (2017), Darawsheh (2014), Flick et al. (2004) and Guest et al. (2012). It involved two steps:

- 1) *peer review or debriefing*: experts evaluated the research's method, data analysis and results. Their role was to criticise the method, procedures and proposed analysis. This was carried out by the thesis' supervisor and assessor;
- 2) *reflexivity*: a process requiring the researcher's self-reflection, to raise awareness regarding actions, feelings and perceptions (Anderson, 2008; Hughes, 2014). The aim was to enable recognition of how the phenomena under study affect the researcher, what it says about them and how it touches

their history, conceptions and values. Its purpose was to examine how the researcher's subjective role could interfere with the analysis process, i.e., what biases might have entered the process of investigation and interpretation of the phenomena. This is an alternative to a sterile neutrality, which assumes a strict orthogonality between observer (researcher) and object (phenomenon). Reflexivity recognises the presence of non-neutrality and its implications for the process of investigating and understanding an research object. My reflexivity account is given in Appendix O. Figure 5 summarises the data analysis:

Figure 5

Data Analysis Process – Thematic Analysis



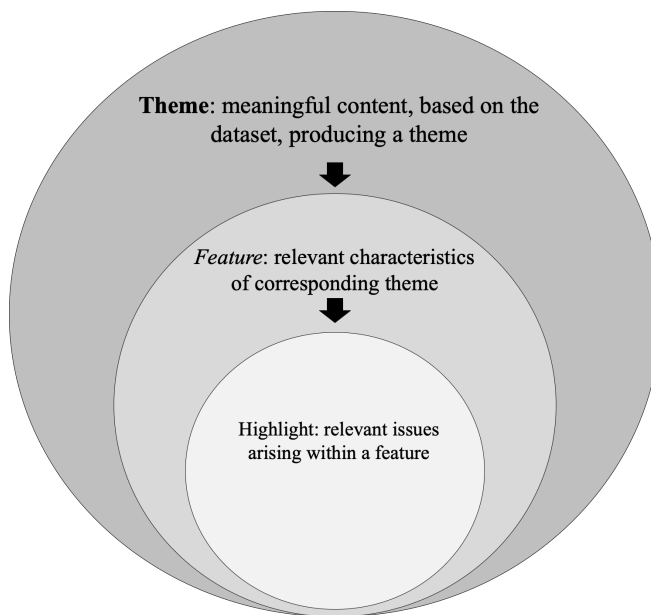
Results

Presenting Themes and Features

Themes are presented in hierarchical order (illustrated in Figure 6). Table 18 presents fifteen themes generated by the thematic analysis, with features and highlights.

Figure 6

Hierarchy of Contents: Order in Which the Themes Will Be Presented



Part I: The Role of Context Issues in Child Custody Cases

The themes emerging from context elements resemble what Wells (1978) called ‘estimator variables’ in eye-witness testimony research, a variable that affects the legal process but is not under its control. They are part of the context in which a person witnessed a crime. Estimator variables (context) can influence a person’s testimony. Context issues constrain child custody cases and influence decision-making but are not under the control of the legal system or the decision makers. This characteristic makes context issues uncertainty-enhancers. We identified seven (1, 2, 3, 6, 8, 9, and 15) themes with context issues that impact child custody cases and divided them in three domains: 1) ‘family’; 2) ‘family court’; and 3) ‘legal-psychosocial’.

Table 18*Themes, Features and Highlights Generated*

THEMES, FEATURES AND HIGHLIGHTS
Theme 1: Parental Separation: Crisis and Family Life Cycle (1.1) <i>Dysfunctionally coping divorce: family crisis</i> (1.2) <i>Misunderstanding and pathologisation of family interactions and coping strategies in the context of custody cases: perspectives on parental alienation</i> (1.2.1) <i>Tricks the decision-making</i> (1.2.2) <i>Impairs the child's role</i> (1.3) <i>Parental separation as part of the family life cycle</i> Theme 2: Hindering BIC (2.1) <i>Conjugality vs Parenthood</i> (2.2) <i>Detaching from the child and attaching to the litigation</i> (2.3) <i>Lack of parenting skills</i> (2.4) <i>"No 'child maintenance', no contact with the child"</i> (2.5) <i>Exclusion position</i> (2.6) <i>Misunderstanding joint custody</i> (2.7) <i>Involving the child in parental conflict</i> Theme 3: The Judiciary's Constraints & Practices (3.1) <i>"The law is powerless": legal and epistemological limitations of law</i> (3.1.1) <i>Limits of law</i> (3.1.2) <i>Litigious mindset</i> (3.2) <i>Organisational issues</i> (3.2.1) <i>Time & Workflow</i> (3.2.2) <i>Staff & Workload</i> (3.2.3) <i>Judges' career & Courts</i> (3.2.4) <i>Lack of training and knowledge</i> (3.3) <i>Between fear and bravery: the psychologists' practice in Brazil</i> (3.4) <i>An advocate in intractable cases: psychologists' practice in England</i> Theme 4: (Mis)Understanding BIC (4.1) <i>Focusing on and addressing parents' interests instead of child's</i> (4.2) <i>"It has nothing to do with psychology"</i> (4.3) <i>BIC as a rhetorical resource</i> Theme 5: Promoting BIC in Child Custody Cases (5.1) <i>Preserving basic (material-physiological) needs and rights</i> (5.2) <i>Enhancing the child's psychosocio-emotional well-being</i> (5.3) <i>Preserving the relationship with both parents</i> (5.4) <i>Protecting the child from parental conflict</i> (5.5) <i>Maintaining the sense of stability</i> (5.6) <i>Addressing the Children Act (1989)'s welfare checklist</i> Theme 6: Applying BIC (6.1) <i>Indeterminacy</i> (6.2) <i>Idiosyncrasy</i> Theme 7: Decision-making Process (7.1) <i>"There is no need to hear the child if there is a parental agreement"</i> (7.2) <i>Between inadequacy and lack of skills: "I do not hear the child"</i> (7.3) <i>Listening to the child's voice: the older, the better</i> (7.3.1) <i>"It is easier to deal with": they can speak their minds</i> (7.4) <i>Trading-off interests</i> (7.5) <i>Addressing the child's interpersonal contexts</i> (7.6) <i>The children as subjects of rights and as an active agent in their reality</i> Theme 8: Making the Decision-making Process Harder

(8.1) *Misconduct, maltreatment and abuse allegations*

(8.2) *Tied Parents: “I cannot pick one”*

(8.3) *Legal actors’ emotional struggles*

Theme 9: Assessing BIC in Child Custody Cases: Evaluation Services

(9.1) *‘Psychosocial Study’: the Brazilian model*

(9.1.1) Family firefighters: the role of psychosocial evaluation

(9.1.2) To intervene or not to intervene, that is the question

(9.1.3) Interdisciplinarity

(9.1.4) Non-protocol-based practice

(9.2) *‘Children and Family Court Advisory and Support Service – CAFCASS’: the English model*

(9.2.1) Protocol-based practice: Children Act, Section 7, Report

(9.2.2) Non-evidence-based practice

(9.2.3) Risk-avoidance practice

Theme 10: Assessing BIC in Child Custody Cases: Procedures, Sources and Tools

(10.1) *What is assessed?*

(10.1.1) Child’s development stage and specific needs

(10.1.2) Child’s daily life and routine

(10.1.3) Family dynamic and its reality

(10.1.4) Child-parent relationship

(10.1.5) Parenthood & Co-parenting skills

(10.1.6) Healthcare

(10.1.7) Neglect, maltreatment & risk factors

(10.2) *Sources of information: school, caregivers and protection network*

(10.3) *Tools and strategies to assess BIC*

(10.3.1) Interviewing parents and/or other family members

(10.3.1.1) Aspects that are looked for during the interview

(10.3.2) Interviewing the child

(10.3.3) Visiting the family household

Theme 11: Dichotomies in Lawyers’ Practice

(11.1) *Enrolling the dispute*

(11.2) *Putting parents’ interests first*

(11.3) *Safeguarding the child’s welfare*

(11.4) *Seeing and addressing the child’s best interests through the parents’ interests*

Theme 12: Legal Actors’ Biases and BIC

(12.1) *Gender*

(12.1.1) Misogyny

(12.2) *Personal beliefs*

Theme 13: Strategies to Avoid ‘BIC-Harming Parental Litigation’

(13.1) *Self-arrangement: empowering the family*

(13.2) *Educating parents*

(13.3) *Mediation & Conciliation*

Theme 14: Child Custody Arrangements

(14.1) *Joint custody: between parental dynamics and conditions*

(14.1.1) “It is what the law determines”

(14.1.2) The perfect arrangement

(14.1.3) “It is settable regardless of the parental dynamic”

(14.1.4) Conditional joint custody: “It is not to every family”

(14.2) *“The best arrangement is the one that fits the family best”*

(14.3) *Shared caring: not good enough to be applied but not too bad if the child has already adapted*

Theme 15: Making a Child’s Arrangement Decision Involving Adolescents

(15.1) *“It’s quite impossible to go against their will”*

(15.2) *“They can play the game too”: getting into the litigating parents’ dynamic*

Family Domain. Table 18 shows themes that encompass the ‘family’ domain, representing issues related to family interaction dynamics after parental separation that can impact the decision-making process. These include family life, development, member roles, parenting, co-parenting, litigation and coping strategies after divorce.

Some legal actors reckon as a family dysfunctionality whenever a family goes to court to delegate to a third party (the judge) the power to solve its problems. Strategies employed by some families to cope with divorce are signs of a crisis (Feature 1.1). Intensification of these difficulties can lead a family, especially the parents, to become blind to BIC and the family’s well-being (Feature 2.2). For instance, there might be non-assertive behaviours and tackling strategies, often manifesting as ineffective communication and psychological suffering. However, the family can overcome this stressful moment and keep their development and their life cycle going (Feature 1.3).

When a family cannot cope with their developmental struggles, there might be an amplification of non-assertive strategies and behaviours. Some legal actors pathologise these behaviours, labelling them as ‘parental alienation’ (Feature 1.2). Parental alienation can make decision-making more difficult and impair the child’s role within it (Highlights 1.2.1, 1.2.2). Others do not rely on parental alienation assumptions or even accept its relevance to the decision-making process (Feature 1.3).

Most harming factors for children in child custody cases derive from family developmental struggles and non-assertive coping strategies. Also, legal actors see these issues, as well as BIC, encompassed by idiosyncrasies that vary from child to child, family, culture to culture and so on (Feature 6.2).

Table 19

Family Domain's Themes, Features and Highlights

THEME	FEATURES	DESCRIPTION	KEY EXCERPTS
Theme 1: Parental Separation: Crisis and Family Life Cycle	(1.1) <i>Dysfunctionally coping with divorce: family crisis</i>	Feature 1.1 captures dysfunctional strategies used by families to cope with times of hardship after parental separation	<p>"I understand that [parents are] going to court and asking the judge what are the best interests of the child is a dysfunctionality in the family itself." BR_SP.Psy.01</p> <p>"Generally, what tends to happen is that there is a lot of heat when it comes to [parental] separation and that kind of tends to cloud a lot of the judgements when it comes to contact [with the child]." EN_Lw.03</p> <p>"Everyone is very hurt, there is no communication. Making a decision regarding child custody at this moment is very complicated." BR_Pr.01</p> <p>"[the parents need to] cope and overcome this moment of crisis so they will be able to see and care for their child again." BR_POA.Psy.01</p>
	(1.2) <i>Misunderstanding and pathologisation of family interactions and coping strategies in the context of child custody cases: perspectives on parental alienation</i>	(1.2.1) Tricks the decision-making	<p>"Parental alienation is common, all [child] custody proceedings have a claim of parental alienation." BR_Pr.01</p> <p>"I don't like to use the term 'parental alienation' because it has a number of connotations which don't necessarily help." EN_Jd.02</p> <p>"I think that parental alienation has become fashionable, when in fact you have to value how this was built, how the other took part, and not whether or not there is parental alienation." BR_SP.Psy.02</p>
	Feature 1.2 captures legal actors' and the judiciary's conceptions and understandings regarding family crisis, which see some of the family's dysfunctional coping strategies as examples of 'parental alienation'	(1.2.2) Impairs the child's role	<p>"Parental alienation [is a situation] in which the child is in service of the adult's desire." BR_POA.Psy.04</p>

Theme 1: Parental Separation: Crisis and Family Life Cycle	(1.3) <i>Parental separation as part of the family life cycle</i>	Feature 1.3 captures conceptions that see parental separation as part of the family's developmental cycle, and that non-assertive behaviours might happen in such situations due to the crisis that the family is going through, which is typical in parental separation	<p>"It is a phase of life transition and that is how I see it. It is a phase of going through transitions, and sometimes they are very emotional and people, maybe, do not know how to deal with it in a positive way." BR_POA.SW.03</p> <p>"Some people sometimes ask me: <i>Does divorce destroy families?</i> It depends on the family; some get destroyed, others do not, some [families] understand that it is something temporary and that time will heal those wounds and the children need to be protected." BR_BsB.Jd.01</p>
Theme 2: Hindering the Best Interests of the Child	(2.1) <i>Conjugality vs Parenthood</i>	Feature 2.1 captures a frequent issue faced by separated parents involved in high-level litigation: they cannot distinguish parental issues from conjugal ones	<p>"Well, quite frequently my experience is that when there's still hostility between parents about why their marriage is broken down that can influence greatly influence their attitude towards either visiting contact... to be able to see the other parent, to be able to facilitate that." EN_Psy.09</p> <p>"I think that [separating parenting from conjugality issues] it is something that, many times, [must] pass through strong psychological support. I think the judiciary is not always prepared for that." BR_Pr.02</p>
	(2.2) <i>Detaching from the child and attaching to the litigation</i>	Feature 2.2 captures issues related to situations in which parents are so involved in their own matters, and within which they keep up the conflict, that they can neglect and harm the child's well-being	<p>"Parents go deep into the dispute and forget the child and the main aim, which is to protect and ensure a healthy development for the child and promote a positive familial coexistence." BR_POA.SW.01</p> <p>"Sometimes there is a father who comes here and wants to fight in court because the mother spent the alimony on a R\$2.00 [£0.30] nail polish." BR_BsB.Lw.03</p> <p>"Parents get to a very entrenched position and are incapable of seeing any good in the other parent and this makes the geography of everybody involved much more difficult. Sadly, these cases are not uncommon." EN_Jd.03</p> <p>"It's about winning a case and not about what is best for the child at all. You know, to the extent of completely ignoring what the child wants." EN_Lw.06</p>

Theme 2: Hindering the Best Interests of the Child

(2.3) *Lack of parenting skills*

Feature 2.3 captures issues regarding parents who do not have the necessary parental skills to protect the child and/or promote the child's welfare

"I am going to call it the emotional immaturity of the parents, you know? This is when there is no pathology involved." **BR_Pr.05**

"Sometimes a parent does not have the slightest ability to look after the child, for various reasons, people who have problems with drugs, with alcohol, so we have several cases like this." **BR_BsB.Jd.01**

(2.4) *"No 'child maintenance', no contact with the child"*

Feature 2.4 captures parents' perspectives that misunderstand BIC by making the contact between the child and the non-custodial parent conditional upon receipt of maintenance payments

"Those with lower-wage parents misunderstand a lot the issue of alimony and the issue of coexistence. So, if the father does not want to pay alimony, the mother says: *ok, then I will also not let you see my child*. The child becomes a bargaining chip." **BR_BsB.Jd.02**

"They [parents] associate alimony with the right to have contact with the child. It happens especially amongst people who have very little education, this is rare in the middle class, but it happens there too." **BR_BsB.Jd.03**

(2.6) *Misunderstanding joint custody*

Feature 2.6 captures misunderstandings regarding joint custody

"Sometimes the person says: *Ah, I want joint custody because I want to see my son every day*. This is not joint custody. The joint custody is joint care, co-responsibility." **BR_BsB.Lw.02**

"The parents see the joint custody as a kind of mystery, it is something that "everybody likes" but they do not have a clear notion about what this kind of arrangement really is." **BR_SP.Lw.04**

"The law does not define well what this joint custody would be, because, you see, in truth, family power was already enshrined in the law beforehand." **BR_Pr.02**

(2.7) *Involving the child in parental conflict*

Feature 2.6 captures issues related to high-level litigation situations in which the parents involve the child in their conflict, by either co-opting them to one side, forming alliances, or neglecting the children who

"[the parents can harm the child's best interests when] putting pressure on the child, or, first of all, by exposing the children to the conflict, by negative talk about the other parent." **EN_SW.01**

"The child feels in the middle of it and is often put in a position of mediating this dispute between parents. It demands from the child a psychological basis and structure that are not there. I have seen cases in which the child ends up somatising these struggles." **BR_SP.Psy.03**

		are forced to assume roles and functions more suited to adults or parents	“Some children become carers for parents who are facing a really difficult marriage break down. They take on too much responsibility, emotionally they’re not really ready for.” EN_Psy.09
Theme 6: Applying BIC	(6.2) <i>Idiosyncrasy</i>	Feature 6.2 captures characteristics that make BIC application idiosyncratic	<p>“It [BIC] will depend on the customs, moral and cultural values of each family, because we know that each family has its principles, its morality, and this will vary from family to family.” BR_BsB.Lw.01</p> <p>“I consider that [BIC] is extremely subjective from case to case because it varies so much, the way that the guidelines are interpreted.” EN_Psy.04</p>
Theme 8: Making the Decision-making Process Harder	(8.1) <i>Misconduct, maltreatment and abuse allegations</i>	Feature 8.1 captures situations in which there are allegations of abuse, violence or maltreatment against the child that make the custodial decision-making process even harder	<p>“They [hardest cases] are those in which there are allegations of violence of any kind.” BR_SP.Psy.02</p> <p>“If a parent thinks that there is a possibility of abuse from the other [and makes allegations], it is a bad case from the start”. BR_SP.Psy.01</p> <p>“Whether there are domestic violence allegations, true or not, whether there is a sexual abuse allegation or not... that causes problems, whether it’s true or not because the court doesn’t know how to deal with it, only the parties know or only God knows whether that is true.” EN_Lw.02</p> <p>“Cases involving allegations of sexual abuse. Because they are almost impossible to prove. It is very difficult to find pieces of evidence to support them because they sound more as made-up narratives.” BR_SP.Psy.04</p>
Theme 15: Making a Custodial Arrangement Involving Adolescents	(15.2) <i>“They can play the game too”: getting into the litigating parents’ dynamic</i>	Feature 15.2 captures legal actors’ perceptions that adolescents can consciously and intentionally involve themselves in the parental conflict	<p>“They [adolescents] tend to make alliances with one or the other according to their own interests.” BR_Pr.06</p> <p>“The chances of the child finding they can play one off against the other are massively enhanced and ... that’s quite often the case that leads to the kind of private law proceedings in which I end up getting involved.” EN_SW.05</p>

Participants noted context issues within the family that can jeopardise BIC: a) overlapping of conjugal and parental issues leading to acrimony between parents – hence, parents are not focused on the child’s interests but rather on issues stemming from the broken relationship (Feature 2.1); b) parents can be overly involved in their own issues such as a litigious conflict, which can make some parents detach from the child and attach to the ‘litigation game’ (Feature 2.2); c) the lack of parenting skills, for instance when one or both parents have difficulties, limitations or risky behaviours, which weaken their ability to care for a child (Feature 2.3); d) parental misconduct, maltreatment and abuse allegations (Feature 8.1); e) conflating child maintenance with their right to keep contact with the non-custodial/resident parent and misunderstanding ‘joint custody’ (only in Brazil; Features 2.4, 2.6); f) involving the child in the parental conflict, where children can get triangulated within their parents’ conflicts by picking sides and forming alliances, or being forced to assume parental roles and functions (Feature 2.6); and g) adolescents can even ‘play the game’ by engaging themselves in the parental conflict (Feature 15.2).

Family Court Domain. This domain captures themes that emerge from legal issues constraining the decision-making process. As Table 20 shows, these issues refer to the application of the law and its limits, organisational and procedural issues as well as how the court views the child during the decision-making process. From participants’ accounts of law limitations, legal mindset (Feature 3.1) and organisational issues (Feature 3.2), it seems these issues, alongside the family domain, most pressurize the decision-making process in child custody cases.

Another issue regarding the family court domain is the application of BIC, which was reported as being unclear and vague (Feature 6.1). Participants also see situations in which both parents are equally meeting the child’s needs, and legal actors

feel unable to pick one or another (Feature 8.2). Another challenge is dealing with adolescents as sometimes the court feels it is impossible to set an order capable of determining what an adolescent should do regarding their custody (Feature 15.1). At the end of the day, adolescents can do whatever they want once they leave the court. The older the adolescent, the weaker are legal custody measures.

Legal-psychosocial Domain. The legal-psychosocial domain comprises themes regarding the evaluation services in Brazil and England. This domain also refers to the legal actors' practices and their emotional struggles during the decision-making process, as shown in Table 21.

The involvement of psychologists in the evaluation process in both countries is different. In Brazil, they are regularly involved and their work bounces between the fear of being targeted by litigation (as pointed by BR_SP.Psy.04) and bravery to act as a child's advocate (Feature 3.3). In England, the work of psychologists is required only in complex or intractable cases and they see themselves as an advocate for the child (Feature 3.4). Brazilian judges and prosecutors tend to see psychosocial staff (psychologists and social workers) as 'family firefighters' as these professionals would be the only solution for intractable cases (Highlight 9.1.1). However, the Brazilian evaluation service tends to not have a protocol to guide their practice (Highlight 9.1.3). This is the converse of the English service, which has a more protocol-based practice (Highlight 9.2.1). Nevertheless, some participants see the English service as a non-evidence-based service (Highlight 9.2.2)³⁶.

³⁶ The [CAFCASS website](#) states that "practitioners use the Child Impact Assessment Framework (CIAF) when carrying out their analysis. The CIAF is a structured framework that sets out how children may experience parental separation and how this can be understood and assessed at CAFCASS. It builds on our existing knowledge and guidance and follows a consistent and evidence-informed approach helping practitioners to find an outcome that is in the best interests of the children involved. The framework is informed by external research and our experience of supporting 140,000 children per year".

Table 20*Family Court Domain's Themes, Features and Highlights*

THEME	FEATURES	DESCRIPTION	KEY EXCERPTS
Theme 3: The Judiciary's Constraints & Practices	(3.1) <i>"The law is powerless": legal and epistemological limitations of law</i>	(3.1.1) Limits of law	<p>"I think in every divorce, or almost every divorce to some degree, the child suffers, that is my perception. But I think the law is powerless to solve this kind of problem." BR_BsB.Jd.04</p> <p>"We can make orders about what should happen to a child, but judges have no power to make sure it will happen." EN_Jd.01</p> <p>"The [family's] reality often does not fit into legal guidelines." BR_BsB.SW.01</p>
	Feature 3.1 captures issues that the law cannot affect or control, such as domestic dynamics, parents' behaviours outside the court, and daily routines involving the child. Also, law limitations would refer to the impossibility of preventing the child from suffering during parental separation	(3.1.2) Litigious mindset	<p>"If people want to fight, they will be able to and they will continue to fight whether the judgment has closed the case or not, because usually in a case like this, one parent wins and the other one loses." BR_Pr.03</p> <p>"I clearly see that with [people involved in] a case of divorce, the role of the judiciary is triangulated as 'the great third'. This is a way of maintaining an emotional bond [with the ex-partner]". BR_BsB.Psy.04</p>
	(3.2) <i>Organisational issues</i>	(3.2.1) Time & Workflow	<p>"I work in a context in which we have very little time to elaborate a psychosocial evaluation and provide psychosocial information to the judge. BR_BsB.Psy.05</p> <p>"They [CAFCASS] have a too-tight timeline to deal with it. I think it can be that they rush sometimes, and I don't think they always look deep enough into the cases to get enough information from the parents and obviously from the children." EN_Lw.05</p>

Theme 3: The Judiciary's Constraints & Practices	(3.2) <i>Organisational issues</i> Feature 3.2 captures the judiciary's issues that constrain child custody cases, such as time, staff, workflow, workload, magistrates' careers, court dynamics, and legal actors' training and knowledge regarding BIC and family dynamics after separation	(3.2.2) Staff & Workload	<p>“CAFCASS, they do a decent job, but they are overworked and underpaid and they just have got too many cases, so, sometimes the reporting back is very sloppy.” EN_Lw.02</p> <p>“We are in an institutional lapse in which many colleagues have retired. We are waiting for a public tender [to have more staff] and in the meantime, things are difficult. So, at this moment, we have five psychologists, three of them also work with juvenile court and the other two with domestic violence.” BR_POA.Psy.01</p>
		(3.2.3) Judges' career & Courts	<p>“There are some judges who are just ‘standing by’ the family court, they have to spend time in this kind of court so they can achieve their career goals. This kind of judge tends to commit atrocities like saying, in the middle of the hearing, <i>I do not like family court or family law. I am here just for a short time so you better get an agreement.</i>” BR_SP.Lw.04</p>
		(3.2.4) Lack of training and knowledge	<p>“I think it is necessary to have training for the improvement of some instruments such as interviewing children, for example, which is something that I cannot even assure because we do not learn this during our undergrad training.” BR_POA.Sw.02</p> <p>“What always scared me a lot in the courts is that you go there and everything is ‘guesswork’, with little scientific reasoning for the act, so ‘we will choose the mother’ okay, but on what criteria, based on what?” BR_POA.Lw.03</p>
Theme 6: Applying BIC	(6.1) <i>Indeterminacy</i>	Feature 6.1 captures legal and conceptual limitations that make ‘the BIC’ principle an unclear and vague construct	<p>“I have no way of giving you a definition [for BIC]. If you are going to look into the doctrine that underpins it, there is no specific definition for that principle.” BR_BsB.Lw.01</p> <p>I think it's a very fluid concept, the best interests of the child. I think it's open to interpretation.” EN_Lw.07</p> <p>There are unclear guidelines [for BIC].” EN_SW.01</p>

Theme 8: Making the Decision-making Process Harder	(8.2) <i>Tied Parents: “I cannot pick one”</i>	Feature 8.2 captures perceptions regarding situations in which both parents present similar contexts	<p>“In situations where there is no clarity about who has the best conditions to protect or at least to take better care of the child [it is hard to make a decision]. BR_BsB.Jd.01</p> <p>“What is more difficult are those cases in which both parents want the custody and both have similar conditions to be awarded the custody.” BR_Pr.03</p>
Theme 9: Assessing BIC in Child Custody Cases: Evaluation Services	(9.1) <i>‘Psychosocial Study’: the Brazilian model</i> (9.1.2) Interdisciplinarity	Feature 9.1 captures the Brazilian evaluation process carried out by psychosocial staff, called a ‘psychosocial study’.	<p>“In some cases of greater complexity, they [psychologists and social workers] conduct the study together and in some cases of less complexity, they will do it separately.” BR_BsB.Psy.01</p> <p>“If a case is considered of high complexity, it will be evaluated in pairs [psychologist and social worker].” BR_BsB.Psy.05</p>
Theme 15: Making a Custodial Arrangement Involving Adolescents	(15.1) <i>“It’s quite impossible to go against their will”</i>	Feature 15.1 captures legal actors’ perceptions that it is impossible to force an adolescent comply with a legal custody decision	<p>“You do not have much to do when it is a teenager. It is very difficult for you to order: <i>you’re going to stay with your father...</i> he/she just takes his/her stuff and goes back to his/her mother’s house, and that is the way it is, and what can we do?” BR_BsB.Jd.01</p> <p>“The older the children, the judge becomes increasingly powerless.” EN_Jd.01</p> <p>“Essentially the older the child, the higher is the likelihood that any judge is going to make an order which is going to hold him with something that was partially accepted and was what they want. Because once you step out, they will vote with their feet anyway.” EN_Jd.04</p> <p>“They [adolescents] are going to vote with their feet; in other words, the adolescent will go to live with whichever parent he or she wants to live with.” EN_Jd.03</p>

Table 21*Legal-psychosocial Domain's Themes, Features and Highlights*

THEME	FEATURES	DESCRIPTION	KEY EXCERPTS
Theme 3: The Judiciary's Constraints & Practices	(3.3) <i>Between fear and bravery: the psychologists' practice in Brazil</i>	Feature 3.3 captures Brazilian psychologists' perceptions on the edges of their work	<p>“Working with fear is not for me, a judge once said that if we were to work here we would have to be fearless.” BR_SP.Psy.02</p> <p>“It has happened to me that a lawyer questioned my competency and attached my résumé to the case transcripts in order to question my work. He had his own retained expert, then he used my résumé to claim that I was not good enough. [...] This aspect, this characteristic of private family law cases makes us [staff] quite reluctant”. BR_SP.Psy.04</p>
	(3.4) <i>An advocate in intractable cases: psychologists' practice in England</i>	Feature 3.4 captures English psychologists' commitment to safeguarding the child's welfare in intractable cases	<p>“I'm only involved when the case is quite complicated” EN_Psy.09</p> <p>“We call intractable disputes between parents that cannot reach any agreement. And the child is potentially suffering because of it.” EN_Lw.04</p> <p>“[I see myself as] an advocate for the child. So, you are working for... If you're working with the child you're working for the child.” EN_Psy.02</p>
Theme 8: Making the Decision-making Process Harder	(8.3) <i>Legal actors' emotional struggles</i>	Feature 8.3 captures the legal actor's emotional struggles in child custody cases	<p>“There are some cases that I feel so sorry for the child, because the fight destroys the child's mental health, we feel so sorry.”</p> <p>BR_SP.Jd.01</p> <p>“Sometimes you suffer a lot, because I say, you cannot, because of the father's problems, the mother's problems, you cannot solve this case. It is very sad.”</p> <p>BR_POA.Jd.02</p>

Theme 9: Assessing BIC in Child Custody Cases: Evaluation Services

(9.1) <i>‘Psychosocial Study’: the Brazilian model</i>		“Whenever the case goes to psychosocial study, it is because the parental conflict is very serious.” BR_BsB.Jd.03
	(9.1.1) Family firefighters: the role of psychosocial evaluation	Highlight 9.1.1 encompasses legal actors’ perceptions that see psychosocial staff as the only solution for intractable cases “So not all cases go to a psychosocial evaluation. Only in cases we notice a conflict; cases in which the parents agree do not go to psychosocial evaluation.” BR_Pr.01 “I think when I help adults to reflect on what is the best for a child, on how the child will be better, I am doing something the judiciary should do, which is to protect the child. I think that protection should be present in all instances.” BR_BsB.SW.01
	(9.1.3) Non-protocol-based practice	Highlight 9.1.3 encompasses legal actors’ perceptions regarding the lack of default procedures, guidelines and structured aims to conduct the evaluation “We do not have a standard, a rigid methodology.” BR_POA.Psy.03 “We do not use any protocol.” BR_BsB.Psy.03 “I think professional freedom is important, but I think it is also important to build a methodology of service, something that is consistent and incorporates some principles.” BR_BsB.Psy.05
	(9.2) <i>‘Children and Family Court Advisory and Support Service – CAFCASS’: the English model</i>	
	(9.2.1) Protocol-based practice: Children Act, Section 7 Report	Highlight 9.2.1 encompasses legal actors’ perceptions regarding the British evaluation process and their structured guidelines “In most of those cases, there will be a report on section 7 of the Children Act, prepared either by a CAFCASS office or, if local authorities social services are involved, by a social worker.” EN_Jd.01 “Every children application that is sent to the court is ultimately sent to them and they initially do what is called a safeguarding report to check if there are any safeguarding welfare issues.” EN_Lw.01
	(9.2.2) Non-evidence-based practice	Highlight 9.2.2 encompasses legal actors’ perceptions regarding the lack of evidence in some CAFCASS officers’ report “Reading through [the report], it was just absolute nonsense, it was just the CAFCASS officers’ views, it wasn’t based on facts, or logic or reasonableness.” EN_Lw.02 “I would say that a lot of the guidance we used to follow in CAFCASS was based on opinion, as opposed to hard research or based on evidence, and I think that could be a criticism that you might level at the system.” EN_SW.01

Part II: Making Sense Out of Uncertainty to Act: Cognitive Strategies

To make sense of uncertainty caused by context issues, legal actors use cognitive strategies. Themes presenting cognitive strategies resemble ‘heuristics’ and ‘metacognition’ strategies that reduce the complexity of uncertain situations. Heuristics constrain what legal actors select, consider and analyse within the child custody scenario. They are used to draw attention towards a possible solution by organising and making sense of uncertainties in the case environment. Metacognition strategies confirm that whatever decision/action legal actors reach is right considering the goal state.

Heuristic Themes. Heuristics provide *strategic knowledge* that is applied to select “operators that are most likely to lead to the goal state” (van Gog et al., 2005, p. 237). They are a cognitive mechanism used to search the problem space and make decisions within the task environment (Hutchinson & Gigerenzer, 2005). They provide ‘rules of thumb’: guidelines based on practice rather than theory (Shah & Oppenheimer, 2005). Heuristics simplify our environment and aid the decision-making process (Rehak et al., 2010). A disadvantage of using heuristics is the potential loss of accuracy and the fact that they usually go unseen by decision makers (McCray et al., 2002). Heuristic themes can be divided into four domains: a) selection; b) evaluation; c) degrees of freedom; and d) outsourcing decisions & resolution.

Selection. Selection heuristics prioritise what is important and what should be searched or considered in decision-making. As seen in Table 22, selection involves issues regarding the child’s welfare, the child-parent relationship as well as factors that legal actors consider in decision-making.

Table 22*Selection Heuristic Domain's Themes, Features and Highlights*

THEME	FEATURES	DESCRIPTION	KEY EXCERPTS
Theme 5: Promoting BIC in Child Custody Cases	(5.1) <i>Preserving basic (material-physiological) needs and rights</i>	Feature 5.1 captures elements that legal actors select in child custody cases to promote the child's basic needs and rights	<p>"All the aspects that refer to the basic needs [...] housing, physical well-being, clothing, food." BR_BsB.SW.02</p> <p>"Physically safe environment that kind of applies for their educational welfare, it will keep them healthy, give them food and clothes to wear." EN_Psy.06</p>
	(5.2) <i>Enhancing the child's psychosocio-emotional well-being</i>	Feature 5.2 captures elements that legal actors select in child custody cases to address the child's psychosocio-emotional well-being	<p>"[One has to look after children's] mental health, preserving their emotional and social well-being." BR_BsB.Lw.02</p> <p>"Regarding post-separation, the emotional impact on a child is something that is a real concern." EN_Lw.02</p>
	(5.3) <i>Preserving the relationship with both parents</i>	Feature 5.3 captures elements that legal actors select in child custody cases that are related to the child's relationship with the non-custodial parent	<p>"[to protect] this coexistence with the other parent or even with other people of the family is important and is a child's right." BR_Pr.03</p> <p>"I think you have to try very hard to make sure that you keep the relationship going between the child and both parents." EN_Jd.01</p>
	(5.4) <i>Protecting the child from parental conflict</i>	Feature 5.4 captures elements that legal actors select in child custody cases related to protecting the child from the litigious dispute between the parents	<p>"I think in such cases [child custody] the peace of the child is jeopardised because the child is involved in the dispute, what is taken from her/him is precisely this, it is peace and tranquillity." BR_POA.Psy.02</p> <p>"First thing is to form a clear agreement that could enable the parents to agree on a certain course of action, which will not put the child in a conflict situation. So, sparing the child from that conflict by having a clear agreement." EN_SW.01</p>
	(5.5) <i>Maintaining the sense of stability</i>	Feature 5.5 captures elements that legal actors select in child custody cases that are related to the child's perception of continuity	<p>"What most affects [children] in a divorce situation, is the loss of the current stability." BR_BsB.Lw.03</p> <p>"I think that the thing is that kind of stability is the background, the bedrock of the child's life and you don't disturb it. They need their interests and they need stability outside of the parental relationship." EN_SW.01</p>

Theme 7: Decision-making Process	(7.5) <i>Addressing the child's interpersonal contexts</i>	Feature 7.5 captures legal actors' perceptions that the child's interpersonal relationships and interactions are important inputs for the custodial decision-making process	<p>"The best interests of the child go, necessarily, through the family's well-being." BR_BsB.Jd.02</p> <p>"The best interests of the child cannot be seen in an isolated way, it has to be seen related to a context and to the family's capabilities and/or to the environment in which the child is in." BR_BsB.SW.01</p> <p>"So it is important that [children] have a relationship with the extended family, because that's their roots, that's their connection, they have to." EN_Lw.02</p>
	(10.1) <i>What is assessed?</i>	(10.1.1) Child's development stage and specific needs	<p>"I think each stage [of development] is specific, right? I mean, the very condition of being a child, a younger child, an older child, means different interests and rights." BR_BsB.SW.01</p> <p>"We try to figure out the child's needs in each step of their development and what's the parent's role in this whole process. Based on this information, we can be more confident when suggesting sole or joint custody." BR_BsB.SW.01</p>
Theme 10: Assessing BIC in Child Custody Cases: Procedures, Sources and Tools	Feature 10.1 captures aspects related to the child's development, routine, emotional bonds, and characteristics of the family context that are assessed during the evaluation process	(10.1.2) Child's daily life and routine	<p>"I examine which one of them [the parents], within their routine, better accommodates the child, who has more availability of time, which is more able to support the child on a daily basis; for example, schooling, help with homework." BR_BsB.Jd.01</p> <p>"What kind of things did they do? It's not just about all activities and doing nice things, because you also have to do things in the home, like living normal home life, which is not just about having fun all the time. There is cooking, having a meal together, sitting at the table, watching a TV program together." EN_SW.02</p>
		(10.1.3) Family dynamic and its reality	<p>"[it is important] to analyse, to consider the family; what their morals are, their customs, how they have developed as a family." BR_BsB.Lw.01</p> <p>"The psychosocial evaluation can bring out the panorama of family relations and the dynamics of how that family and the conflict work." BR_Pr.01</p>

Theme 10: Assessing BIC in Child Custody Cases: Procedures, Sources and Tools

10.1) *What is assessed?*

Feature 10.1 captures aspects related to the child's development, routine, emotional bonds, and characteristics of the family context that are assessed during the evaluation process

(10.1.4) Child-parent relationship

“The relationship between them [parents and child] is evaluated, the level of complicity, the relationship they have [...] the companionship, intimacy, whether they are emotionally close.” **BR_BsB.Lw.01**

“Watching the parent play with the child is quite interesting, you know. Do they have to win all the time? What does that tell me about their relationship with the child? You know, how coercive are the parents in the way they talk to their child? Are they seeking to get the child as an ally, you know?” **EN_SW.04**

(10.1.5) Parenthood & Co-parenting skills

“It is important to see which of them is more flexible in regard to maintaining the contact between the child and the other parent.” **BR_BsB.SW.01**

“You look at the parenting, the parents' relationship styles and you look at whether or not they're sensitive to the needs of the child or whether they're unresponsive so they avoid or neglect the needs of the child and prioritize their own or whether they try to control the child within their relationship.” **EN_SW.04**

(10.1.6) Healthcare

“Sometimes, I ask one of the parents, ‘Did the kid take all the needed vaccines for their age?’ and if they answer, ‘Oh, I do not know because the vaccination card is with their mother’... well, the vaccination card is with the mother, but we still are talking about their kid, so they should have known.” **BR_POA.SW.01**

(10.1.7) Neglect, maltreatment & risk factors

“We tend to see risk and protection factors, not only in cases of vulnerability, even in a context of social vulnerability, even in contexts of families more privileged economically, we try to investigate what the emotional risk factors are, the ones for coexistence.” **BR_BsB.Psy.03**

“The stimulation they receive, whether there's any neglect, whether there's a risk of chaotic living or whether there is any risk to the child posed by the parents because they have mental health problems, drug abuse and so forth.” **EN_Psy.04**

(10.3) *Tools and strategies to assess*

Feature 10.3 captures tools and strategies that psychosocial staff use to assess the child's best interests in child custody cases

(10.3.1) Interviewing parents and/or other family members

“Interviews are conducted individually with each parent and sometimes with other relatives to help us understand how the family are organised and how their dynamic as a family is.” **BR_POA.SW.01**

“I begin by interviewing both parents. So that is, that is the critical first step for me, is to give a picture of what's going on basically in the broadest sense possible.” **EN_Psy.05**

Legal actors are concerned to protect the child's biopsychosocial and emotional needs. They do so by selecting information regarding the child's basic needs and rights that refer to material issues (e.g., clothing, housing, physical safety) and physiological ones (e.g., nourishment, health) – Feature 5.1. Legal actors also want to ensure the child's psychosocio-emotional needs, especially the child's mental health after the parental separation. Hence, they look for information regarding the child's emotional and social well-being as well as their psychosocio development (Feature 5.2).

Another issue is the relational dynamic between the child and their parents, with special concern to preserve the affectional bond between them (Feature 5.3). Legal actors also collect information on the child's position in the parental conflict, to protect the child from acrimonious interactions between parents (Feature 5.4). The 'peace of the child', as stated by BR_POA.Psy.02 in Table 22, is identified by legal actors as something that needs to be worked on.

Legal actors collect information that help them grasp how the child's perception of stability is being affected – they understand that the child's sense of continuity has to be preserved by ensuring financial, relational, and spatial stabilities – but mainly emotional stability and sense of routine (Feature 5.5). Information regarding the child's inter-relational contexts (e.g., extended family, peers, community, school, church) tend also to be selected by legal actors during decision-making (Feature 7.5).

For a psychosocial assessment, factors that legal actors select are: a) child's general development and routine (Highlights 10.1.1, 10.1.2); b) the interactional dynamic between family members, parents and the child (Highlights 10.1.3, 10.1.4, 10.3.1); c) co-parenting skills (Highlight 10.1.5); d) the child's healthcare and signs of neglect, maltreatment and risk factors (Highlights 10.1.6, 10.1.7).

Evaluation. Evaluation heuristics set up general principles and/or guidelines based on practice rather than theory. Table 23 shows that some legal actors do not see the child as an active agent in the decision-making process. Some believe that the child should not even know about the court proceedings at all. These perceptions lead to the understanding that, for some legal actors, the child is completely excluded from the decision-making process (Feature 2.5). As Table 23 shows, an agreement between parents can be a rationale to not hear the child at all during the evaluation process. There is an assumption that, if adults agree, then the child's interests are safeguarded (Feature 7.1). Another issue regarding hearing the child during the evaluation process is how old the child is (Feature 7.3). For some legal actors, hearing older children (i.e., older than 8) is easier because they can speak their minds more comprehensively. Older children make proceedings easier because their communication skills are such that talking to and understanding them do not require special training. In England, alongside the age criterion, some legal actors seek to establish the child's 'Gillick competence', which indicates if a child is psychologically mature enough to understand all the circumstances and their implications.³⁷

When involving a child in the evaluation process, legal actors tend to: a) comprehend what the child's meaningful relationships are (family, school, friends); b) find out how children see their family and the conflict itself; c) understand their routine, and who is involved in it (Highlight 10.3.2). To capture all this information, psychosocial staff usually plays games, build up a genogram (only in Brazil) or use drawing to interact and talk to a young child, as they observe their behaviour. Another strategy is to visit the family household to see the child in their natural context. This was referred to only by Brazilian experts (Highlight 10.3.3).

³⁷ Idem 19.

Table 23

Evaluation Heuristic Domain's Themes, Features and Highlights

THEME	FEATURES	DESCRIPTION	KEY EXCERPTS
Theme 2: Hindering the Best Interests of the Child	(2.5) <i>Exclusion position</i>	Feature 2.5 captures legal actors' perceptions regarding the child's secondary role in the custodial decision-making process	<p>"I do not see [the child] as an actor in this process." BR_BsB.Jd.01</p> <p>"I do not see any active participation [of the child] in order to help us make a decision, no." BR_BsB.Jd.02</p> <p>"What is terrible is that the child almost gets ignored as a person in the dispute between the parents." EN_Lw.06</p> <p>"Ideally, the child should not know that there are court proceedings." EN_Jd.03</p>
	(7.1) <i>"There is no need to hear the child if there is a parental agreement"</i>	Feature 7.1 captures legal actors' perceptions that a young child speaking of wishes, feelings and views is not needed during the custodial decision-making process, if there is an agreement between the parents	<p>"In the vast majority of cases where parents come to court and quickly reach an agreement, it would be rare for the child to be seen by the judge." EN_Jd.01</p> <p>"That is, when the adults agree, we do not ask what the best interests of the child are. It is assumed that if the adults are on the same page, BIC is preserved, from this perspective." BR_SP.Psy.01</p>
Theme 7: Decision-making Process	(7.2) <i>Between inadequacy and lack of skills: "I do not hear the child"</i>	Feature 7.2 captures legal professionals' inability to properly hear the child, or the inadequacy of doing so during the custodial decision-making process	<p>"We rarely talk to the children [...] The judge, by the number of cases, does not have the time to do this and he/she is not prepared to do it, he/she has no training to do this." BR_SP.Jd.02</p> <p>"I do not like it [hearing the child] because when the child arrives to be heard by the judge, it is usually in the context of a conflict of loyalty." BR_Pr.01</p>
	(7.3) <i>Listening to the Child's voice: the older, the better</i>	Feature 7.3 captures legal actors' perceptions that see the older child as a better informant of their wishes, feelings and views	<p>"I confess that I prefer to talk with adolescents than with young children because there are no instruments and methodologies, and no specific training is needed for this." BR_POA.SW.02</p> <p>"Especially if it's a child over age 8, 9, 10, when they are able to express their views. It's very difficult when they are very small, at 1, 2, 3, 4, the decision is made purely then from an objective perspective and maybe an expert might say as to what is in their best interest." EN_Lw.03</p>

Theme 7: Decision-making Process			“It will depend on the age of the child. Obviously, that’s one big parameter. It’ll depend on whether the child has Gillick competency.” EN_Psy.05
	(7.4) <i>Trading-off interests</i>	Feature 7.4 captures legal actors’ perceptions regarding the ways in which they trade-off the various factors relating to the child’s needs during the custodial decision-making process	<p>“This [emotional bond] is a tie-breaker criterion. It’s pointless to let the child with a parent that has a good income, lives nearby the school, is well-educated but does not have a good affective bonding with the child be granted custody, so affective issues will prevail.” BR_SP.Jd.03</p> <p>“In child custody cases, you have to weigh what is the best interests of that child concerning the type of custody, the coexistence arrangement, alimony, etc...” BR_Pr.01</p>
	(7.6) <i>The children as subjects of rights and as an active agent in their reality</i>	Feature 7.6 captures the legal actor’s perceptions regarding the relevance of the child’s role in the custodial decision-making process	<p>“I think there is the issue of the child being seen as a subject, as someone who feels, that can participate, who has an opinion and understands what is happening [...] I think it [the child’s role] has to be an active role, [they are] a protagonist for me, I think the child has to speak.” BR_BsB.Psy.02</p> <p>“[Children] cannot be seen as if they were an object, they cannot be objectified in the custody dispute [...] as if one could do whatever one wants, as if the child were a clay mass that one can shape in whatever way one wants.” BR_BsB.Psy.03</p>
Theme 10: Assessing BIC in Child Custody Cases: Procedures, Sources and Tools	(10.3) <i>Tools and strategies to assess BIC</i>		<p>“[When] I’m with the child or the young person, I try just to talk about their relationships generally, I usually am seeing them in school. So I ask them first about the school relationships just to kind of ease them into the discussion.” EN_Psy.07</p>
	Feature (10.3) captures tools and strategies that psychosocial staff use to assess the child’s best interests in child custody cases after parental separation	(10.3.2) Interviewing the child	<p>“I suggest the drawing [to start the interview], I can begin by observing how they decide what they are going to draw, how the negotiation is made.” BR_SP.Psy.01</p>
		(10.3.3) Visiting the family household	<p>“Visit the place where the child lives and there you see the child in context, how he or she deals with that context of preference.” BR_BsB.Psy.02</p> <p>“I think that visiting the house is the most important instrument. Through the visit to the family household, it is possible to identify which space the child occupies in that context.” BR_SP.SW.02</p>

Some needs seem to be more important than others during the decision-making process, such as the child's emotional bonds and right to family coexistence (Feature 7.4). However, these can be overridden if there is jeopardy to the child's physical or mental integrity. Due to the dynamism between aspects of the child's needs, some legal actors believe weighing the child's needs and trading them off some is an important step during decision-making.

Degrees of Freedom. These heuristics constrain or limit decisions in child custody cases. Table 24 shows that the welfare checklist presented in Section 1(3) of the Children Act 1989 is the main constraint, in England, on BIC (Feature 5.6). Some Brazilian legal actors set joint custody because that is what the law says, especially when there is no agreement between parents (Highlight 14.1.1). Others think the custodial arrangement must fit with the family (Feature 14.2). Thus, the best arrangement is one that contextualises itself into the child's and family's reality and highlights the family's capacities. Legal actors also have mixed feelings regarding shared care (Feature 14.3).

Outsourcing Decisions & Resolution. This heuristic relate to sorting child custody cases outside the court. Table 25 shows that school seems to be the greatest source of information outside the legal environment (Feature 10.2). Another way to outsource decisions, avoiding parental litigation, is by empowering the family. Legal actors can give parents the chance to make their own arrangements, as it might preserve the child's interests and the family's general well-being (Feature 13.1). The rationale is that the State should not disturb a family's dynamic that is going well as, sometimes, an imposed modification can make things worse. In addition, the family shall have their independence from the judiciary fostered. Most of legal actors also sees mediation, conciliation or treatment as an aid to avoid BIC-harming litigation (13.3).

Table 24

Degrees of Freedom Heuristic Domain's Themes, Features and Highlights

THEME	FEATURES	DESCRIPTION	KEY EXCERPTS
Theme 5: Promoting BIC in Child Custody Cases	(5.6) <i>Addressing the Children Act's welfare checklist</i>	Feature 5.6 captures elements that English legal actors consider in child custody cases in order to promote the child's welfare	<p>"Well, I think the welfare checklist in Section 1, subsection 3 sets out all that you need to know [to address BIC]." EN_Jd.01</p> <p>"Perhaps in Britain, the best interests of the child are represented by the welfare checklist [...] So, for me, I always refer to the welfare checklist." EN_SW.03</p> <p>"I tend, certainly, on a difficult case, to go through each element of the welfare checklist quite slavishly." EN_Jd.01</p>
	(14.1) <i>Joint Custody: between parental dynamics and conditions</i>	Feature 14.1 captures legal actors' perceptions regarding their understanding and application of the 'joint custody arrangement'	<p>"Today, the law determines that the legal custody is joint custody. Moreover, the law states that the rule is joint custody" BR_BsB.Jd.02</p> <p>"The custody, as a rule, should be joint custody. I try to follow it because that is the rule, that is [what was] enacted" BR_BsB.Jd.03</p> <p>"The law is clear, without agreement between the parties, the custody will be joint, except in rare hypotheses" BR_POA.Jd.01</p>
Theme 14: Child Custody Arrangements	(14.2) <i>"The best arrangement is the one that fits the family best"</i>	Feature 14.2 captures legal actors' perceptions that the best arrangement is the one that best fits the family's reality and possibilities	<p>"The best arrangement is the one which best fits the family. It is important to consider the characteristics of both child and family." BR_SP.SW.01</p> <p>"Well, my thought is that you cannot have a one-size-fits-all policy. Every case is different. You've got a different dynamic between the child and the parents. And I think it's very dangerous to have very specific views about what is going to be best. I think you have to look at each case individually." EN_Jd.04</p> <p>"Everything I have seen over the years since then has been a softening of that; along the lines of: it's whatever works for the family and it's whatever works for the child." EN_SW.01</p>

(14.3) <i>Shared caring: not good enough to be applied but not too bad if the child has already adapted</i>	<p>Feature 14.3 captures the legal actors' perceptions that understand the shared caring as a good option if it fits the family and the child's reality and needs</p>	<p>"Many parents already come up with this arrangement in court, it is no problem at all for me if it is working, that is what we want, what we are looking for. If the child has adjusted, it is perfect! However, if it will impose this routine on the child, I do not grant such an arrangement." BR_BsB.Jd.01</p> <p>"That's not an arrangement that I personally like, I have reservations about that; but, if two parents come to me and say "this is what we agreed that should happen", then I would let it happen. But I think it's problematic." EN_Jd.01</p>
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Table 25*Outsourcing Decisions & Resolution Heuristic Domain's Themes and Features*

THEME	FEATURES	DESCRIPTION	KEY EXCERPTS
Theme 10: Assessing BIC in Child Custody Cases: Procedures, Sources and Tools	(10.2) <i>Sources of information: school, caregivers and protection network</i>	Feature 10.2 captures input from school, caregivers or social services, taken into account during the evaluation	<p>“The school is a great indicator, school performance and the child’s behaviour at school is an indicator of the child’s needs, the problems they are facing, and how these problems are presenting themselves.” BR_Pr.01</p> <p>“Input from the child’s social network is an important reference point for the judge to be able to make that decision.” BR_Pr.01</p> <p>“Always talk to professionals, if possible, who knew the child... usually that would be a school teacher or the head of the school, who would give us some sort of insight into how the parents’ dispute, because there’s always a dispute involved, how it [parental dispute] is affecting the child.” EN_SW.01</p>
Theme 13: Strategies to Avoid ‘BIC-Harming Parental Litigation’	(13.1) <i>Self-arrangement: empowering the family</i>	Feature 13.1 captures issues that advocate for self-arrangements for child custody by prioritising the family’s capacity and competency to know and understand its own reality and needs.	<p>“We have to try to give back their ability to solve their own issues. ‘<i>Oh, it is in your hands,</i>’ we say, ‘<i>we will inform the judge, but the power [to find a better solution] is in your hands</i>’. Everything goes through the parents.” BR_BsB.SW.02</p> <p>“Many times an imposed solution, in the family court, can create and even increase the conflict, depending on the case.” BR_Pr.02</p> <p>“Parents come in all shapes and sizes, some might be wonderful, others might be not so wonderful, but at the end of the day, this is their child and the state and the court should not be intervenient unless they really have to.” EN_Jd.02</p> <p>“The court is not going to be there forever, the court isn’t going to be involved in their lives in every decision, so if upon separation we can get them to work together and to come up with a plan together, then that kind of works for the future of the child.” EN_Lw.01</p>

Theme 13: Strategies to Avoid
' BIC-Harming Parental
Litigation'

(13.3) *Mediation & Conciliation*

Feature 13.3
captures extra-
judicial initiatives to
promote family
mediation or
conciliation in child
custody cases, with
the aim of mitigating
parental litigation
and BIC hindering

“Mediation, conciliation... these things that can solve the situation without having to
judicialize the issue.” **BR_BsB.Psy.02**

“First, you will try family mediation, through dialogue, make the parties talk with the help
of a third party, and get them to work out a solution.” **BR_POA.Jd.02**

“I have been using parental mediation to try to help the parents separate the conjugal
issues from parenting and it has helped a lot.” **BR_SP.Jd.03**

“So, mediation is an opportunity for parents to try to solve their problems together.
Without somebody, a stranger or a judge, for instance, having to make decisions on their
behalf.” **EN_Lw.04**

“Under the English system, parents are encouraged to go to meetings, mediation before
going to court, but, again, there was a problem with funding mediation – it doesn’t happen
as often as it should.” **EN_Jd.03**

Metacognitive Themes. These themes resemble *metacognitive knowledge* that is applied as a supervising and monitoring aid, which functions in the “process of selection and application of operators by keeping track of the progress toward the goal state” (van Gog et al., 2005, p. 237). This type of strategy ensures that the decision maker feels comfortable with their decisions/actions throughout the decision-making process. That is important because decisions made in natural settings are high stakes (Patterson et al., 2016; Orasanu & Connolly, 1993). Metacognitive themes have three domains: a) custodial arrangements; b) professional practices; and c) BIC speech.

Custodial Arrangements. This metacognitive strategy influences legal actors’ views or preferences for a certain type of custodial arrangement. Table 26 shows that Brazilian legal actors tend to see joint custody as the perfect arrangement because it would not only address BIC but also provides a balance of power between parents (Highlight 14.1.2). This metacognitive strategy might reinforce decisions due to legal constraints regarding joint custody in Brazil (Highlight 14.1.1).

For some legal actors, joint custody would also spare the child becoming an object to be bargained over. Thus, joint custody should be awarded regardless of other issues like the co-parenting dynamic (Highlight 14.1.3) Nevertheless, some legal actors, including English ones, think this type of arrangement should be conditional (14.1.4). Hence, the minimum conditions to set up joint custody would be: a) mutual respect between the parents; b) good co-parental communication; c) ability to share decisions; d) no signs of major risks to the child if the custody is joint.

Table 26*Custodial Arrangements Domain's Themes, Features and Highlights*

THEME	FEATURES	DESCRIPTION	KEY EXCERPTS
Theme 14: Child Custody Arrangements	(14.1) <i>Joint custody: between parental dynamics and conditions</i> Feature 14.1 captures legal actors' perceptions regarding their understanding and application of the 'joint custody arrangement'.	(14.1.2) The perfect arrangement	<p>"I rarely order a sole physical custody. Joint custody, to me, really, was an incredible breakthrough in the child protection issue" BR_BsB.Jd.01</p> <p>"I understand that joint custody is the one that best meets it [BIC], precisely because it offers a balance of power in the exercise of family power" BR_BsB.Jd.01</p>
		(14.1.3) "It is settable regardless of the parental dynamic"	"[the legislator wanted to say:] <i>It does not matter if you do not get along... the custody is joint, make it work, you will have to figure it out</i> ". It puts they [parents] both on an equal footing. I think that is the most important thing" BR_POA.Psy.02
		(14.1.4) Conditional joint custody: "It is not to every family"	<p>"As long as there is respect between parents; they do not need to be friends, but they need to be able to talk to each other with respect, talk and solve their children's stuff. [...] If they fight, forget about it [granting joint custody]." BR_BsB.Jd.02</p> <p>"I think if you have eliminated any particular risks for the child then I think joint custody is always going to be the best outcome, for the best interests of the child. Because children thrive the more people they have involved." EN_Psy.08</p>

Table 27*Professional Practices Domain's Themes, Features and Highlights*

THEME	FEATURES	DESCRIPTION	KEY EXCERPTS
Theme 4: (Mis)Understanding BIC	(4.2) <i>"It has nothing to do with psychology"</i>	Feature 4.2 captures the ways in which some psychologists do not see BIC as linked to their practice	<p>"I think that within psychology no one discusses this [BIC]." BR_BsB.Psy.03</p> <p>"Actually, we do not use that term [BIC] much. It's a legal term." BR_BsB.Psy.01</p> <p>"I did not hear about the best interests of the child in psychology, this question is not asked." BR_SP.Psy.03</p> <p>"Actually, we do not use that term [BIC] much. It's a legal term." BR_BsB.Psy.01</p>
Theme 11: Dichotomies in Lawyers' Practice	(11.1) <i>Enrolling the dispute</i>	Feature 11.1 captures the lawyers' involvement in the parental litigation by enrolling themselves within, or increasing the acrimony between litigating parents	<p>"It's very easy as lawyers to become aggressive, to become overly involved in a case to the point where all you are doing is being a mouthpiece for your client." EN_Lw.04</p> <p>"There are times that lawyers do not help because they have those interests, interests in continuing the litigation, they want the fight because then they will have some financial benefit." BR_SP.Jd.01</p> <p>"Sometimes you see that the lawyer is fighting more than the clients. If I take out the lawyers and leave the two parties here, they will calmly talk to each other..." BR_SP.Jd.01</p>
	(11.2) <i>Putting parents' interests first</i>	Feature 11.2 captures lawyers' practices and perspectives that put parents' interests before the child's	<p>"The lawyer acts in the interest of their client, and often the interest of their client is not exactly in the best interests of the child. [...] Sometimes, by defending the client's interest, the lawyer ends up violating the child's." BR_BsB.Jd.01</p> <p>"My role is not to promote what is in the best interest of the child, my role is to advise my clients as to whatever their subjective opinion is, how would it be received by the law?" EN_Lw.02</p>

Theme 11: Dichotomies in Lawyers' Practice	(11.3) <i>Safeguarding the child's welfare</i>	Feature 11.3 captures lawyers' practices and perspectives around commitments to safeguard the child	<p>"The role of the lawyer in the context of the best interests of the child is to make the parents understand that the custody dispute does not concern them; it concerns the child." BR_BsB.Lw.01</p> <p>"I got to keep bringing them back down to the basics: <i>this is about the child and it is a child-centred, child-focused decision that the courts make; it's not about what you think, it's not about what the other party thinks, this is about what is in this child's best interests.</i>" EN_Lw.03</p>
Theme 12: Legal actors' biases and BIC	(12.1) <i>Gender</i>	Feature 12.1 captures the legal actors' gender biases during the custodial decision-making process	<p>"I think there is a gender issue there. It is crucial, because of biological factors and not because of cultural factors, that the mother breastfeeds, and I cannot get a child out of breastfeeding." BR_BsB.Jd.04</p> <p>"A baby will not be able to express his or her will, and of course the baby will want to go with the mother. Usually, the biggest bond for a baby is with the mother." BR_POA.Lw.01</p> <p>"The tendency still, in Brazil, and that I can say, can be a gender problem. The child will stay with the mother. I would say, in Brazil, that if the mother wants to stay with her son, she hardly will not." BR_Pr.06</p> <p>"In practice in England, the biggest problem we have really is that the child is nearly always placed with the mother. Even when you know there are drug difficulties, alcohol problems, it's very rare for the father to get custody of a child." EN_Psy.08</p> <p>"Women end up being villainised in the family courts with this idea of parental alienation as being a practice more associated with women" BR_POA.Psy.02</p>
	(12.2) <i>Personal beliefs</i>	Feature 12.2 captures legal actors' biases related to their personal beliefs that can affect BIC	<p>"I feel that some decisions focus a lot on the personal values of the judge or the prosecutor." BR_BsB.Psy.03</p> <p>"I have seen a judge talking about the bible in a judgment." BR_BsB.Jd.03</p> <p>"Usually, the arguments are based on personal experiences, so the judge says: 'but my son is like this or like that' – they use themselves as a reference which can be good or bad [for the decision-making process]." BR_SP.Lw.04</p> <p>"It is preferable to have a marriage that's not very good than a bad separation. So, if it is terrible to be separated, stay married." BR_Pr.06</p>

Theme 13: Strategies to Avoid , BIC-Harming Parental Litigation'	(13.2) <i>Educating parents</i>	Feature 13.2 captures the need to orientate and educate parents going through a custody dispute	<p>“And also in the process of raising awareness of parenthood, responsible parenthood, [there are] parenting workshops in which parents are invited to talk about it, to discuss it. So, it is an issue of orientation, we have been seeking to guide parents.” BR_Pr.02</p> <p>“We try to guide the parent on how to have a less aggressive dialogue. Some techniques that we try to teach to these parts [parents].” BR_Pr.02</p> <p>“There is something we always say to clients: you must not talk in a derogative manner about the other parent in front of the child, that is against their best interest.” EN_Lw.03</p> <p>“[We try to] educate them [parents] really about the effects on the child of acrimonious dispute.” EN_Psy.07</p>
	(9.1) <i>Psychosocial study’: the Brazilian model</i>	(9.1.2) To intervene or not to intervene, that is the question	<p>The psychosocial role] is to promote reflection, and intervention in some cases, where we perceive cases of vulnerability or risks that are spotted and referred to the support network.” BR_BsB.SW.02</p> <p>“When they come for an evaluation, they come very much in a position of defence. Therefore, I think it is a bit of an illusion for us to think that there will be an intervention, a big intervention. We can suggest interventions, of course, but our role here is evaluating.” BR_POA.Psy.02</p>
Theme 9: Assessing BIC in Child Custody Cases: Evaluation Services	(9.2) ‘ <i>Children and Family Court Advisory and Support Service – CAFCASS</i> ’: the English model	(9.2.3) Risk-avoidance practice	<p>“As with all cases of professionals working with risk, they [CAFCASS] are on the side of caution. Because ultimately, it’s about protecting their own judgment. And covering themselves.” EN_Psy.08</p> <p>“I do think that they are a very risk-averse organization. They certainly have become that. So, for instance, they will always take the safest route, safest route even if it means that a child potentially might suffer by not having a relationship.” EN_Lw.04</p>

Professional Practices. This metacognitive strategy refers to supervising and monitoring legal actors' professional practice. Table 27 shows that, some Brazilian psychologists, understand that BIC is not related to the psychologist's practice, because it is a legal concept. They indicated that this is due to a lack of BIC content within psychology degrees, as stated by BR_SP-Psy.03 (Feature 4.2). If one does not recognise something as part of professional practice, one should not be concerned to address it. By not acknowledging BIC as part of their professional practice, some psychologists do not feel they are ought to address it directly. This strategy copes with difficulties of defining and operationalising BIC, as seen in context features 6.1 and 6.2.

Another issue is when lawyers enrol in the parental dispute, becoming one more 'player in the fight'. This can alter their professional practice, producing outcomes that increase acrimony between parents, perhaps, extending the dispute for years (Feature 11.1). Also, some lawyers see their professional practice as meant to be focused on their clients (parents), which sometimes harms the BIC as the parents are put first in the judicial process. Some lawyers see it as a practical issue: "my role is to represent and defend my clients' interests, regardless" (EN_Lw.02). Based on this excerpt, we note that the judicial practice can push and shape lawyers' practice to that mindset. Participant BR_SP.Jd.03 highlights that as putting the child first is hard for parents, it might be even harder for lawyers.

Like other legal actors (e.g., psychologists and social workers), lawyers have dichotomous issues related to their practice. Feature 11.2 highlights a lawyer's professional practice that can put BIC first, or at least take it into account. Hence, the lawyer can be an advocate for the child's needs by helping their clients (parents) put the child first, even confronting them when their intentions are not child-focused or when

they are too aggressive towards one another. It will depend on each lawyer's mindset, as some might value the people's well-being while others might value the dispute more.

Legal actors' professional practice can be affected by their beliefs and biases, which also work as a metacognitive strategy. For instance, some beliefs refers to physiological attributes of women as a rationale to make a decision or take an action (Feature 12.2). Gender bias can also happen in cases characterised as 'parental alienation' (explored in Theme 1, Feature 1.2) as its assumptions display misogynistic views towards the mother – e.g., mothers are the most frequent alienating parent (Feature 12.1).

Another way legal actors monitor and supervise their decisions/actions is by educating parents on what is the best for the child and how parents could be more proactive towards it (13.2). By applying this professional practice, legal actors can make sure the child's welfare and interests are preserved and that whichever custodial arrangement is set would not be harmed by parents' lack of awareness regarding BIC.

The last professional practice refers to evaluation services. In Brazil, there is an issue whether or not to make interventions when interviewing parents (Highlight 9.1.2). For some psychosocial professionals, making an intervention would ensure BIC, while others think their role is just to collect and report information to the court.

BIC speech. This refers to use of BIC to qualify or justify a decision. Table 28 shows that some legal actors can favour the parents' interests while saying that they are safeguarding the child's. Hence, BIC speech is used rhetorically (Features 4.1 and 4.3). Some lawyers try to find a half-way point between putting the parents' and the child's interests first (Feature 11.4). It attempts to reconcile both perspectives by addressing the child's interests via the client (parent)'s point of view.

Table 28*BIC Speech Domain's Themes and Features*

THEME	FEATURES	DESCRIPTION	KEY EXCERPTS
Theme 4: (Mis)Understanding BIC	(4.1) <i>Focusing and addressing parents' interests instead of BIC</i>	Feature 4.1 captures the misuse of BIC in support of, primarily, adults' needs or interests, instead of those of the child	<p>"Many times [BIC] is confused with the parents' best interests." BR_Pr.02</p> <p>"I understand that the best interests of the child are, actually, what would suit the best interests of the adults." BR_SP.Psy.01</p> <p>"You don't say that. But, some parents are motivated by money. Money is really important to determine what is in the best interests of your child. Trust me, money!" EN_Lw.02</p>
	(4.3) <i>BIC as a rhetorical resource</i>	Feature 4.3 captures the use of BIC by legal actors to justify any action and/or argument, even when it does not focus on the child's interests	<p>"It seems to me that this expression [the 'best interests'] is utilised more as a figure of speech than to express thorough preoccupation. It sounds good when you say 'best interests of the child'. (...) It seems that the problem would be solved just by mentioning it [BIC]." BR_SP.Psy.03</p> <p>"Since it does not seem to be something 'palpable', one can justify anything at the beginning, even to deny or to defend something, not to listen to the child or to listen to the child, to grant custody or to not grant a custody." BR_POA.Lw.02</p>
Theme 11: Dichotomies in Lawyers' Practice	(11.4) <i>Seeing and addressing the child's best interests through the parents' interests</i>	Feature 11.4 captures lawyers' practices and perspectives that try to address the child's interests by articulating them via the parent's interests	<p>"I will defend the child's best interests under the viewpoint of my client." BR_SP.Lw.02</p> <p>"I try to achieve the outcome that my client wants, which should be linked back to what is the child's best interests. [...] But, ultimately, it is not for me to determine what's in the child's best interests, it's for the client to determine with my advice and then we could forward their position." EN_Lw.01</p>

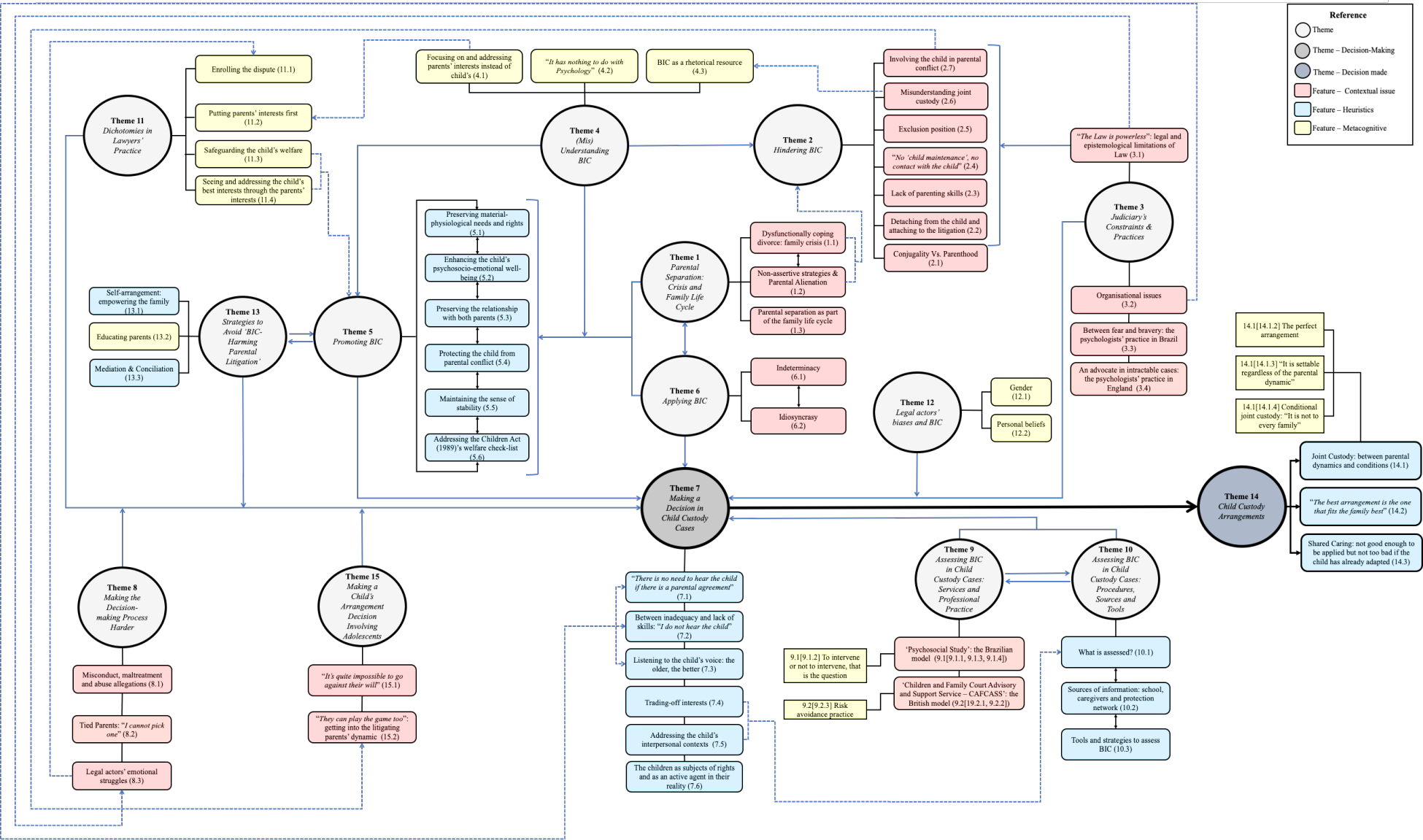
Discussion

Figure 7 presents a thematic map in which the complexity of interactions between context and cognitive strategies can be observed. The map reveals a picture of the child custody scenario after parental separation. It shows how themes and features are connected and interacting. It also shows their classification as either context or cognitive strategies. The separation between context and cognitive strategies is didactic, as they are intrinsically linked by interactions that shift between oppositional and supportive relationships.

Metaphorically, one could see the interaction between two domains as a tug-of-war: on one side are context issues (family dynamics, crisis and developmental issues, organisational and judicial constraints); on the other are legal actors' cognitive strategies (selecting, evaluating, gathering relevant information to help reach a decision and validating actions/decision throughout the process) pulling in the other direction. Depending on how these forces interact, uncertainty can be increased, making decision-making harder. Hence, the sum of these forces can increase the level of uncertainty by enhancing mutual incomprehension between parents, boosting their conflicts, inserting ambiguous or incomplete information into the process, increasing triangulation and bilateral alliances within the family as well as the objectification of the child. The outcomes of this interaction will depend on the singular and specific transactional process between context issues and cognitive strategies issues in every case.

Figure 7

Thematic Map – Connections Between and Within Themes; Features and their Classification (‘Context’ vs. ‘Cognitive’ Strategies)



The results show how context issues play a significant role in the decision-making process. Classical models of the decision-making process in natural settings (Klein et al., 1993) tend to highlight decision makers rather than context actors (parents, children, etc.) as key players in the process. In a child custody cases, decision makers (judges, prosecutors, lawyers, psychologists and social workers) and the family (parents and children) are key players, as they can directly and indirectly affect the decision-making process.

Every decision-making process that is carried out in a natural setting will be surrounded by uncertainty (Klein et al., 1993). Context issues are what makes child custody cases a very uncertain setting. In such cases, uncertainty may lead decision makers to apply strategies that help them to make sense of the setting before them so that they can operate on it. They do so by means of cognitive strategies that can make their focus, principles and actions vary across the categories of legal actors and the decision-making. In some cases, this can make child custody cases even more uncertain.

By observing context themes and their features, it is possible to identify five distinct dynamics that structure uncertainty in child custody cases: a) family crisis and development; b) conjugal vs parental issues; c) triangulations and collusion inside the family; d) legal actors' dichotomous practices; e) BIC understanding, and maltreatment and abuse allegations; and f) judicial constraints (legal and organisational).

The issue that might generate most uncertainty in child custody cases is family dysfunctionality (Feature 1.1) caused by the crisis moment of divorce (Feature 1.3). As seen in Chapter I, It is known that parental separation is linked to the family's development, being part of its life cycle. The family life cycle, within which parental separation occurs, is paced by developmental steps marked by uncertainty, instability and disorganisation, that push family interactions towards a change of pattern that lead

it to the next step of its development (Schabbel, 2005; Mendes & Bucher-Maluschke, 2017a). However, many families struggle with this transitional process and try to cope with it by means of dysfunctional and non-assertive strategies.

Non-assertive coping strategies displayed by a family can mislead decision making and limit the child's role in a custody case (Features 1.2 [1.2.1; 1.2.2]; 3.3). An example is what some legal actors call parental alienation. As stated in Chapters I and II, this is a fragile concept if one considers its conceptual, scientific, ethical and technical dimensions. The label derives from the incomplete, imperfect, ambiguous, simplistic and poor information available in child custody cases – a characteristic common to every scenario in which real-world decisions are made. That information is fed and blurred by context issues that the family display after parental separation. Moreover, the label 'parental alienation' highlights the family's dysfunctionality and does not help to protect BIC or the family's well-being (Barbosa et al., 2021; Maciel et al., 2021; Mendes, 2019; Mendes et al., 2016b; Mendes & Bucher-Maluschke, 2017b; Mendes et al., 2020; Shaw, 2016). This label is imbued with misogyny (Feature 12.1 [12.1.1]), by identifying the 'alienator parent' as the mother (Milchman, 2017a), which leads to biased decisions that disregard women (Milchman, 2017b; Meier, 2020; Meier & Dickson, 2017).

Another context issue deriving from the family's dynamic that can make decision-making more uncertain and complex is the parents' struggle to separate conjugal issues related to their past relationship from parenting and co-parenting ones in the present (Feature 2.1), as well as litigating parental dynamics that tend to make parents detach from the child and attach to the conflict (Feature 2.2). Even when parents are not separated, it is important for the family's functional development that they do not mix issues related to their past relationship as a couple with ones related to their role

as parents (Juras & Costa, 2017; Minuchin et al., 2006). In parental separation, this task seems even more important but even more challenging, especially when parents display high-level litigation and tend to become too attached to the conflict (feature 2.2), sometimes leading to a destructive divorce. As seen in Chapter I, this type of divorce is characterised by non-assertive patterns of co-parental communication that are frequently marked by physical and non-physical expressions of violence. All these dynamics not only indicate how complex a child custody case can be, but also how context issues related to the family's relational and emotional struggles can play a significant role in the decision-making process and its outcomes. In this sense, it would be desirable that legal actors have more knowledge and awareness regarding 'post parental separation phenomena'.

Still regarding the family and its uncertain dynamics, adolescents are significant players as they might be consciously involved in parental conflict (Feature 15.2). This triangulation on the part of the adolescent in the parents' conflict shows that adolescents are not only active players, but they are also active in similar ways inside their family. Triangulation and collusion dynamics are frequent in child custody cases, and they are not necessarily dysfunctional or even permanent, as they might be just a way for the family to navigate and adapt itself through transitional developmental stages, especially very stressful ones (Barbosa et al., 2021; Maciel et al., 2021; Mendes et al., 2017a; Juras & Costa, 2017; Emery, 2012). Some triangulations can even benefit the family. The problem is when the dynamic of a triangulation loses its transitional and adaptive character and becomes a long-lasting transactional structure, highlighting fixed and rigid oppositions that increase tension between family members. This can lead to coalitions, inflexible loyalties and triangulated conflicts that impede the family's

development (Bowen, 1991; Juras & Costa, 2011; Minuchin et al., 2006) and, thus, can impact the decision-making process.

Usually, a child custody case is an environment with multiple shifting goals that can be ill-defined and in competition with one another – another common characteristic for decisions made in natural settings as seen in Chapter III (Orasanu & Connolly, 1993). In such cases, there are situations in which the child's interests should be traded-off (Feature 7.4) and shifted according to some hierarchical criteria (e.g., 'the child's emotional bonds and the right to family coexistence are prime interests' but they can be overruled if "there is a substantial danger to the child's physical or mental integrity"). We have observed this same pattern in Chapter IV when naïve participants, driven by the need to protect the child's welfare, made radical changings in the current custodial arrangements in order to safeguard the child's physical integrity. Both situations reinforce Chapter II's assertions that pointed the intrinsic and interdependent relationship between the child's material-physiological and psychosocio-emotional needs.

The major task for legal actors in a child custody case is dealing with uncertainty. To do so, they use cognitive strategies to organise and make sense of cases. The first step is to determine which aspects of the case they should draw their attention to. This is achieved with strategies, procedures and tools that define aspects such as 'what should be addressed to improve BIC?' and 'what should be assessed?'. Legal actors pointed out that they are interested in preserving the child's basic and emotional needs (Features 5.1 and 5.2), the child's emotional bonds and sense of stability (Features 5.3 and 5.5) as well as protecting them from parental conflict (Feature 5.4). The systematic literature review in Chapter II identified these same aspects regarding the application of BIC.

The second step in managing uncertainty is to employ procedures and strategies to evaluate all relevant aspects. One of the most interesting strategies reported was the decision to not hear the child (either in court or via the evaluations carried out by psychologists or social workers) if there is an agreement between parents – the rationale being that, if the parents agree, it is assumed that the child’s interests are preserved (Feature 7.1). This strategy reveals two important aspects in the child custody decision-making process. The first is the link between this strategy and other elements of child custody cases, such as difficulties or limitations when attempting to hear the child (Features 7.2, 7.3), and the need to cease parental litigation by means of reaching an agreement (Feature 5.4). The second is the fact that the child’s interests are often understood, deliberated upon and applied not only through the adults’ views and perspectives (those of parents or legal actors) but also through their accommodations – e.g., what the evaluators can do, what constitutes their reach, what judges or prosecutors are able to address and decide, how lawyers conduct their professional practice.

The third step is to acknowledge the limitations that shape the whole process. In Brazil, as mentioned before, a clear example is the joint custody that is, by law, a default-decision. In England, a similar example is adherence to the ‘welfare check-list’ presented in Section 1(3) of the Children Act 1989. English legal actors “always refer to it” (EN_SW.03) and tend to use it in the most difficult cases, especially, where they would use that checklist “quite slavishly” (EN_Jd.01). It was expected that the strict Brazilian Civil Law, with its extensive norms, regulations and instructions, would provide legal actors with a more structured and sourceable environment. However, we noticed quite the opposite; Brazilian legal actors have to develop workarounds (e.g. educating the parents – Feature 13.2) because the law is insufficient to efficiently guide the decision-making process and preserve the child’s interests. In a similar but reversed

contrast to expectations, English legal actors, that are compassed by Common Law—which is based on case law and precedents and would appear to provide a looser and more unstructured environment – rely heavily on the law (i.e., Children Act 1989) and strictly associate the child’s best interests with the welfare check-list during the decision-making process. In both cases, those strategies are deployed to deal with uncertainty in child custody cases.

Another strategy to cope with uncertainty is to seek information from outside the family and the family court, or even to place the decision making in an alternative environment, such as family mediation. One of the most interesting strategies reported involved inputs from the school and a visit to the family household. For some legal actors, the school was an important source of information for the decision-making process, particularly in cases that are ‘blurred’. Visits to the family household were reported only by Brazilian legal actors. This practice is regular in Brazilian cases (Quirino & Menezes, 2017) and aims to liaise with the family, especially the child, in their natural context to better understand the family and its issues (Cardoso, 2011).

Throughout these three steps, legal actors will apply reasoning that will draw their preferences to one or another custodial arrangement (Features 14.1, 14.2 and 14.3). They will also accommodate some biased reasoning, procedures and/or actions during the decision-making process such as gender bias (12.1). This type of bias is well known within the child custody field and has been identified in surveys and experiments indicating that ‘mother primacy’ still plays a role in the decision-making process (Costa et al., 2018; Dotterweich & McKinney, 2000).

A final line of reasoning concerns procedures, actions or decisions that use BIC framework as justification. Some legal actors use the framework to virtue-signal (it is noble to act ‘on behalf of the child’s interests’) or to justify any decision or action made

throughout the decision-making process, even when they are contradictory or questionable for what is really the best for the child (Mendes et al., 2020).

Final Considerations

Child custody cases encompass context issues and cognitive strategies in complex and interdependent interactions. This scenario presents context elements regarding the family and the judicial environment that can increase its uncertainty. Even though the results of this study make progress in understanding the decision-making process in child custody cases – which is very under-researched – there are still processes that need to be investigated, for example:

- How context issues are measured and/or weighed by legal actors when making a decision in a specific case?; and
- Do legal actors apply the cognitive strategies identified – selection, evaluation, degrees of freedom, outsourcing decisions and resolution, professional practice, custodial arrangement, BIC speech?

The verbal protocol analysis presented in the next chapter critically examines these questions.

Chapter VI

Coping with Uncertainty: Cognitive Strategies in Child Custody Decision-Making

There are three typical strategies used to cope with uncertainty during a decision-making process (Lipshitz & Strauss, 1997): (1) reduce uncertainty; (2) acknowledge uncertainty; and (3) suppress uncertainty. Strategies to reduce uncertainty are mainly anchored in collecting additional information before one decides. Whenever further information is not available, the decision maker can make some extrapolations based on the information available, then make a decision/take an action. Decision makers can either acknowledge or suppress the uncertainty. These assumptions are pivotal for the RAWFS heuristic (Reduction, Assumption-based reasoning, Weighing pros and cons, Forestalling, and Suppression) proposed by Lipshitz and Strauss (1997) – a classical model of how decision makers cope with uncertainty when making real-life decisions. This model explains how decision makers cope with uncertainty in naturalistic settings. It was based on data gathered from military personnel from Israel Defence Forces, and it is used to understand the decision-making process in various natural settings but is it fitting to child custody cases?

Chapter V showed that, when face uncertainty prompted by the context, legal actors tend to apply cognitive strategies that can help them understand and organise that uncertainty and then make decisions/actions towards a final decision regarding child custody and access/contacts. However, interactions between context and cognitive strategies in sequences of concurrent processes that underlie decision-making cannot be captured in post-hoc rationalisations from interview data. Hence, this chapter presents a decision-making study based on concurrent verbal protocol analysis. The main goal was

to capture the processes with which legal actors recognise and cope with uncertainty in child custody cases.

Theoretical Framework and Assumptions

Every decision-making process that occurs in a natural setting is surrounded by uncertainty (Klein et al., 1993). Uncertainty in real-life decision-making refers to doubts generated by the perception of a problem and its structure and shape in the search for a solution (Lipshitz, 1993b; Lipshitz & Strauss, 1997). In child custody cases, the assembling of estimator variables (e.g., context factors described in Chapter V), and interactions between and within them, are what structures uncertainty. Context factors prompted by the family are a main source of uncertainty because they relate to psychosocial rather than legal issues, which can increase the stress that impacts legal actors' performance. Taking this into account, the theoretical framework that guided the designing of this study was a composite of: (1) Lipshitz et al. (2001)'s assertions regarding types of uncertainty in naturalistic decision-making scenarios; (2) Chapter II's inputs regarding the children's needs/rights and their best interests; (3) interactions between the child's material-physiological and psychosocio-emotional needs as seen in Chapter IV; and (4) cognitive strategies portrayed in Chapter V.

Lipshitz et al. (2001) refer to three types of uncertainty in naturalistic decision-making: (1) inadequate understanding, due to equivocal, novel or unstable information (Weaver et al., 2006); (2) lack of information, because it is incomplete, ambiguous or confusing; and (3) conflicted alternatives, in which decision-making options do not differ sufficiently, meaning they can be equally attractive or unattractive. Chapters IV and V's findings showed that in child custody a level of uncertainty is always present. Ambiguity factors structure those three types of uncertainty and so they were manipulated in this study's experimental conditions.

Based on the findings reported in Chapter V, we selected two categories of needs: *preserving basic (material-physiological) needs and rights* (described in section 5.1) and *enhancing the child's psychosocio-emotional well-being* (section 5.2). We addressed the two most representative needs in each category: 'education' and 'physical well-being' for material-physiological needs and 'child-parent relationship' and 'sense of stability' for psychosocio-emotional needs. All four needs were presented and interacted within each condition.³⁸ Based on Chapter IV's findings, we assume that the complexity prompted by interactions between these needs would affect decision-making. Hence, in the first condition, these needs were presented as conflicting – i.e., by safeguarding a type of need, one would jeopardise or make harder to safeguard the other type of need. In the second condition, needs interacted independently, meaning that assuring one need would not make difficult to assure the other one.

Previous chapters, combined with the literature, point to the frequent association, especially in Brazil, between BIC and allegations of parental alienation. Thus, we inserted elements that alluded to parental alienation in each condition. Results from Chapter V also suggest heuristics that legal actors use to cope with uncertainty. Hence, this study considered both heuristics (selection, evaluation, degrees of freedom, outsourcing decisions & resolution) and metacognitive strategies (custodial arrangements, professional practices, BIC speech).

Verbal Protocol Analysis

Verbal protocol analysis was chosen as a research method because it does not change “the underlying structure of the thought processes and thus avoids the problem of reactivity, namely, where the act of generating the reports may change the cognitive processes that mediate the observed performance” (Ericsson, 2006, p. 224). This

³⁸ See Table 46 in Appendix W for more details.

methodology is fitting for studies that address the Justice System, as legal experts can find difficult to explain post-hoc their thought processes and how they make decisions because they “are often unaware of the specifics of what they do, let alone how they do them” (MacMillan, 2015, p. 47). This makes verbal protocol analysis one of the most effective ways to reveal knowledge regarding cognitive processes of experts (Ericsson, 2006; Ericsson & Simon, 1984/1993). In addition, it is also appropriate for investigating decision-making processes (Kuusela & Paul, 2000).

Verbal protocol analysis requires participants to think aloud contents of their conscious awareness while performing a task, instead of just describing, explaining and/or rationalising what they are doing (Ericsson & Simon, 1984/1993). This method assumes that contents of working memory can be expressed verbally and that verbalisation does not modify the sequence and content of thoughts related to the task (Ericsson, 2006; Trickett & Trafton, 2009). Verbal protocol analysis can also reveal misconceptions, conceptual changes, strategies, mastery and effective responses that experts might portray while performing tasks (Trickett & Trafton, 2009). Another advantage is its flexibility. Fox et al. (2011) identified 1,926 studies from different areas that addressed verbal protocol analysis involving sports, games, learning processes, consumer behaviour, weather forecasting and others. This method is more concerned with process rather than outcomes, providing a detailed picture of what happens during the task, giving a sophisticated analysis of performance (Trickett & Trafton, 2009). In this study, participants gave think-aloud reports about their decision-making concerning who a child was to live with and/or the time they were to spend with their parents.

There are three levels of verbalisation in think-aloud studies (Ericsson & Simon, 1984/1993). Level 1 refers to covert vocalisation or oral encodings. Level 2 is descriptions or explanations of one’s thoughts without evaluation. Level 3 refers to

more structured verbalisations such as explanations of a thought, ideas, hypotheses or motives. This study considered all three levels³⁹.

Verbalisation can occur while the task is being carried out (concurrent) or after the task is completed (retrospective). Concurrent verbalisation provides insights into thought processes that exclude rationalisations (Kuusela & Paul, 2000). In a retrospective approach, one is asked to report thoughts after performing the task. Here, we chose a concurrent approach.

Goals and Hypotheses

This study aimed:

- 1) to identify the sequence in which legal actors seek, dismiss or call for information to make decisions regarding child custody;
- 2) to identify types of uncertainty (i.e., inadequate understanding, lack of information, conflicted alternatives) that legal actors face;
- 3) to investigate how legal actors cope with uncertainty and how they map heuristics and metacognition onto context and vice-versa;
- 4) to explore how legal actors' uncertainty-coping strategies and heuristics affect BIC.

Method

Participants

Legal actors from Brazil and England took part in this study. Participants included some of the professionals who took part in the interview study (Chapter V) plus additional participants recruited for this study. At least four participants were recruited per profession category and per country. There were more than four eligible

³⁹ Some researchers exclude 'Level 3' from their analysis process as this kind of verbalisation might constrain an introspective dimension that can lead participants to reflect on their thoughts and order them – see MacMillan (2015). We understand that the choice for considering all levels of verbalisations or just part of them is intrinsically related to each study's goals. For this study, Level 3 verbalisations were important to depict relevant cognitive process that outlined the codes regarding 'screening the context' – see subsection 'Coding Scheme' in the Method.

participants in some categories, so they were assigned randomly using the online tool www.random.org.⁴⁰ This study was approved by University of Sussex Sciences & Technology C-REC under the Certificate of Approval ER/JA454/5⁴¹. A total of forty-five participants were recruited – 27 Brazilian, 18 English, 62% females. Mean years of experience was 14.5 ($SD = 8.7$) in Brazil and 16.9 ($SD = 10.6$) in England. Appendix R presents participants' basic sociodemographic information. The average amount of words per protocol was 2,481 (varying from 785 to 9,917 words) in Case A and 1,596 (varying from 376 to 4,791 words) in Case B.

Design and Materials

The design addressed the interaction between material-physiological and psychosocial/emotional needs. We manipulated ambiguity (contradictory and incomplete information) throughout the conditions. Contradictory information was meant to make legal actors unsure about the situation where conflicting claims were made (e.g., one parent accuses the other of physically abusing the child; the accused parent accuses the other one of 'alienating the child'). Incomplete information was meant to generate the sense that certain elements were missing or were insufficient to help legal actors understand the case (e.g., it is not possible to prove allegations of physical abuse or maltreatment).

The child's needs were addressed differently in each case:

- *Case A*: material-physiological and psychosocio-emotional needs interacted in a *conflicting* way. For instance, the case portrayed a situation in which a

⁴⁰ If after seven working days the participant did not respond, we moved onto the next participant in the randomised list, until we reached the minimum number of four participants per category/country. Most of the last study's cohort did not reply or was unable to take part in this study. Hence, in Brazil, 33% of that cohort took part and only 16% of English previous participants were enrolled. After exhaustively liaising with legal actors from Brasília, São Paulo and Porto Alegre, we recruited participants from Goiás (a state located in the same region of Brasília) in order to reach our minimum number of participants as well as to accomplish our research schedule.

⁴¹ Information Sheet available in Appendix P and Consent Form in Appendix Q.

material-physiological need made it difficult to satisfy a psychosocial-emotional need, and vice-versa;

- *Case B*: material-physiological and psychosocio-emotional needs were *independent* from one another. For instance, the case portrayed a situation in which material-physiological need was not directly related to a psychosocial-emotional need, and vice-versa.

Procedure

Participants analysed each case and then made a recommendation regarding who the children were to live with and/or the time they were to spend with each parent. Vignettes were adapted from real cases available on legal databases. Participants went through a series of three information blocks until they reached a recommendation:

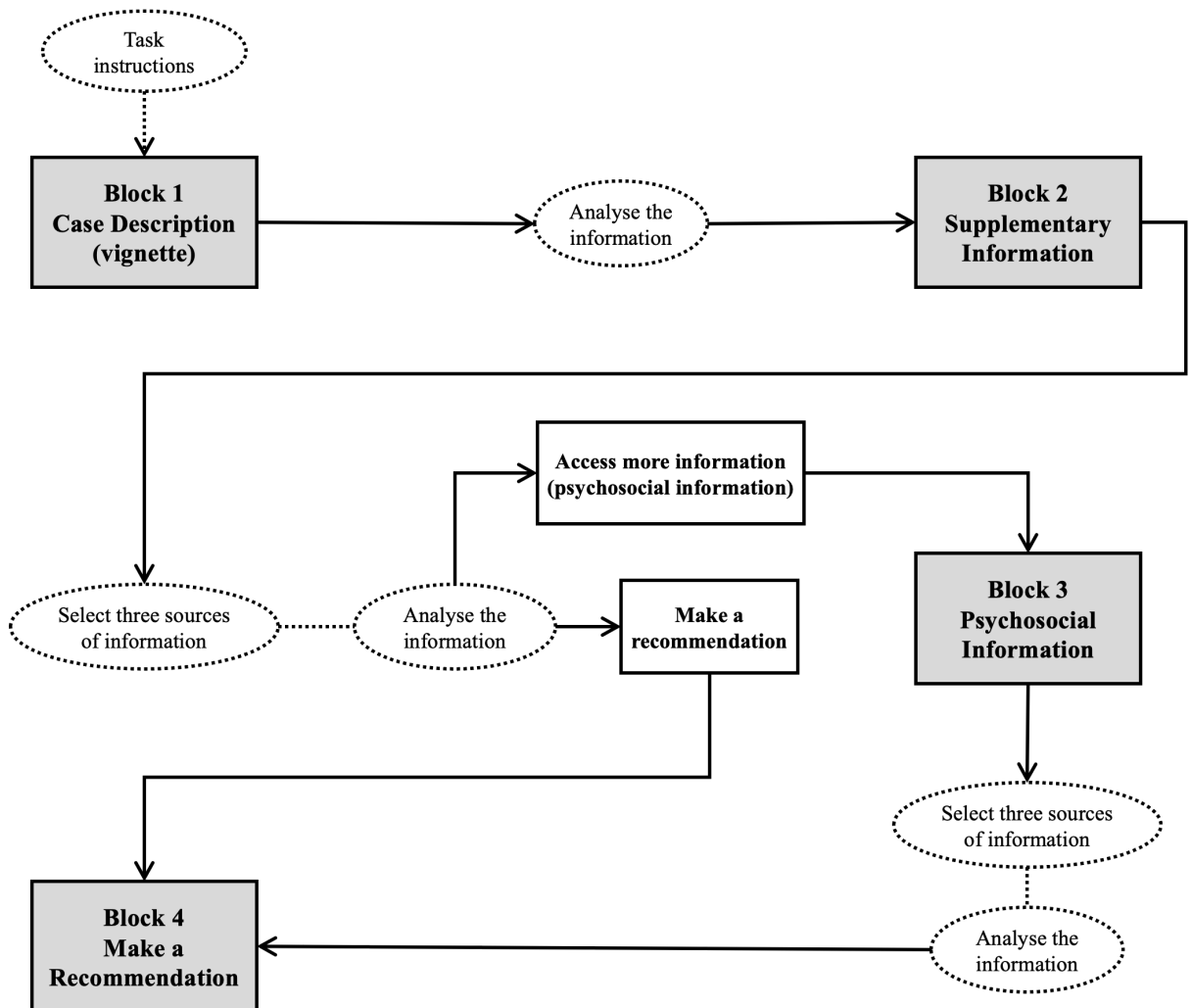
- 1^o block – Case description (vignette): both cases had the same structure: a) *brief couple history* (how they become a couple and had a child); b) *reason to seek family court* (reasons that led parents to seek judicial intervention); c) *parents' statements about the case* (their arguments); and d) *their request* (decisions parents would like the court to make). Parents were presented without gender descriptors;
- 2^o Block – Supplementary information: this was a mandatory phase in which participants could choose three sources of supplementary information amongst eight different options: a) *the children's age*; b) *the children's gender*; c) *details about coparental communication*; d) *each parent's gender*; e) *both parents' financial information*; f) *details about past and current custodial arrangements*; g) *parents' formal education*; and h) *parents' criminal records*;
- 3^o Block – Psychosocial information: Participants could choose to access further information about the case before deciding. They could choose three sets of information from six different options (see Table 29).

- 4^o Block – Making a recommendation: from the information gathered in blocks 1, 2 and 3, participants made a recommendation regarding who the children were to live with and/or the time they were to spend with their parents.

Table 29*Sets of Psychosocial Information*

<p><i>1 – Health & Physical Integrity</i></p> <ul style="list-style-type: none"> - Material-physiological needs/rights - Child's health care - Neglect, Maltreatment & Risk factors 	<p><i>2 – Bonds & Relationship</i></p> <ul style="list-style-type: none"> - Parent-child relationship - Child's interpersonal contexts - Family dynamic 	<p><i>3 – Parental issues</i></p> <ul style="list-style-type: none"> - Parental conflict - Parenting & Co-parenting skills
<p><i>4 – Child's Development & Emotional well-being</i></p> <ul style="list-style-type: none"> - Child's developmental stage - Child's psychosocio-emotional well-being - Child's daily routine and stability 	<p><i>5 – Extra judicial information</i></p> <ul style="list-style-type: none"> - Reports from School - Reports from social services 	<p><i>6 – Child's wishes and feelings</i></p> <ul style="list-style-type: none"> - Child's views and feelings

Figure 8 gives a flow summarising the experiment's design for both conditions:

Figure 8*Experimental Conditions' Design*

The experiment was hosted by the online platform Qualtrics. Appendix S presents the specific content of each experimental condition as well as instructions participants received throughout the experiment.

Data Collection

Participants received a link to a meeting using Zoom, and shared their screen with the experimenter, but with cameras turned off. The experimenter only intervened by prompting '*please keep talking*', whenever the participant remained silent for more than 10 seconds. Verbalisations were also recorded using a Sony ICDBX140 Digital

Voice Recorder. The researcher registered the participant's choices of information sources and other relevant data throughout each case.

Data Analysis

The audio recordings were transcribed and segmented into intervals of 10 seconds. Initially, these segments were chosen as the unit of analysis (MacMillan, 2015). However, after pilot coding⁴² three randomly selected verbal protocols (11%) from Brazil and three (16%) from England, the unit of coding was changed to segments of transcribed audio corresponding to an interval of 20 seconds, reflecting the coding scheme's complexity and to avoid unnecessary division of sentences between segments.

Initially, the construction of this study's coding scheme was top-down and had two domains: (1) type of uncertainty (based on Lipshitz et al. [2001]'s work); and 2) cognitive strategies identified in Chapter V. After pilot coding, we identified another domain of codes: screening the context, a process in which legal actors do a screening of the decision-making context and, based on their expertise, practices and experiences, identify key issues regarding the case. See Appendix T for a full description of each code. Pilot coding showed that it was possible to identify more than one type of uncertainty within the same segment. For instance:

*What is happening with these parents and why are they making these allegations?
Why there is one believing it's unsafe for the other to have contact with the parents,
with the children? – Code IU (Inadequate Understanding). So I want more
explanation on that – Code LI (Lack of Information).*

More than one code referring to cognitive strategies could also be present in the same segment, as in this example (codes shown in brackets):

My view, bearing in mind the wishes and the feelings of the children (LIC), bearing

⁴² Following Chi (1997)'s recommendation.

*in mind the capacity of these parents (CFR), bearing in mind all of the factors in the welfare checklist (LAB), is that the existing arrangement would meet the needs of the children... (FTA) if both parents were to respond appropriately.*⁴³

All segments that were not coded as screening, uncertainty or cognitive strategy were coded as ‘recapitulation’, i.e., whenever the participant recapitulated information that they just had accessed without further probe or meaningful reasoning. These segments were not considered for the purposes of this study’s analysis. A flowchart for the coding process is available on Appendix U. The coding process was carried using Microsoft Excel – Appendix V shows an example of the sheet used during this process.

Statistical Analyses

Data were checked for compliance with parametric assumptions of normality and homogeneity, and for outliers. Descriptive and inferential statistics analysis were run using SPSS v25. For the types of cognitive strategies, we summed scores of the codes. For instance, ‘Selection’ = BNR + PEN + CFR.

Results

General Trends

Brazilian participants took, on average, 35 minutes to complete Case A ($SD = 17$) and 26 minutes and 13 seconds to complete Case B ($SD = 13.6$). English participants took, in average, 26 minutes ($SD = 10$) to complete Case A and 20 minutes to complete Case B ($SD = 7$). A two-way mixed ANOVA showed a significant effect of Case on the time spent to complete the task. Participants spent more time in Case A ($M = 31.72$) than in Case B ($M = 22.82$) [Pillai’s Trace = 0.28; $F(1, 43) = 17.02$]; $p <$

⁴³ The codes correspond as follows: LIC – Listening to the child; CFR – Child’s family reality; LAB – Law-abiding; FTA – Family-tailored arrangement. See Appendix T for further information.

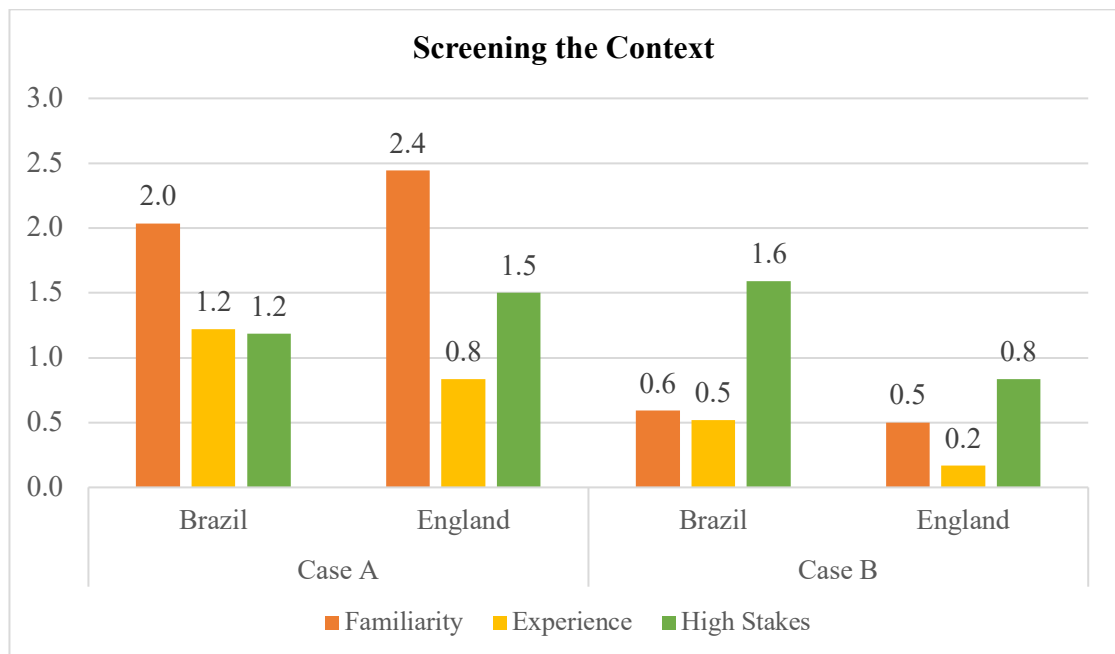
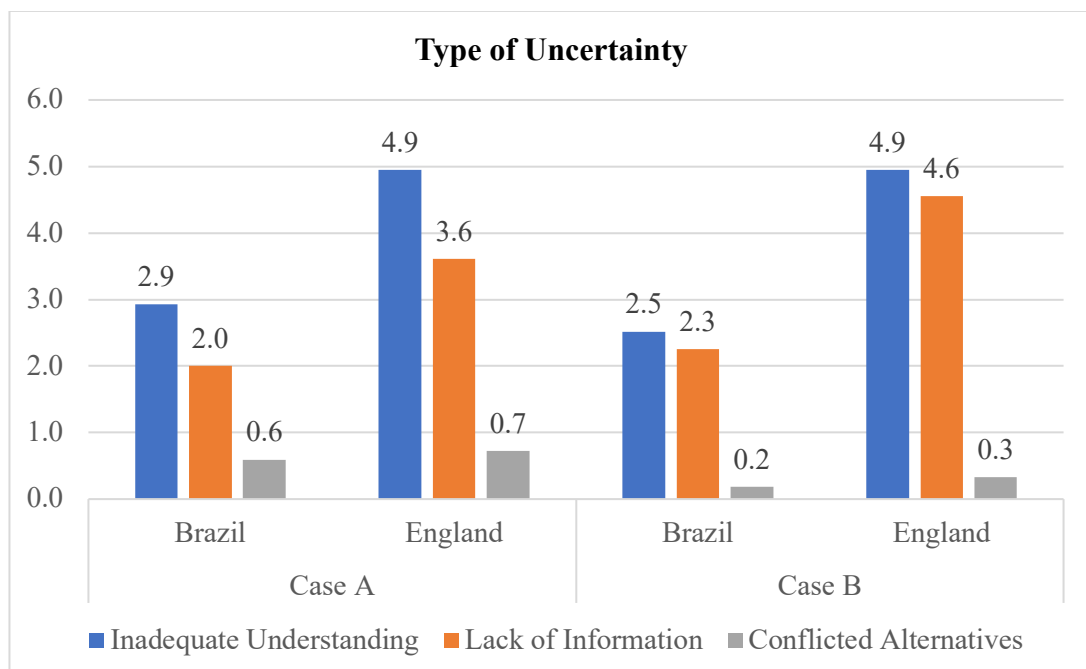
0.001].⁴⁴ Participants spoke, on average, 122 words per minute ($SD = 21$) during Case A and 117 words per minute ($SD = 25$) during Case B. No statistically significant differences were observed when comparing mean values of verbalisation for both cases and countries.

The mean values presented in the figures below were set by dividing the number of occurrences of each code by the number of participants in each country undertaking each case. A two-way MANOVA showed an effect of Case [Pillai's Trace = 0.50; $F(3, 84) = 27.95$; $p < 0.01$] for the mapping of 'familiarity'. As Figure 9 shows, it was more frequent in Case A than case B.

Regarding the type of uncertainty (see Fig. 10), there was an effect of Case [Pillai's Trace = 0.95; $F(3, 84) = 2.951$; $p < 0.037$] and Country [Pillai's Trace = 0.132; $F(3, 84) = 4.274$; $p < 0.007$] on the type of uncertainty mapped by legal actors. The mapping of 'conflicted alternatives' was higher in Case A than in Case B. When facing uncertainty traits, participants referred more to 'inadequate understanding' and 'lack of information' in England than in Brazil.

In all three scenarios, the interaction between Case and Country was not statistically significant: 1) time spent to complete the task: Pillai's Trace = 0.27; $F(1, 43) = 1.18$; $p = 0.282$; 2) screening the context: Pillai's Trace = 0.22; $F(3, 84) = 0.63$; $p = 0.596$; and 3) type of uncertainty: Pillai's Trace = 0.003; $F(3, 84) = 0.09$; $p = 0.963$.

⁴⁴ See Figure 40, Appendix W, for how long each category of participant took to complete each case.

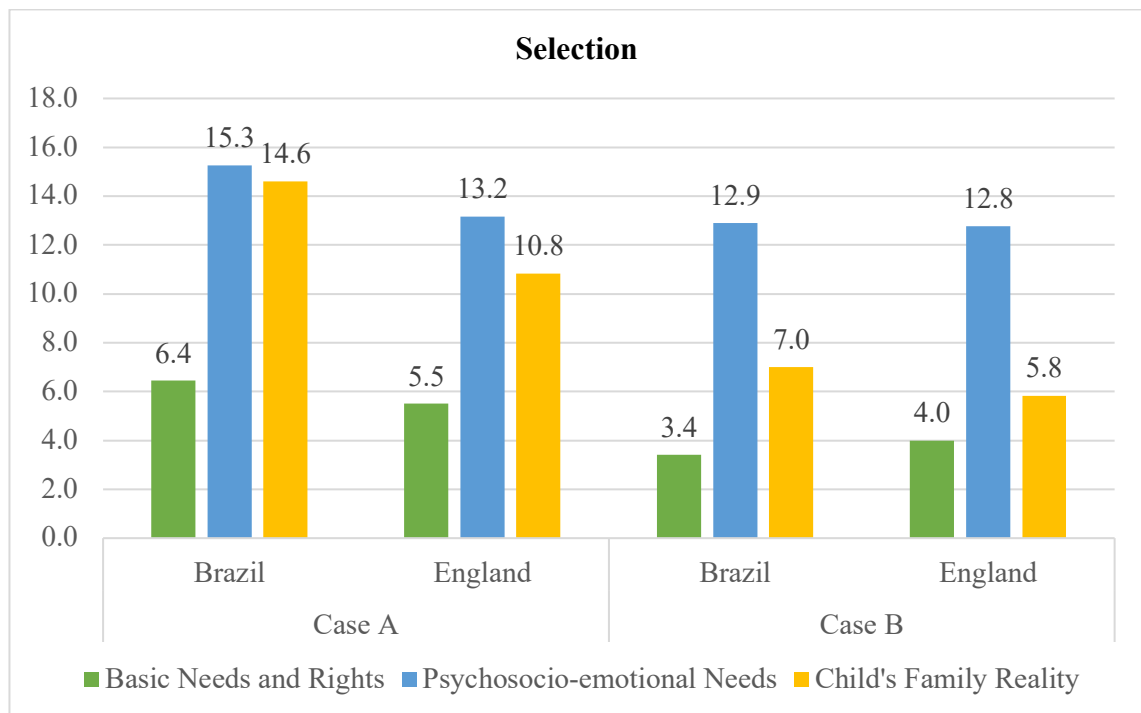
Figure 9*Mean Values for Screening Elements Mapped by Case and Country***Figure 10***Mean Values for Types of Uncertainty Acknowledged by Case and Country*

Regarding heuristics that participants mapped during the task, a two-way MANOVA showed an effect of Case [Pillai's Trace = 0.337; $F(3, 84) = 14.222$; $p <$

0.001] on referring to ‘selection’ factors. As seen in Figure 11, aspects related to the child’s family dynamic as well as the child’s basic needs and rights were more mapped in Case A than in Case B.⁴⁵ There was no effect of Country [Pillai’s Trace = 0.52; $F(3, 84) = 1.53$; $p = 0.214$] or of the interaction between Case and Country [Pillai’s Trace = 0.017; $F(3, 84) = 0.485$; $p = 0.694$].

Figure 11

Mean Values for Selection Heuristics Mapped by Case and Country

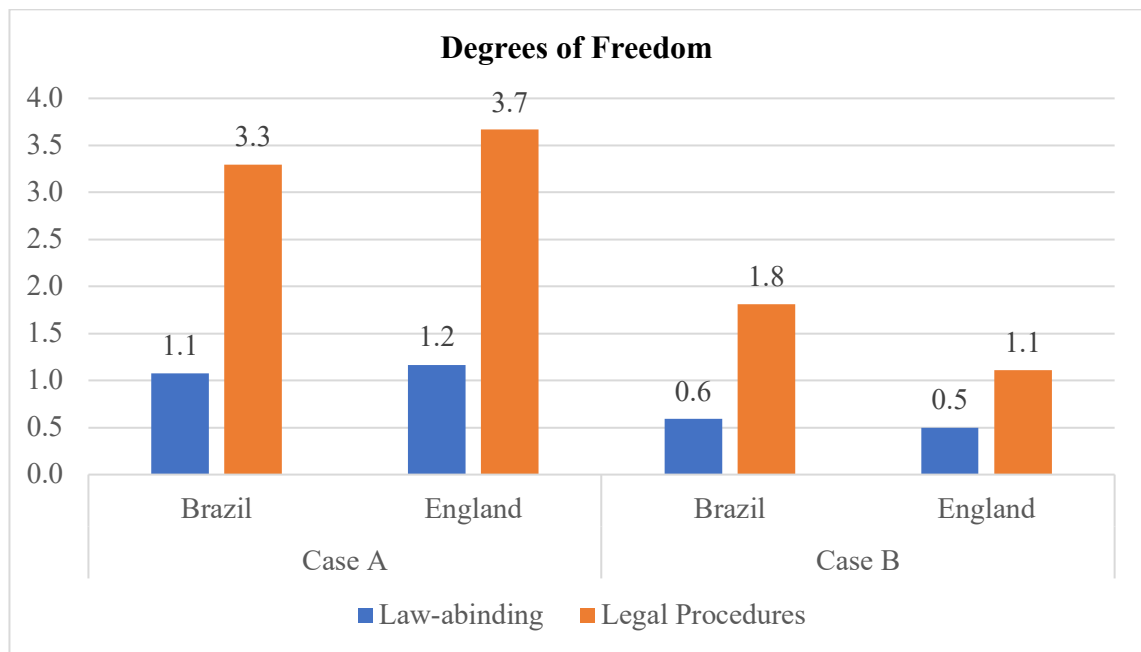


Another two-way MANOVA also showed an effect of Case [Pillai’s Trace = 0.84; $F(2, 85) = 3.908$; $p < 0.024$] on the mapping of ‘degrees of freedom’. Figure 12 shows that the mapping ‘legal procedures’ was higher in Case A than in Case B. There was no effect of Country [Pillai’s Trace = 0.001; $F(2, 85) = 0.33$; $p = 0.967$] or of the interaction between Case and Country [Pillai’s Trace = 0.006; $F(2, 85) = 0.270$; $p = 0.764$].

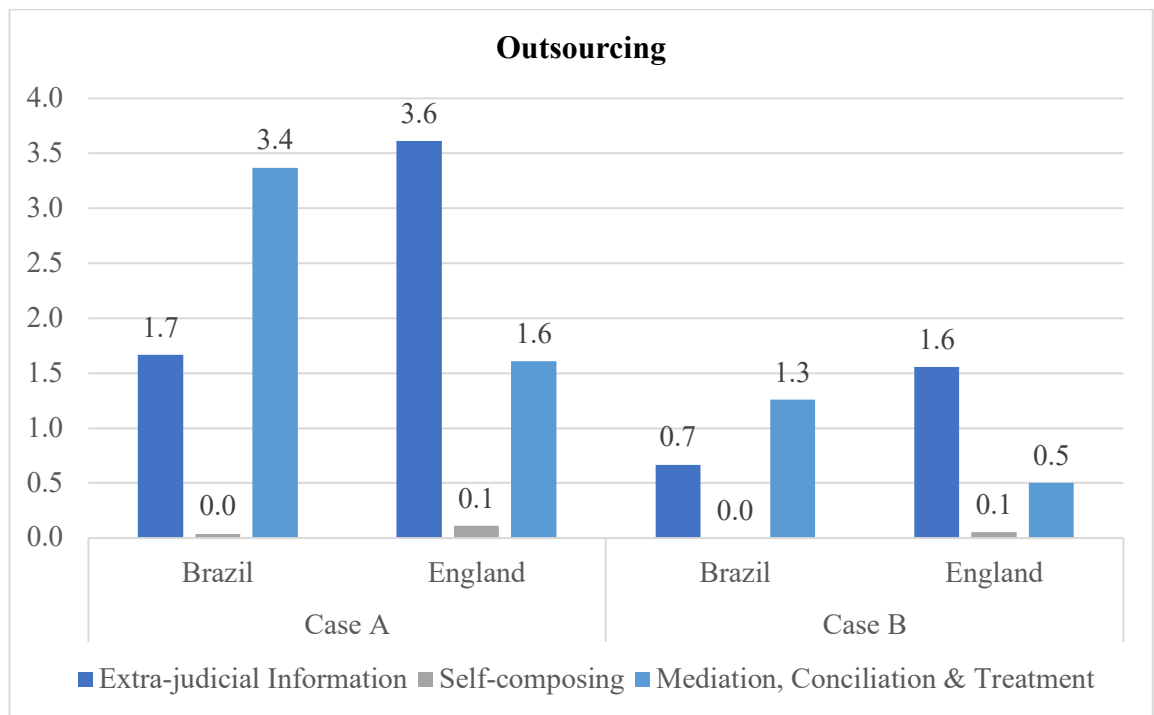
⁴⁵ See Figure 41, Appendix W, to check how all heuristics elements were mapped across the cases and by country.

Figure 12

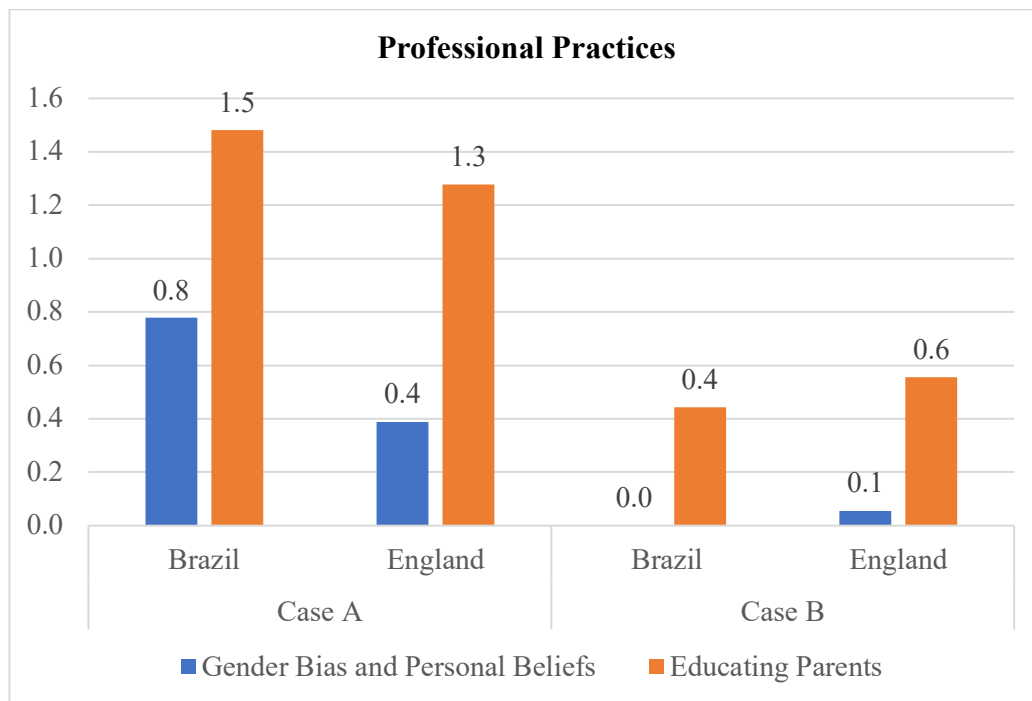
Mean Values for Degrees of Freedom Heuristics Mapped by Case and Country



Regarding 'outsourcing' heuristics, a two-way MANOVA showed that there was an effect of Case [Pillai's Trace = 0.122; $F(3, 84) = 3.896$; $p < 0.012$] and Country [Pillai's Trace = 0.194; $F(3, 84) = 6.739$; $p < 0.001$]. Figure 13 shows that Brazilian participants were more likely to look at for mediation and treatment, whereas English participants were more likely to look at extrajudicial information. Also, seeking extrajudicial information and mediation and treatment were more predominant in Case A than in Case B. There was no effect of the interaction between Case and Country [Pillai's Trace = 0.031; $F(3, 84) = 0.903$; $p = 0.443$].

Figure 13*Mean Values for Outsourcing Heuristics Mapped by Case and Country*

Regarding metacognitive strategies, the mapping of ‘professional practices’ was affected by Case – Pillai’s Trace = 0.161; $F(2, 85 = 8.147)$; $p < 0.001$. Figure 14 shows that ‘gender bias’ and ‘personal beliefs’ as well as the need to educate parents were more predominant in Case A than in Case B. There was no effect of Country [Pillai’s Trace = 0.010; $F(2, 85 = 4.29)$; $p = 0.653$] or in the interaction between Case and Country [Pillai’s Trace = 0.020; $F(2, 85 = 0.865)$; $p = 0.425$].

Figure 14*Mean Values for Professional Practices Metacognition Mapped by Case and Country*

‘Evaluation’ was mainly triggered by the need to listen to the child throughout the decision-making process – this might have happened due to a demand characteristic, as it is expected that legal actors would acknowledge the importance of listen to the child. ‘Custodial arrangements’ was mapped only by Brazilian participants, particularly towards the preference for joint custody – which is not surprising as joint custody is a custodial arrangement that Brazilian legal actors are legally encouraged to award. In both countries, BIC speech is referred to only as a rhetorical use of the best interests of the child to justify any action/idea during decision-making. In both cases, referring to self-composition was few but higher in England than in Brazil. No statistically significant differences between cases, countries and the interaction between them were found for ‘evaluation’, ‘custodial arrangements’ and ‘BIC speech’.⁴⁶

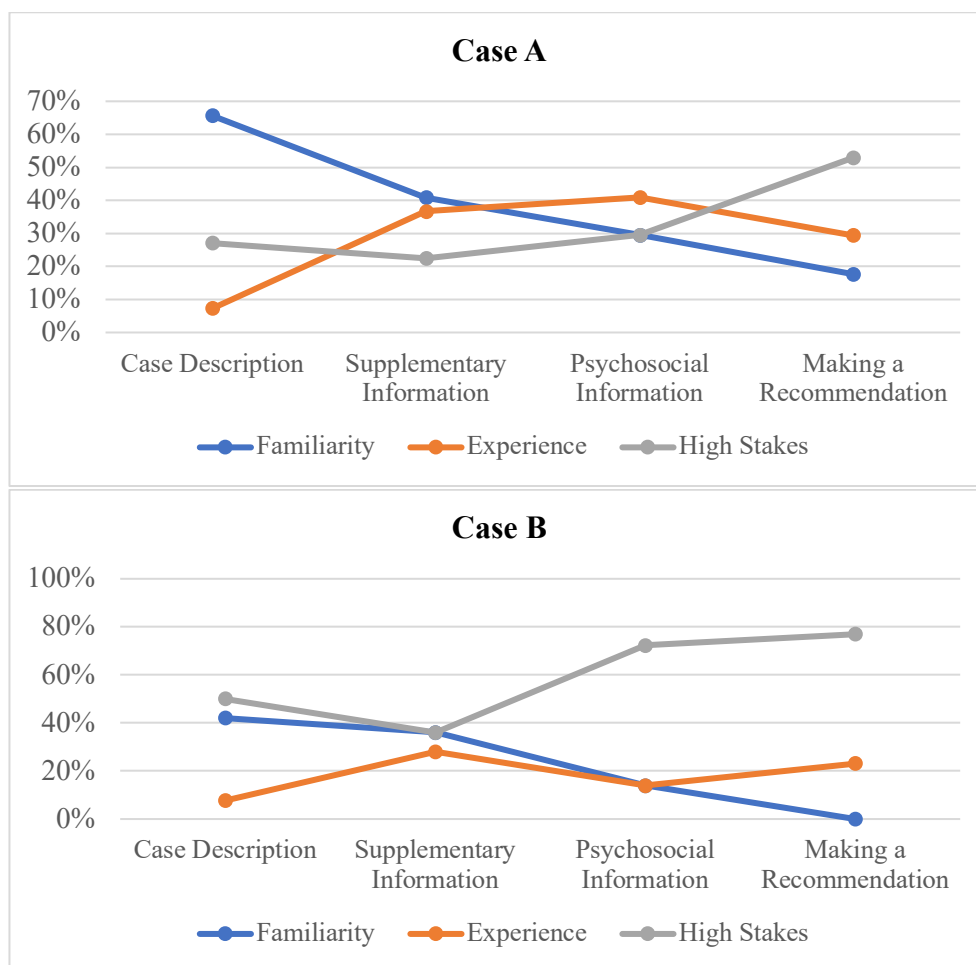
⁴⁶ See Figure 42, Appendix W which shows how all metacognition elements were mapped across the cases and by country.

Mapping Uncertainty and Cognitive Strategies Throughout Decision-making

This section descriptively explores how uncertainty and cognitive strategies varied across each phase of the task: 1) case description; 2) supplementary information; 3) psychosocial information; and 4) making a recommendation.⁴⁷ As Figure 15 shows, ‘familiarity’ was dominant at the beginning of the task and decreased towards the end. In contrast, ‘experience’ started low, increased in the middle and remained stable towards the end. ‘High stakes’ increased throughout the task and almost doubled by the end.⁴⁸

Figure 15

Proportion (%) of ‘Screening’ Elements Throughout the Task by Case



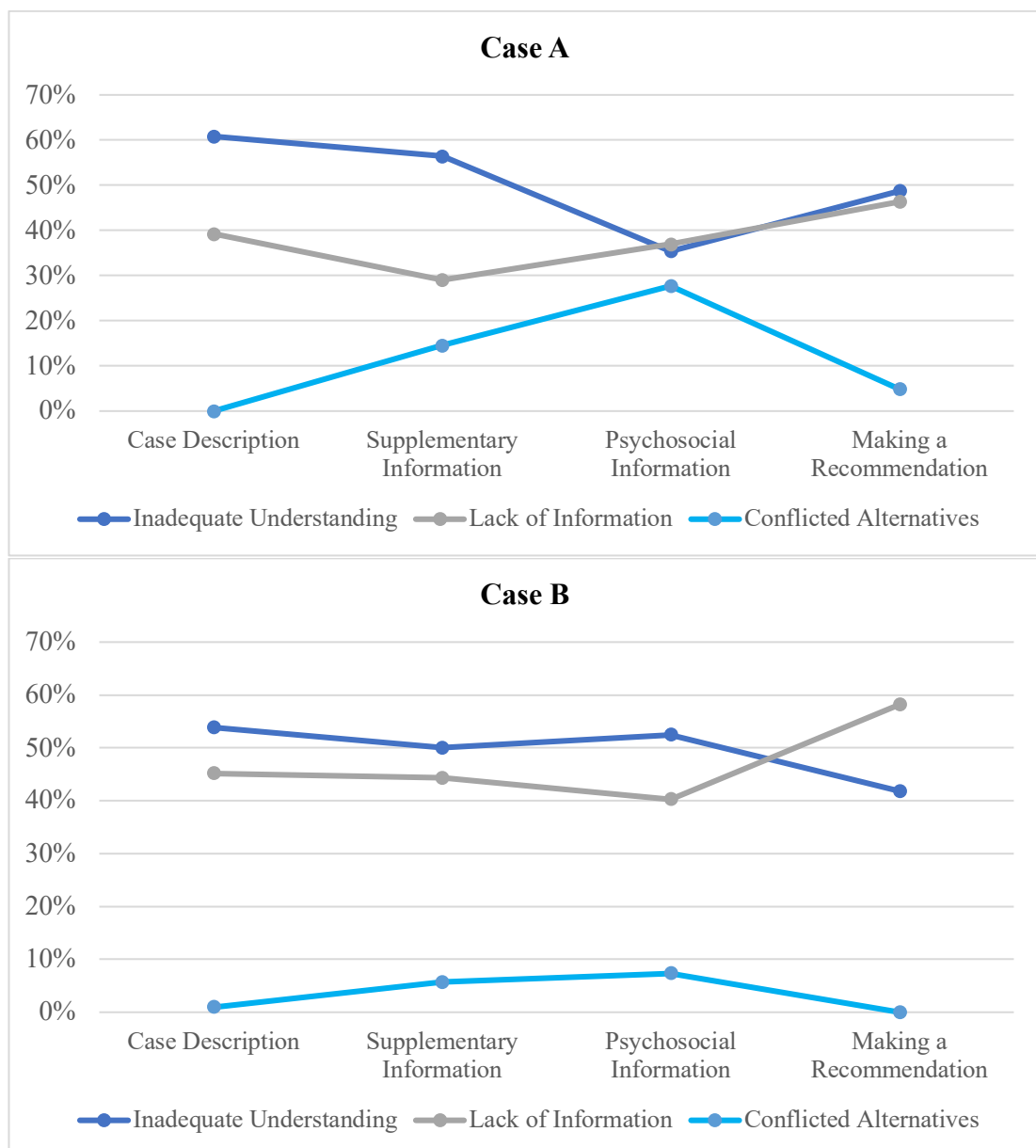
⁴⁷ Due to page limitation, we decided to present results by combining data from Brazil and England. We intend to explore possible differences between them and its implications in a future paper.

⁴⁸ See Figure 43, Appendix W, which shows the frequency of screening elements by country.

Regarding uncertainty, as Figure 16 shows, insufficient awareness of the context (i.e., inadequate understanding) was high for both cases at the start.⁴⁹ Also, in the case with conflicting interaction between the child's needs/rights (Case A), inadequate understanding spiked by the end of the task.

Figure 16

Proportion (%) of 'Types of Uncertainty' Acknowledged Throughout the Task by Case

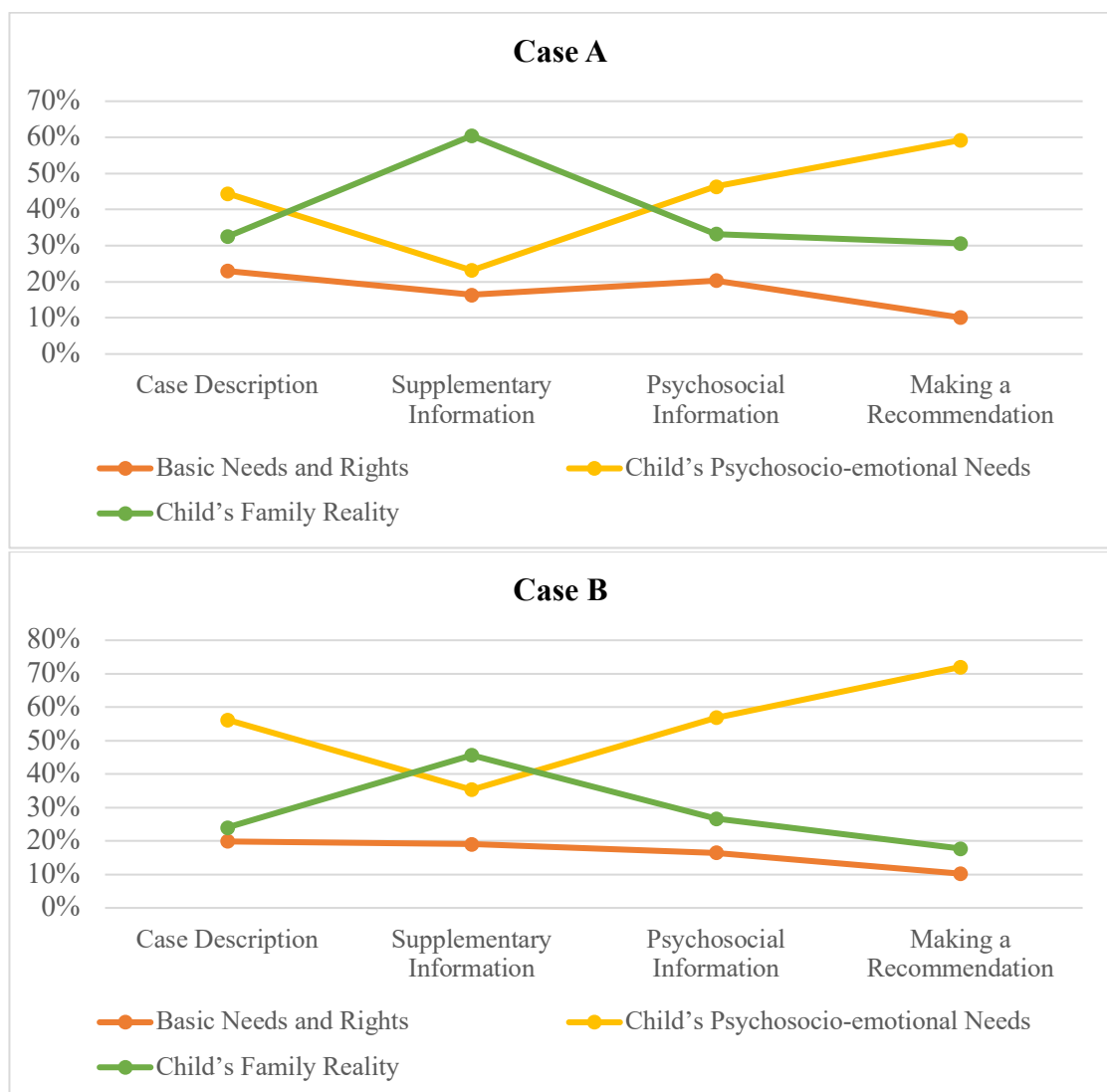


⁴⁹ See Figure 44 Appendix W for the frequency of 'types of uncertainty' by country in each case.

Figure 17 shows that, at the beginning, the child's psychosocio-emotional welfare was dominant.⁵⁰ However, in the second stage, in which participants had to choose the sources of supplementary information, the child's family reality peaked before decreasing, psychosocio-emotional issues increased and basic needs/rights decreased or remained flat. Hence, it seems that supplementary information that alerts legal actors to the family situation makes gaps in psychosocial-emotional needs more apparent while confirming basic needs are met.

Figure 17

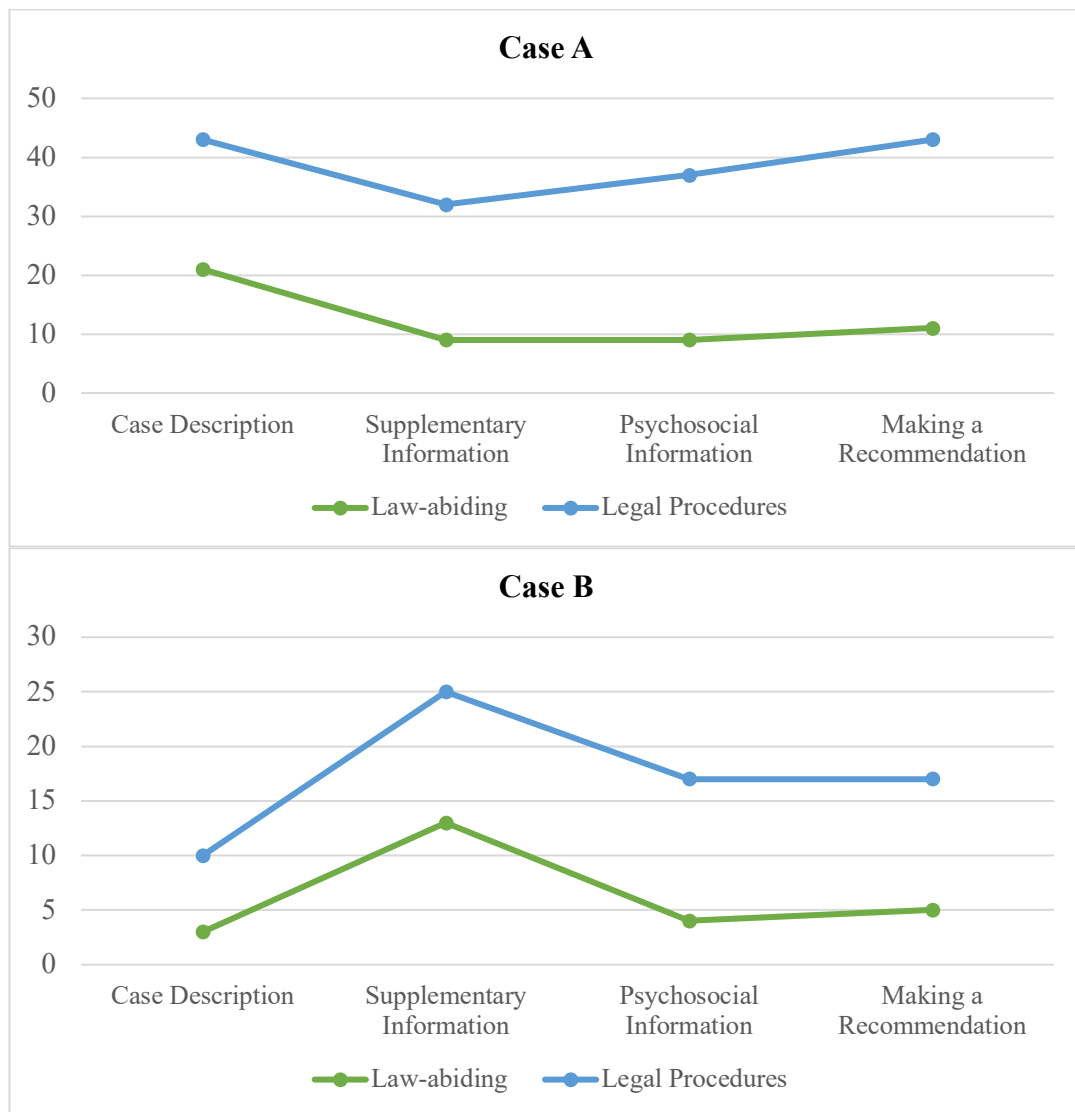
Proportion (%) of 'Selection' Heuristics Throughout the Task by Case



⁵⁰ See Figure 45 Appendix W for the frequency of 'selection' heuristics by country in each case.

Cases differed in how legal actors mapped constraints that shaped decision (i.e., degrees of freedom).⁵¹ As seen in Figure 18, legal constraints and legal procedures were high for case description in Case A but did not peak until supplementary information was sought for Case B. It is possible that the conflicting interaction in Case A immediately led legal actors to refer to the law, because they might have seen material-physiological needs more legalistically or, at least, they needed to check if they were not violating legal statutes by addressing the conflict, which does not seem as much as an issue when the child's needs are independent one from another.

⁵¹ See Figure 46 Appendix W for the frequency of degrees of freedom heuristics by country in each case.

Figure 18*Occurrences of 'Degrees of Freedom' Heuristics Throughout the Task by Case*

The mapping of procedural acts that would sort out the case outside the family court (i.e., outsourcing decisions & resolution) varied in each case.⁵² In both cases, asking for extra-judicial information was more relevant in case description than at the end of it. Also, referring the family to mediation and treatment was more relevant at the end of the task, which is not surprising as participants made recommendations in this phase. Moreover, participants mapped custodial arrangements mainly during

⁵² See Figure 47 Appendix W for the frequency of 'outsourcing' heuristics by country in each case.

psychosocial information and making recommendation phases. However, in Case B, English participants did no map that strategy.⁵³ Regarding practices that affect actions and decisions during the task (i.e., professional practices), Figure 19 shows that the practice of educating parents spiked in both cases at the recommendation phase.⁵⁴

Regarding the participants' use of BIC to qualify or justify an action or decision, the rhetorical use of BIC was more relevant at the start and at the end of each case. Focusing on the parents' interests was not observed, perhaps because this is a another case of demand characteristic.⁵⁵

Nine participants (20%) saw parental alienation within the cases. Five were English and 4 were Brazilian. Also, 7 of them were law professionals (i.e., judges, prosecutors and lawyers) and 2 was social workers. In general, 'familiarity' and 'inadequate understanding' were dominant amongst those who saw signs of parental alienation within the cases.⁵⁶

⁵³ See Figure 48, Appendix W, to check the frequency of 'custodial arrangements' metacognitive elements by country in each case.

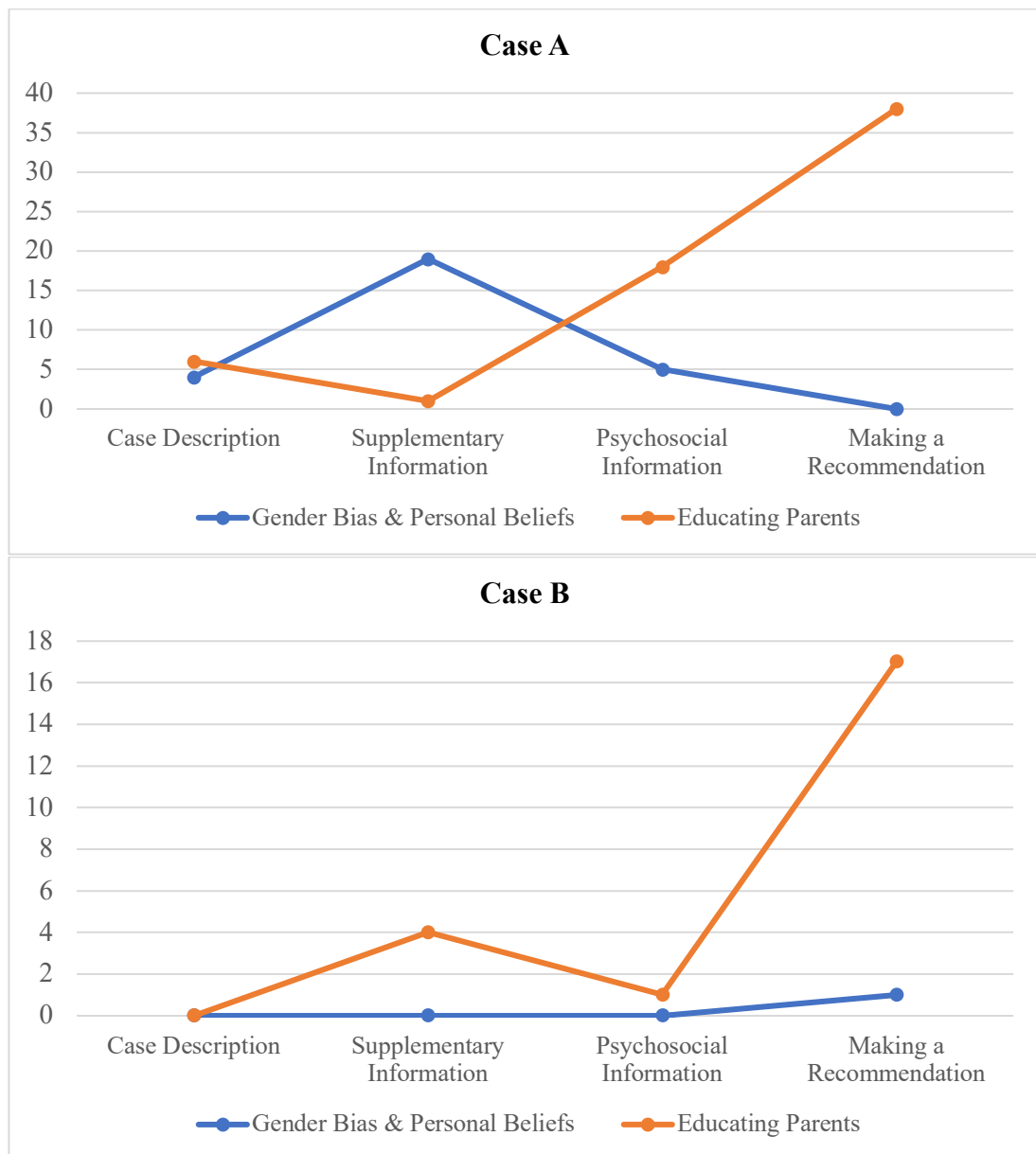
⁵⁴ See Figure 49, Appendix W, to check the frequency of 'professional practices' metacognitive elements by country in each case.

⁵⁵ See Figure 50, Appendix W, to check the frequency of 'BIC speech' metacognitive elements by country in each case.

⁵⁶ Due to page limitation as well as the scope of this chapter, we decided to further discuss this issue and its implications in a future paper.

Figure 19

Occurrences of 'Professional Practices' Metacognitive Elements Throughout the Task



Choosing Sources of Information and Making Decisions Throughout the Task

In the second phase of the task, participants had to choose three sources of supplementary information amongst six options. The three most chosen were: 1º) children's age: chosen by 91% of participants; 2º) details about coparental

communication: chosen by 69% of participants; and 3^o) details about past and current custodial arrangements: chosen by 65% of participants.⁵⁷

At the end of the second phase of the task, participants had to decide if they would like to make a recommendation or access more information. Thirty-four participants (76%) decided to assess more information in Case A and 39 (87%) in Case B.⁵⁸ In the fourth phase, psychosocial information, the three most frequently chosen sets of information were: 1^o) set 6 – child’s wishes and feelings: chosen by 69% of participants; 2^o) set 2 – bonds & relationships: chosen by 53% of participants; and 3^o) set 4 – child’s development & emotional well-being: chosen by 37% of participants.⁵⁹

Regarding custodial arrangements they most recommended at the end of the task, they were⁶⁰: 1^o) maintain the current custodial arrangement and foster contacts (77%); 2^o) maintain the current custodial arrangement until further assessment (11%); 3^o) sole physical custody to the parent who lives in the child’s ‘reference home’ (9%); and 4^o) swap the custody (2%).⁶¹

Discussion

In both countries, ‘familiarity’ and ‘high stakes’ were referred to more frequently during case description than when making a recommendation. ‘Evoking experience’ occurred equally for both countries, concentrated in supplementary information and psychosocial information phases. These data suggest that, when facing high levels of uncertainty during case description phase, legal actors tend to screen the context looking for familiar traits and/or known aspects that can help them cope with

⁵⁷ See Table 55, Appendix W, to check how each source of supplementary information was chosen by each category of legal actors, country and case.

⁵⁸ See Table 56, Appendix W, to check the frequency by each category of legal actors, country and case.

⁵⁹ See Table 57, Appendix W, to check the frequency by category of legal actors, country and case.

⁶⁰ The recommendation was ‘open-ended’ and these categories just summarise the participants’ core recommendations.

⁶¹ *Idem* 60.

uncertainty. This suggestion is reinforced by the fact that the occurrence of ‘familiarity’ decreased phase by phase – e.g., at the end of the task, when making a recommendation, ‘familiarity’ decreased 15 times compared to the beginning of the task.

The mapping of familiar elements is consistent with the assumption that decisions made in naturalistic settings are driven by situation assessment (Lipshitz & Strauss, 1997). Situation assessment is important as it helps experts to recognise cues that are fundamental to read the context and make subsequent decisions or actions (Mosier, 2008). Hence, during case description, participants were not trying to define what they were going to do but rather trying to understand the problem. That is why ‘experience’ was low, ‘high stakes’ was higher and ‘familiarity’ was very high. Therefore, ‘case description’ was a phase of problem understanding.

‘High stakes’ also increased towards the end of the task, suggesting that the higher the uncertainty, the higher is the legal actors’ concerns about the case and how they will manage it. Also, as the study phases moved forward, participants seemed to capture urgency through high stakes – i.e., they were indicating *this is something that I really must put into my head to make a good recommendation*. Hence, after case description, decision-making switched from problem understanding to problem solving. Also, when making recommendations, ‘high stakes’ carried on being significant: participants were checking to not miss something important to the case. In this sense, ‘high stakes’ had a double role by sometimes helping to decide what information was more important and sometimes making sure that the content of that information would be taken into account during the whole decision-making process.

Regarding problem solving, the way in which participants tackled the cases progressed by means of ‘selection’ and ‘evaluation’ from the child’s basic needs, passing by the child’s family reality, and relied heavily on the child’s psychosocio-

emotional needs. That is why there was a dominance of psychosocio-emotional needs at the end of the task.

Referral to ‘outsourcing’ heuristics varied by nationality: Brazilian participants were more likely to look at for mediation, whereas English participants looked for extrajudicial information. As seen in Chapter I, English law is set up to encourage mediation and settlement before court proceedings. Hence, English legal actors focus on aspects that are not legally set up by the law such as looking for extra-judicial information. On the other hand, the Brazilian law values extra-judicial information, especially from the school. Brazilian legal actors are more concerned to use their expertise to provide something that was missing and was crucial to safeguard BIC – such as mediation.

The rhetorical use of BIC was more present at the beginning and at the end of the task. We believe that it arises since, in both phases, participants were facing uncertainty either regarding the problem understanding or the problem solving. Hence, mapping this metacognitive strategy would make legal actors less unsecure about their analysis and actions during the decision-making under uncertainty. This is a key strategy as “coping with uncertainty [...] lies at the heart of making a decision” (Lipshitz & Strauss, 1997, p. 151).

Is the RAWFS Heuristic Fitting to the Decision-Making Process in Child Custody Cases?

One of the RAWFS model’s assumptions is that, when faced with uncertainty, a decision maker’s first course of action is to reduce uncertainty, especially by searching for additional information (Lipshitz & Strauss, 1997). In child custody cases, this assumption is partially supported. Legal actors first attempt to cope with

uncertainty by trying to reduce it, but not by collecting additional information; by screening the context through recognition of familiar instances.

RAWFS also assumes that naturalistic decision makers use assumption-based reasoning (i.e., using knowledge to fill information gaps within the decision environment – van den Heuvel et al., 2014) to cope with uncertainty. Considering that ‘familiarity’ refers to ‘familial’ recognition of a resemblance between aspects of cases (e.g., *I know this; I know what this is about; I have seen this before*), ‘experience’ refers to how legal actors operationalise this recognition (e.g., *given that I recognise this, this is how I categorise it*). In this sense, assumption-based reasoning in child custody cases would correspond to the evoking of experience based on what is familiar, to the decision maker’s expertise. ‘Experience’ would be the equivalent to assumption-based reasoning because both derive from the decision makers’ firm knowledge.

Another coping strategy within the RAWFS heuristic is weighing pros and cons of two or more alternatives (Lipshitz et al., 2001). Legal actors applied this strategy throughout the whole task by selecting what was relevant or a priority to understand and solve within the case. Concomitantly, they also mapped high stakes to highlight the most sensitive issues within the case.

Forestalling is another coping strategy within the RAWFS heuristic. It refers to the anticipation of unwanted contingencies and planning to properly respond to them (Lipshitz et al., 2001). Forestalling was a coping strategy used by legal actors, specifically when they mapped ‘professional practices’ and ‘outsourcing’ issues that would lead them to educate the parents regarding the child’s best interests in the case and/or referral of the parents to mediation and treatment.

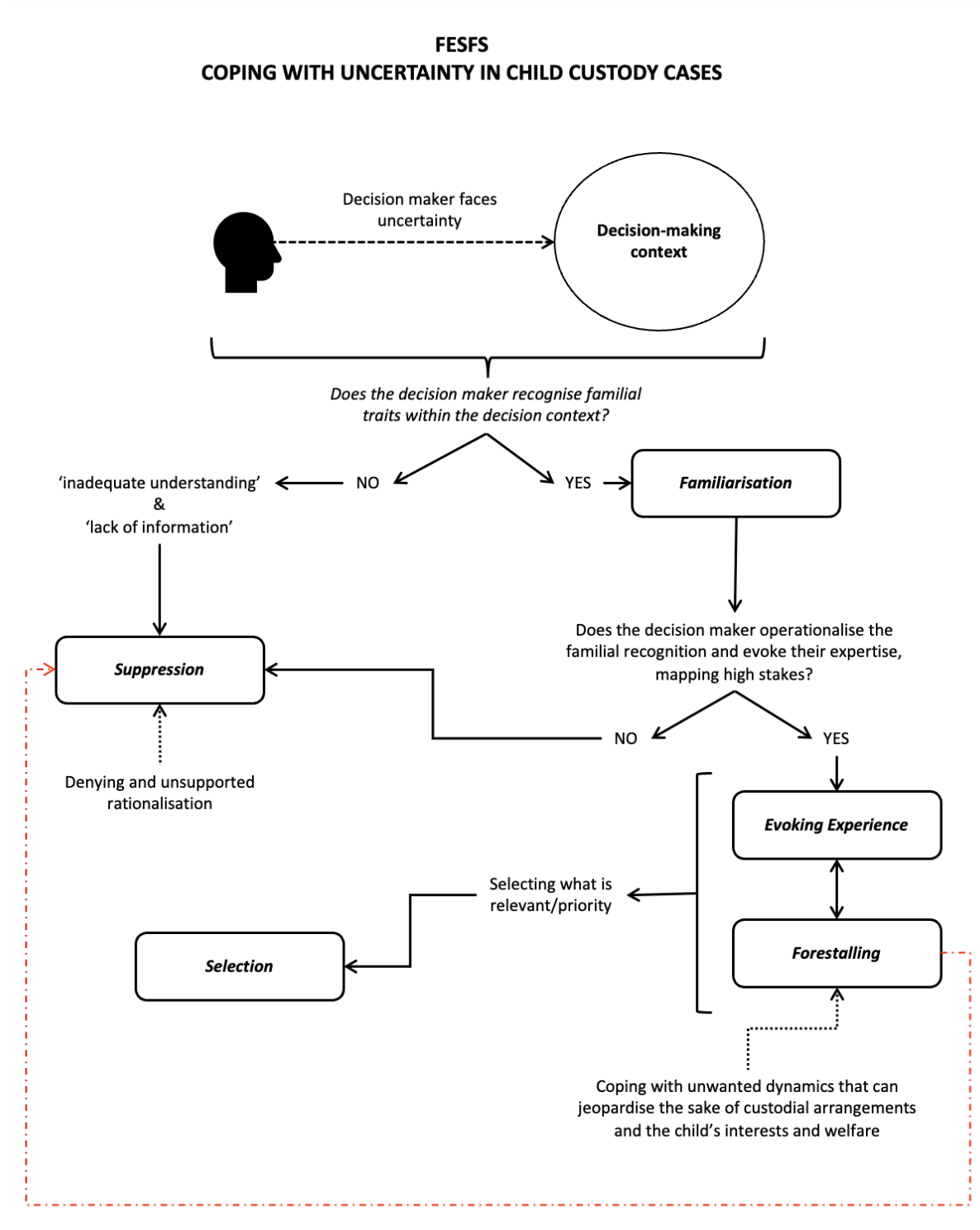
The last coping strategy within the RAWFS heuristic is suppression, which refers to the act of denying (i.e., dismissing undesirable information) or relying on

unsupported rationalisation (Lipshitz et al., 2001; Lipshitz & Strauss, 1997). The strategy of suppressing uncertainty was also present, especially when legal actors mapped ‘professional practices’ and ‘BIC speech’ issues that led to the rhetorical use of BIC as well as gender bias and legal actors’ personal beliefs. Suppression could also be seen as a strategy amongst those who saw signs of parental alienation, as they tended to frequently map ‘familiarity’ but rarely ‘experience’ and ‘high stakes’ – these last two strategies are important to direct decision making towards effective coping strategies that do not suppress uncertainty. Also, the parental alienation framework is known for being overly simplistic and for ignoring complexities and nuances that make acrimonious child custody cases, and therefore decisions, so difficult (Barbosa et al., 2021; Barnett, 2020; Bruch, 2001; Kelly & Johnston, 2001; Maciel et al., 2021; Mackenzie et al., 2020; Meier et al., 2019; Meier, 2020; Mendes, 2019; Mendes et al., 2016b; Mendes & Bucher-Maluschke, 2017a; Neilson, 2018; Pepiton et al., 2012; Shaw, 2016).

The RAWFS heuristic partially fits the uncertainty-coping strategies that legal actors apply in child custody cases. As a refined alternative, we propose an FESFS (Familiarisation, Evoking Experience, Selection, Forestalling and Suppression) model, as shown in Figure 20 below.

Figure 20

The FESFS (Familiarisation, Evoking experience, Selection, Forestalling and Suppression) Model



FESFS proposes that, after facing the uncertainty prompted by the context, a decision maker's first course of action is to search for familial aspects within the

context to reduce uncertainty. If they cannot recognise any familial aspects, they might express a sense of inadequate understanding or lack of information, and then try to suppress the uncertainty. However, if they recognise familial aspects and operationalise this recognition by evoking experience, they start to select the most relevant information for the decision-making process as well as forestalling any unwanted issues that could make the decision making difficult or jeopardise the child's best interests. Nonetheless, as indicated by the red dotted line in Figure 20, some forestalling strategies might also lead to the suppression of uncertainty.

PART III – GENERAL DISCUSSION

Chapter VII

Decision-making Factors and the ‘Child Custody Decision-making System’

In Chapter I, we discussed how Brazilian and English legal systems frame the judicial process as well as some differences in how each country addresses child custody. One of the issues raised was whether legal actors would recognise the impact of family developmental struggles in the decision-making process. The outcomes from Chapters IV, V and VI indicate that, regardless of being naïve (students) or experts, decision makers were impacted by the family’s developmental struggles related to the parental separation. For naïve participants, the uncertainty prompted by these issues, as well as their complex interaction with the child’s needs, led to a radical shifting in their decision-making, swapping from a predisposition to not change the *status quo* to a ‘pseudo-certainty’ that changing the *status quo* would be better than preserving the current custodial situation. In the case of experts, Brazilian legal actors seemed to be more aware of the uncertainty prompted by the family developmental struggles than English legal actors.

Chapter I also raised the issue of whether the type of legal system would impact the decision-making process. Chapter V’s outcomes outlined some differences regarding the way professional evaluation is carried out in each country. A sustained difference between participants in the two countries emerged: in Brazil evaluation tends to be non-protocol based; in England it tends to be non-evidence based. In the evaluation process, the safeguarding of the child’s interests can be weakened by these tendencies in the work carried out by psychologists and social workers. These results are surprising, since we expected the Brazilian evaluation process to be stricter and more structured, due to its civil law system, which relies on written law rather than case law and customary practice. We also expected the English evaluation process to be looser and

more marked by workarounds, due to its common law system. However, we saw quite the opposite. Some Brazilian participants indicated that “the [family] reality often does not fit into legal guidelines”⁶², so their practice needs to be more open, and workarounds need to be applied so they can properly approach the case and cope with uncertainty. Even though English participants tend to work in a more open and customary legal system, they indicated that they rely heavily on protocols: “I tend, certainly, on a difficult case, to go through each element of the welfare checklist [from Children Act 1989] quite slavishly”⁶³.

In a complementary way, Chapter VI’s outcomes also pointed out this interesting contrast between Brazilian and English legal systems. For instance, when mapping ‘outsourcing’ heuristics, Brazilian participants were more likely to look for mediation, whereas English participants looked for extrajudicial information. English law is set up to encourage mediation and settlement before proceedings. Hence, during the decision-making process, English legal actors focused on aspects that were not legally set up by their legal system (e.g., looking for extra-judicial information). In contrast, Brazilian legal actors were more concerned with using their expertise to provide something that was missing and crucial to safeguard the child’s best interests. Hence, in both countries, experts used their expertise to provide things that were missing in the decision context – they were filling in the gaps. This suggests that the development of expertise in child custody cases is a process of interacting with the environment and is, perhaps, extensional to it.

Chapter II examined the definition and application of the best interests of the child. The take-home message from this chapter is that referring to the child’s best interests is, in fact, referring to their developmental needs – material-physiological and

⁶² Participant ‘BR_BsB.SW.01’ from the expert interviews study presented in Chapter V.

⁶³ Participant ‘EN_Jd.01’ from the expert interviews study presented in Chapter V.

contextual (psychosocio-emotional). Brazilian articles selected in the systematic review focused on the need to protect the child's physical and psycho-socioemotional well-being, highlighting the child as a subject of rights and preserving the child's meaningful bonds. English articles broadened the 'best interests perspective' by approaching the child's characteristics, the role of the parents' interests, as well as the arduous task of evaluating and safeguarding the child's best interests, considering each child according to their unique needs, circumstances, risks and vulnerabilities.

Chapter II also raised questions regarding how decision makers recognise and weigh the child's material-physiological and contextual needs during decision making. Chapters IV and VI showed that the number of needs involved in the case, as well as the quality of the interaction between them, impact decision making differently. For instance, mentions of familiar traits were more frequent when the child's needs were interacting in a conflicting way (i.e., addressing one need/right would impede or make it difficult to address another need/right) than when they were independent of one another (i.e., addressing one need/right would not impact addressing another need/right). Also, mentions of high stakes were more frequent when the child's needs were independent of one another.

Chapter III showed how the eight common features of naturalistic decision-making settings (i.e., ill-structured problems; uncertain dynamic environments; shifting, ill-defined, or competing goals; time; high stakes; multiple players; action/feedback loops; organisational goals and norms) fitted child custody cases. However, the chapter questions whether the decision-making process in child custody cases resembles typological decision-making models by presenting common activities/phases or specific cognitive processes. The outcomes from Chapter V showed that, in such cases, legal actors tend to map heuristics (i.e., selection, evaluation, degrees of freedom, outsourcing

decisions and resolution) and metacognitive strategies (i.e., custodial arrangements, professional practices, BIC speech) during decision making. Furthermore, Chapter VI indicated that, before this mapping, decision makers tend to screen the context to make a situation assessment. First, they screen the context looking for familiar traits and triaging them according to high stakes. Then they deal with them based on their experience to solve the problem. This process shows that reaching a decision in child custody cases is heavily dependent on context, which was also explored in Chapter V.

Chapter VI highlighted that whenever expert decision makers were assured (or just assumed) that the child's basic needs/rights were safeguarded, they moved on to more complex needs/rights, such as the child's emotional health and sense of stability. Chapter II also identified this pattern within the BIC literature. It seems that decision makers work their way through the topics systematically. If that is the case in a real judicial situation, two conflicting things might happen: 1) if a decision is made early on in the decision task (even if the legal actor does not verbalise it), decision making will be dominated by the child's basic needs and rights; 2) if a decision is made later on, the decision-making process might be dominated by the child's psychosocio-emotional needs. We suggest that decision makers who can balance these two decision styles make the best decisions in child custody cases.

Chapter VI also proposed an explicative model of how decision makers cope with uncertainty in child custody cases: FESFS (Familiarisation, Evoking Experience, Selection, Forestalling and Suppression). This model diverges from classical NDM models as it assumes that the decision maker's first strategy to reduce uncertainty is based on the screening of familiar aspects instead of collecting more information. The FESFS model also highlights the role of 'selection' and 'evoking experience' strategies,

which are novel when one compares it to classical NDM models for coping with uncertainty.

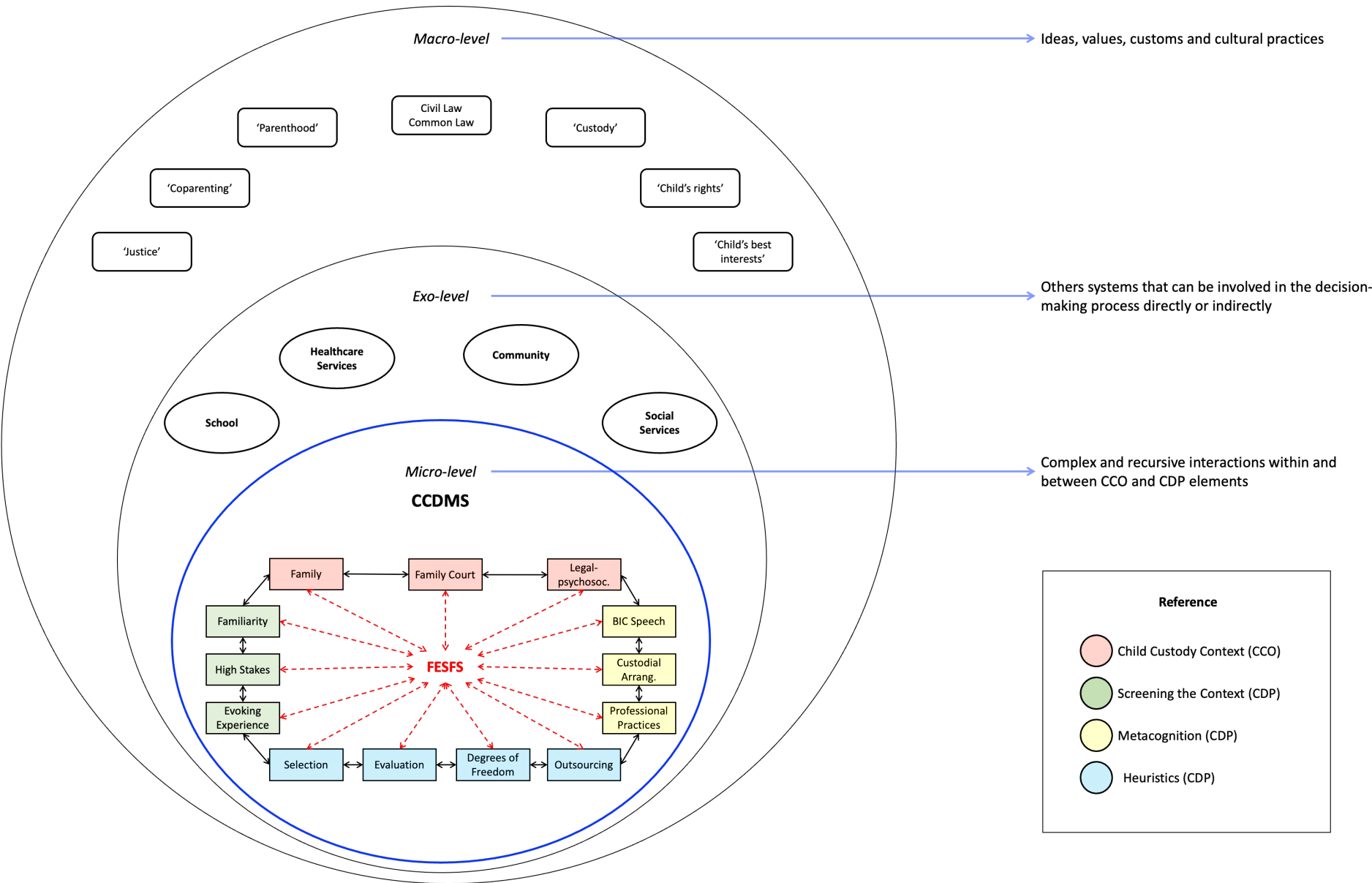
Proposing a ‘Child Custody Decision-making System’

There are two types of definition for a ‘system’: structural and functional (Dowling, 1983; Skyttner, 1996). The former considers a system a complex set of two or more elements interacting via a set of patterns of information exchange that brings about a whole entity that is distinct from its surroundings (Kitto, 2014; von Bertalanffy, 1969). Hence, a system is more than just the sum of its parts (Skyttner, 1996; von Bertalanffy, 1972). The latter definition considers a system a complex set of elements organised for the purpose of achieving specific aims (Churchman, 1968; Skyttner, 1996).

The set of materials presented throughout this thesis reveals a complex network of elements that are constantly interacting in multidetermined and recursive ways, resembling a ‘whole entity’. These elements are also coordinated to accomplish specific goals: a) to solve the legal problem concerning the child custody and contacts/access; and b) to safeguard the child’s best interests and welfare. Figure 21 shows the assembly of these elements as a ‘Child Custody Decision-making System’ (CDMS) which itself has two subsystems: Child Custody Context (CCO) and Custodial Decision-making Process (CDP).

Figure 21

Child Custody Decision-making System, Subsystems and Levels of Interaction



As seen in Figure 21, the CCO subsystem encompasses context elements belonging to the domains: a) *family*: all context-related issues regarding the family's developmental struggles after the parental separation; b) *family court*: all context-related issues that address the law, its application, limits and organisational issues, also the way the court addresses the child during the decision-making process; and c) *legal-psychosocial*: all context-related issues that address the evaluation process as well as how legal actors understand and safeguard the child's best interests. The CDP subsystem encompasses screening, heuristic and metacognitive elements that belong to domains: a) *screening the context* (familiarity, evoking experience and high stakes); b) *selection*; c) *evaluation*; d) *degrees of freedom*; e) *outsourcing decisions & resolution*; f) *professional practices*; g) *custodial arrangements*; and h) *BIC speech*. As seen, in Figure 21, the FESFS heuristic, presented in Chapter VI, emerges from the interactions between CCO and CDP subsystems.

CDMS is an open system and exchanges information with other systems by generating a continuous process of inputs and outputs that will make the functioning of this system increasingly complex due to feedback processes (Olsson & Sjöstedt, 2004). CDMS has two patterns of information exchange: endogenous (between its own elements); and exogenous (with other systems). As shown in Figure 21 these patterns frame CCMS in three levels of interaction: micro, exo and macro. The micro-level encompasses the CDMS and the interactions between its subsystems. The exo-level encompasses interactions between CDMS and other systems, such as school, healthcare services, social services, immediate community. The macro-level encompasses interactions between CDMS, other systems and cultural practices, ideas, values and customs related to the type of legal system and notions of 'custody', 'child's rights', 'parenthood', 'coparenting', 'justice' and 'child's best interests'. CDMS is a hybrid

decision-making model as it comprises strategies and steps of the decision-making process (making it a process model in this context) as well as the process of making a decision and its contingencies (a typological model in this context).

Context factors encompass CCO and impact legal actors' performance throughout the decision-making process by influencing the cognitive strategies they use to cope with uncertainty. However, context factors can also cue strategies that generate errors and biased judgements. Being aware of these factors might be the first step in assertively handling uncertainty in child custody cases, as the understanding of context issues is an important part of the decision-making process (Ben-Haim, 2019).

In principle, elements comprising the CCO subsystem can be used as an informal checklist to ensure legal actors have given due consideration to the most likely sources of uncertainty. One cannot control or promote harm reduction with regard to what one does not know. Hence, legal actors cannot properly tackle uncertainty if they do not acknowledge it and how it can affect their decision-making process. We believe this thesis promotes an awareness regarding the importance of acknowledging the uncertainty in child custody cases. Legal actors can use this information to select better courses of action that avoid or minimise risk factors (Lipshitz and Strauss, 1997), especially for the child's best interests and the family's well-being. This is a much better approach than suppressing uncertainty, which we do not believe is an effective strategy to cope with uncertainty in child custody cases, as it can increase uncertainty and put children's interests and families in jeopardy. Instead, we believe that the best course of action is to acknowledge the sources of uncertainty – such as those presented in this thesis – in order to understand how they might affect the decision-making process; action can then be taken to respond to those sources, based on evidence,

thereby reducing uncertainty and resulting in decisions and outcomes that really are child-focused.⁶⁴

Limitations and Future Research

While a cross-cultural design produces a very rich methodology, it also implies some important choices and, hence, limitations. In this study, the design limited the thesis' scope to analyse issues that were strictly related to legal and cultural elements in Brazil and England. Hence, addressing other cultures as well as other countries with civil law and common law systems might enhance the results presented here or even give a different perspective – this could be a pathway for future work. Also, even though the outcomes of this thesis make progress in understanding how context issues structure uncertainty in child custody cases, and how legal actors cope with them, there are processes that still need to be investigated, such as how to enhance assertive forestalling and avoid suppression in child custody cases after parental separation.

We are aware that some of the elements presented within this thesis, especially context ones, might not be very novel for some readers. However, we believe that presenting them in a structured and organised way, and publishing them alongside pertinent discussions, is an important step for an informed and evidence-based practice within the family justice system.⁶⁵ Moreover, providing substantial evidence and supporting analysis is also important to provoke relevant changes and policymaking within organisations like the judiciary (Sanderson, 2002).

Regarding future work, we believe that the FESFS heuristic and CDMS model have the potential to inform the training of decision makers working with child custody

⁶⁴ This is especially needed in Brazil, where family justice tends to adopt non-evidence based as well as unethical and scientifically questionable practices to mediate and solve conflicts/litigation within family courts – e.g., ‘systemic constellation work’ or ‘family constellation’: a mediumistic pseudo-psychotherapy imported from Germany without any sort of transcultural adaptation and/or scientific probing of its effectiveness (and safety) within the field of family justice.

⁶⁵ Something that is also signposted by Danser and Faith-Slaker (2019).

cases after parental separation – i.e., by highlighting the phenomena associated with the decision-making process and the models portrayed, the training process could be focused on the enhancement of the decision-making process, which should at all times prioritise the child's best interests. Also, future studies addressing other decision-making domains – such as domestic violence, the investigation of rape cases, hate crimes, adoption, police stop-and-search – could consider whether the FESFS heuristic is useful or not and could prove beneficial to its own processes, as well as considering whether the cognitive strategies addressed by CDMS and its levels of interactions could be generalised or adapted to such contexts.

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APPENDICES

Appendix A

Proportions of How Each Area Contributed to BIC Categories – Chapter II

BIC Definition Based on the Content of Selected Articles

Based on the articles' fields, 'Law', 'Healthcare' and 'Psychology' were responsible for 70% of this category. 100% of the articles from 'Law', 'Healthcare' and 'Philosophy' referred to the aspect '*BIC as a primary consideration*'; only 66.6% of 'Psychology' and 50% of 'Policies' did so. 100% of articles from 'Law', 'Psychology', 'Policies' and 'Philosophy' referred to the aspect '*Protect the child's physical and mental welfare*'; only 25% of 'Healthcare' articles did so. Only 'Law', 'Healthcare' and 'Policies' referred to '*Basic children's rights*' and '*Temporality-orientation*' in $\geq \frac{1}{4}$ of their articles. $\geq 50\%$ of the articles referred to '*Physical and non-physical interests*' and '*Physical and non-physical needs*'. All fields referred to '*Individuality & Identity*', except 'Law'. The Brazilian articles referred only to '*Protect the child's physical and mental welfare*' (100%), '*BIC as a primary consideration*' ($\frac{2}{3}$), '*Physical and non-physical interests*' ($\frac{2}{3}$), '*Physical and non-physical needs*' ($\frac{2}{3}$) and '*Individuality & Identity*' ($\frac{1}{3}$).

BIC Characteristics Based on the Content of Selected Articles

Based on the articles' fields, 'Law', 'Healthcare' and 'Psychology' were responsible for 80% of this category. $\geq 50\%$ of articles from 'Law', 'Psychology' and 'Policies' referred to the aspect '*Family coexistence*'. $\geq 50\%$ of articles from 'Law', 'Policies' and $\leq 30\%$ of the other fields referred to '*Child's idiosyncrasies*'. Only 'Law' (50%) and 'Psychology' (33.3%) referred to '*Legal indeterminacy*'. Only 'Law', 'Healthcare' and 'Psychology' referred to '*Not given*' in $\geq 50\%$ of their articles. Only

‘Law’ and ‘Healthcare’ referred to ‘*Adults’ views*’, ‘*BIC promoters’ biases*’ and ‘*Temporality-sense*’ in 25% of their articles. Only ‘Healthcare’ (50%), ‘Psychology’ (66.6%) and ‘Policies’ ($\frac{1}{2}$) referred to ‘*Plurality*’. Only ‘Psychology’ and ‘Law’ referred to ‘*Multi-dimensional*’ in $\geq 50\%$ of their articles. Only ‘Healthcare’ referred to ‘*Parents’ interests moderation*’ (25%). Only ‘Policies’ referred to ‘*Indelible*’. All fields, except ‘Law’, referred to ‘*Multi-determined*’ in $\geq 50\%$ of their articles. The Brazilian articles referred only to ‘*Not given*’ (100%), ‘*Multi-dimensional*’ ($\frac{2}{3}$), ‘*Family coexistence*’ ($\frac{1}{3}$), ‘*Adults’ views*’ ($\frac{1}{3}$), ‘*Plurality*’ ($\frac{1}{3}$) and ‘*Multi-determined*’ ($\frac{1}{3}$).

BIC Application Based on the Content of Selected Articles

Based on the articles’ fields, ‘Law’, ‘Healthcare’ and ‘Psychology’ were responsible for 77.7% of this category. Only ‘Law’ (25%), ‘Psychology’ (33.3%) and ‘Policies’ (50%) referred to the ‘*Flexibility*’ aspect. Regarding ‘*Child as a subject of rights*’, ‘Law’ and ‘Policies’ referred to it in 100% of their articles, and ‘Healthcare’ and ‘Psychology’ referred to it in 50% and 66.6% of their articles respectively. Only ‘Healthcare’ (50%) referred to ‘*Range of benefits*’. Only ‘Law’ (25%), ‘Healthcare’ (75%) and ‘Philosophy’ (100%) referred to ‘*Non-individualistic*’. Only ‘Healthcare’ (25%), ‘Psychology’ (100%) and ‘Policies’ (50%) referred to ‘*Temporality*’. Only ‘Law’ (25%), ‘Policies’ (50%) and ‘Psychology’ (100%) referred to ‘*Multi-professional evaluation*’. Only ‘Philosophy’ (100%) referred to ‘*Holistic approach*’. The Brazilian articles referred only to ‘*Child as a subject of rights*’ ($\frac{1}{3}$) and ‘*Multi-professional evaluation*’ ($\frac{2}{3}$).

Pro-BIC Context Based on the Content of Selected Articles

Based on the articles' fields, 'Law', 'Healthcare' and 'Psychology' were responsible for 86.6% of this category. Only 'Law' (25%), 'Policies' (25%) and 'Psychology' (33.3%) referred to '*Parent-child relationship*'. Only 'Healthcare' (25%), 'Psychology' (33.3%) and 'Law' (50%) referred to '*See the child as a rights holder*'. Only 'Law' referred to '*Conflict-free communication*' in 25% of their articles. Only 'Law' and 'Healthcare' referred to '*Avoid bias*' and '*Continuity*' in 25% of their articles. 'Law' and 'Policies' referred to '*Listen to the child*' in 50% of their articles while 'Healthcare' and 'Psychology' did it in 25% and 'Philosophy' in 100%. Only 'Healthcare' referred to '*Search for parents' criminal charges*' (25%) and '*Complex evaluation process*' (50%). Only 'Law' (25%), 'Policies' (50%) and 'Psychology' (100%) referred to '*Multi-professional work*'. Only 'Law' (25%), 'Psychology' (33.3%) and 'Healthcare' (50%) referred to '*Promote and guarantee child's rights*'. Only 'Policies' referred to '*Promoting the best scenario for the child*' in 50% of their articles. The Brazilian articles referred only to '*See the child as a rights holder*', '*Listen to the child*', '*Complex evaluation process*' and '*Promote and guarantee child's rights*' in $\frac{1}{3}$ of their articles and '*Multi-professional work*' in $\frac{2}{3}$.

Appendix B

Vignettes’ Content – Pilot Study

Contextual

C1
<p>School reported that the adolescent’s mood seemed to have changed as he became isolated, very quiet and fatigued. Because of this, the adolescent was sent to a psychologist who diagnosed depression. Parent A requested sole physical custody, alleging that parent B (custodial parent) could not provide an environment that would enhance the adolescent’s mental health. Parent B stated that the adolescent used to visit parent A every weekend, and that parent A was the one who could not provide such an environment. Each parent requested sole physical custody.</p>
C2
<p>The parents are from different countries. They had a short relationship during an exchange visit. As a result of this relationship, a child was born and the parents tried to live together but, after some years, they broke up. Now, parent A and parent B went to the Family Court to dispute the child custody. Each parent is asking for a sole physical custody because they want the child to be raised according to their own country’s traditions and values.</p>
C3
<p>After some years living in the same neighbourhood, parent B (custodial parent) decided to move to another place. Parent A went to Family Court requesting sole physical custody, alleging that, if the child move far, it would have an impact on the child’s emotional bonds, as the child’s friends, school and also some relatives live in the former neighbourhood. Parent A lives close to the former neighbourhood and argues that the child should maintain these emotional ties. Parent B argues that the new neighbourhood is not too far and that the child could still see their friends and relatives. Each parent requests sole physical custody.</p>
C4
<p>A Jewish couple was married for 20 years and had three children. After the divorce, parent A wanted the children to attend an ultraorthodox same-sex school, while parent B wanted them to go to a modern orthodox school. They went to Family Court and each parent requests sole physical custody.</p>

Material-physiological

MP1
A child was diagnosed with anaemia and malnutrition. Because of this, Parent A is requesting the child custody alleging that Parent B (custodial parent) is providing poor nourishment to the child. Parent B rejects the allegations and argues that the child might have other health issues. Each parent requests sole physical custody.
MP2
Parent A went to the Family Court to request sole physical custody, alleging that the current custodial parent, Parent B, could not provide proper housing conditions for the child. Parent B argued that the only issue regarding housing is the fact the child does not have their own room yet. However, this is a temporary condition as they intend to move out to a bigger house soon. Each parent requests sole physical custody.
MP3
The child's school reported to social services that the child presented signs of physical abuse. Because of this, parent A is requesting sole physical custody alleging that parent B, the current custodial parent, physically abuses the child. Parent B has denied all the allegations, stating that the child visits parent A every weekend and that parent A is actually severely punishing the child. Each parent requests sole physical custody.
MP4
The school notified both parents about the child's clothing, which frequently appeared to be unclean, uncomfortable or worn. Because of this, parent A is requesting sole physical custody, alleging that parent B, the current custodial parent, cannot provide proper clothing for the child. Parent B has denied all the allegations and stated that the child visits parent A every weekend and also uses clothes provided by parent A to go to school. Each parent requests unilateral custody.

Both

C1 + MP1
An adolescent was diagnosed with anaemia, malnutrition and depression by a doctor. Parent B, the custodial one, refutes the diagnosis, arguing that the child might have other health issues that have led to this mistaken diagnosis. Parent A is requesting sole physical custody, alleging that parent B cannot provide an environment that meets the adolescent's mental health and dietary needs. Parent B stated that the adolescent visits parent A every weekend and that parent A is actually the one who cannot provide such an environment. Each parent is requesting sole physical custody.

C2 + MP2
Two parents are from two different countries. They had a short relationship during an exchange visit. As a result of this relationship, a child was born and the parents tried to live together but, after some years, they broke up and went to the Family Court to dispute the child's custody. Each parent requests sole physical custody because they want the child to be raised according to their own country's tradition and values by moving with the child to their home country. Parent A argues they are able to offer better housing for the child, but parent B also argues they are able to do so. Each parent requests sole physical custody.

C3 + MP3
School reported to social services that the child presented signs of physical abuse. In addition, parent A alleged that after some years living in the same neighbourhood, parent B, custodial one, decided to move to another neighbourhood. Because of this, parent A went to the Family Court to request sole physical custody, alleging that parent B physically abuses the child. Parent A also argues that, if the child move out to another neighbourhood, it would have an impact on the child's emotional relationships, as the child's friends, school and some relatives are in the former neighbourhood. Parent B denied the physical abuse allegations, stating that the child visits parent A every weekend and that parent A is actually severely punishing the child. In addition, parent B argues that the new neighbourhood is not that far and the child could still visit his friends. Each parent requests sole physical custody.

MP4 + C4
A Jewish couple were married for 20 years and had three children. After they divorced, parent A wanted the children to attend an ultraorthodox same-sex school, and parent B wanted them to go to a modern orthodox school. The current school has notified both parents about the child's clothing, which frequently appears to be unclean, uncomfortable or worn. Because of this, parent A is requesting sole physical custody of the child, alleging that parent B, the custodial one, cannot provide proper clothing for the child and also that the modern orthodox school does not preserve the best interests of the children. Parent B denies the allegations and states that the child

visits parent A every weekend and also uses the clothes provided by parent A to go to school. In addition, parent B argues that an ultraorthodox same-sex school is the one which is not on behalf of the children's interests. Each parent requests sole physical custody.

Appendix C

Information Sheet – Pilot Study

UNIVERSITY OF SUSSEX PARTICIPANT INFORMATION SHEET

Study title

Child custody decision-making processes: The role of the Best Interests of the Child Principle

You are being invited to take part in a research study. Before you decide whether or not to take part, it is important for you to understand why the research is being done and what it will involve. Please, take time to read the following information carefully.

What is the purpose of the study?

After a parental separation, some issues may arise: who the child is going to live with? How to ensure the best interests of the child? In this sense, this study is part of a Ph.D. research project that aims to investigate how people understand and apply the best interests of the child during child custody decision-making.

Why have I been invited to participate?

The participants of this study will be Law, Psychology and Social Work undergraduate students from Brazil and England as we want to understand how non-professional people make decisions regarding child custody. You are entitled to take part in this study because child custody is a theme that relates to your course and future profession.

Do I have to take part?

It is up to you to decide whether or not to take part. If you do decide to take part, you will consent your participation after reading all this information. Be aware that will be impossible to remove your data from the study as it is going to be not identifiable. However, you can stop taking part at any point by closing the browser window.

What will happen if I take part?

By taking agreeing to take part in this study, you will fill in a questionnaire with some items regarding the main topic of this study. The estimated duration is between 10 and 20 minutes – this can vary from participant to participant.

What are the possible benefits of taking part?

By taking part of this study, you will be entered into a draw to win one of two £25 prizes. In addition, you will contribute to widening the understanding and promotion of the best interests of the child after parental separation.

Will my information in this study be kept confidential?

All the data will be anonymous and confidential as the data will be de-identified. Thus, all information collected will be kept strictly confidential (subject to legal limitations) and handled in accordance with the General Data Protection Regulation (GDPR, 2016). All data will also be encrypted and password protected and only the principal researchers will have access.

What should I do if I want to take part?

Read this information sheet and then consent your participation.

What will happen to the results of the research study?

The results of this study will be part of a Ph.D. thesis and they also might be published in academic journals and/or conferences. If you have an interest in receiving a copy of the results, please inform your email address by the end of the survey.

Who is organising and funding the research?

This study is being conducted by Josimar Mendes, a Ph.D. student at University of Sussex on the School of Psychology, under the supervision of Professor Thomas Ormerod. This study is funded by the Ministry of Education of Brazil (MEC/CAPES).

Who has approved this study?

This study has been approved by the Sciences & Technology Cross-Schools Research Ethics Committee (crecscitec@sussex.ac.uk). The project reference number is ER/JA454/2. If you have any ethical concerns, please contact the student's supervisor Thomas Ormerod (T.Ormerod@sussex.ac.uk) in the first instance. The University of Sussex has insurance in place to cover its legal liabilities in respect of this study.

Contact for Further Information**Josimar Mendes**

Psychologist
MSc. Clinical Psychology and Culture
Doctoral Researcher

J.Alcantara-Mendes@sussex.ac.uk

We thank you for your taking part in this study.

Appendix D

Consent Form – Pilot Study

I agree to take part in this University of Sussex's research project. I have read and understood the Information Sheet. I understand that agreeing to take part means that I am willing to:

- Fill in a survey.

I understand that any information I provide is anonymous and confidential and that no information that I disclose will lead to the identification of any individual in the reports on the project, either by the researcher or by any other party.

I understand that my participation is voluntary and that I can choose not to participate in part or all of the project.

I consent to the processing of my personal information for the purposes of this research study. I understand that such information will be treated as strictly confidential and handled in accordance with the General Data Protection Regulation (GDPR, 2016).

- ☐ I am over 18 years old and I consent.
- ☐ I do not consent, I do not want to participate

Appendix E

Survey Content – Pilot Study

Please, complete the following items by clicking on the response which best reflects your answer or by filling in the blanks where appropriate.

1) How old are you?

2) What is your gender?

Male

Female

Other/Prefer not to say

3) Which course are you taking?

Law

Psychology

Social Work

Other [forward to the end of the survey]

4) In which year of University are you?

First

Second

Third

Fourth or higher⁶⁶

The following items ask you about your knowledge regarding the Best Interests of the Child Principle (BIC). Please, complete the items by clicking on the response which best reflects your answer.

5) Have you ever heard about BIC?

⁶⁶ In Brazil, Law and Psychology have five years of training.

Yes

No

6) Have you ever read any academic material or being in an academic activity (lecture, practical, seminar, workshop, symposia, etc.) which referred to BIC?

Yes

No

INSTRUCTIONS

In the next section, some vignettes regarding child custody will be presented to you. Your task is to read and then make a decision regarding the child custody. Thus, you will be asked to answer to whom you would award the custody and also to list some of the aspects/factors you consider important to make a decision regarding the case.

<<< Random presentation of 3 vignettes out of 12 available>>>

Based on the above scenario, to whom would you award the child custody?

Parent A

Parent B

Joint Custody

Relatives (siblings, aunt, grandmother, etc.)

Other:

Based on the vignette, please select the factors that you think one would need to analyse the case and make a decision:

Factor	Select
Child's wishes and feelings	
Child's social network	
Financial issues	
Level of coparental conflict	
The mother's natural right to have the child's custody	

Parent's gender	
Past events (e.g., marital disinterest, child neglect, leaving home, infidelity, etc.)	
Preserve the child's psycho-emotional bonds	
Maintain the child's routine	
Cooperation between parents	
Child's nourishment	
Housing issues	
Care after the child's health	
Child's clothing	
Signs of Parental Alienation	

Appendix F

Chapter IV’ Supporting Material

Table 30

Number of Participants per Country, Field and University Year

Country	Field	Year				TOTAL
		<i>First</i>	<i>Second</i>	<i>Third</i>	<i>Fourth or higher^a</i>	
Brazil	Law	6	6	12	32	56
	Psychology	21	34	36	118	209
	Social Work	1	9	14	22	46
England	Law	24	26	11	11	72
	Psychology	38	29	23	22	112
	Social Work	8	7	16	4	35
TOTAL		98	111	112	209	530

^a In Brazil, law, psychology and social work undergraduate courses take, at least, five years to be completed.

Vignette C1 – Child’s Mental Health

The second most frequent decision made was choosing ‘other’ (17%; n = 23) – see Table 31 below to check the frequency for the other options. Participants’ main reason for choosing ‘other’ was the need to have further investigation/assessment on the child’s mental health. Other participants also pointed that, because it was a teenager, the decision should follow whatever the adolescent wants.

Table 31

Custodial Decision Made for Vignette C1 (Child’s Mental Health) per Country and Field

Decision Made	Law		Psychology		Social Work		TOTAL n/%
	BR	EN	BR	EN	BR	EN	
Sole physical custody to Parent A (non-custodial parent)	-	2	12	5	1	-	20
Sole physical custody to Parent B (custodial parent)	2	3	5	1	1	2	14
Award joint custody	8	5	24	16	4	6	63
Award custody to a relative (siblings, aunt/uncle, grandparents, etc.)	2	6	8	1	1	1	19
Other	-	5	8	7	2	1	23
TOTAL	12	21	57	30	9	10	139

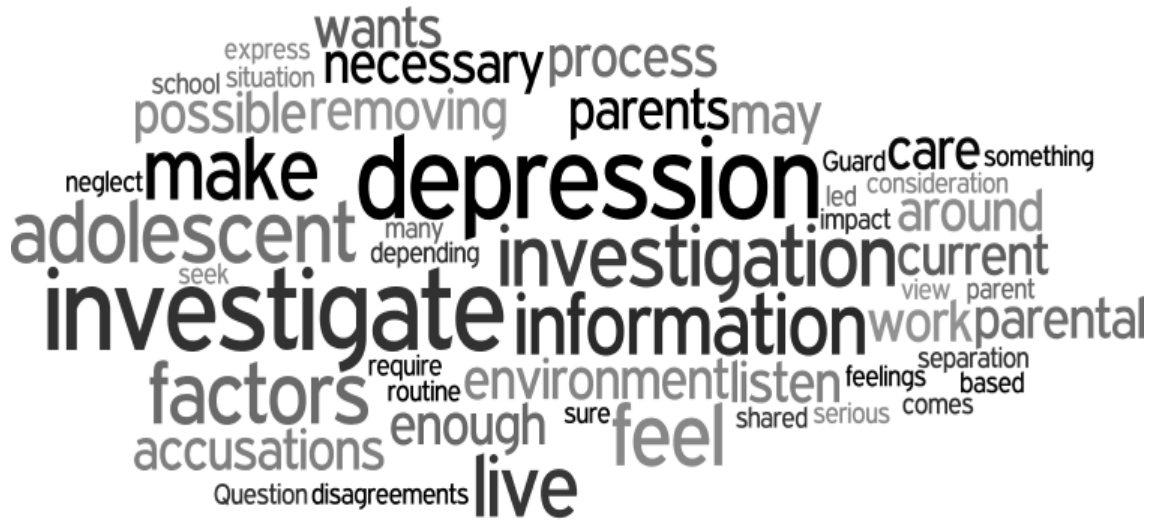
Figure 22 displays a word cloud with participants’ justification for choosing ‘other’ as their decision⁶⁷:

⁶⁷ Word clouds produced using the software Wordle, version 0.2 and considering the 50 most frequent words within the corpus.

Figure 22

Word Cloud with Participants’ Accountings for Choosing ‘Other’ – Vignette C1

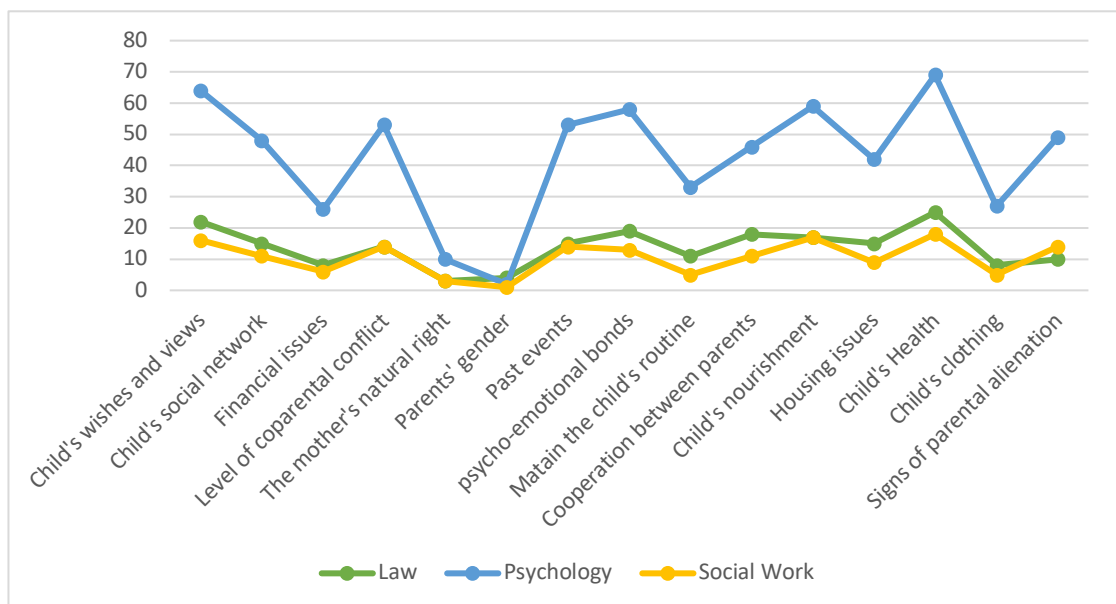
(Child’s Mental Health)



Regarding factors that participants thought would be important to weigh the case, the least chosen factors were: 1) parents’ gender; 2) the mothers’ natural right to have the custody; and 3) financial issues. Figure 23 shows the frequency for all factors:

Figure 23

Case Factors Considered Important by Participants – Vignette C1 (Child’s Mental Health)



Vignette C2 – Child’s Identity

Fourteen percent of participants chose ‘other’ – see Table 32 below to check the frequency for all decisions available. Amongst those who chose ‘other’, most of Brazilian participants would award the custody to the mother (even though there was no clear information regarding the parents’ gender), others would let the child stay in the country where they have been raised. English participants focused on the need to listen to the child’s wishes e feelings and also to let the child stay where they have been raised.

Table 32

Custodial Decision Made for Vignette C2 (Child’s Identity) per Country and Field

Decision Made	Law		Psychology		Social Work		TOTAL
	BR	EN	BR	EN	BR	EN	
Sole physical custody to Parent A (non-custodial parent)	3	2	3	13	-	-	21
Sole physical custody to Parent B (custodial parent)	11	-	16	1	6	-	34
Award joint custody	1	8	2	30	-	10	51
Award custody to a relative (siblings, aunt/uncle, grandparents, etc.)	5	5	6	7	2	-	25
Other	3	2	3	13	-	-	21
TOTAL	23	17	30	64	8	10	152

Figure 24 portrays a word cloud condensing participants’ responses:

Vignette C3 – Child’s Affectional Bonds

The second most frequent decision was to award the custody to parent B (32%; $n = 43$), the custodial parent – see Table 33 below to check the frequency for the other options. Only three participants chose ‘other’ and their justification referred to the child’s age, meaning that if they were young, they should stay with the custodial parent (parent B) but if they were adolescents, they should stay with parent A⁶⁸. The other two referred to the lack of information and to the need to investigate the case further.

Table 33

Custodial Decision Made for Vignette C3 (Child’s Affectional Bonds) per Country and Field

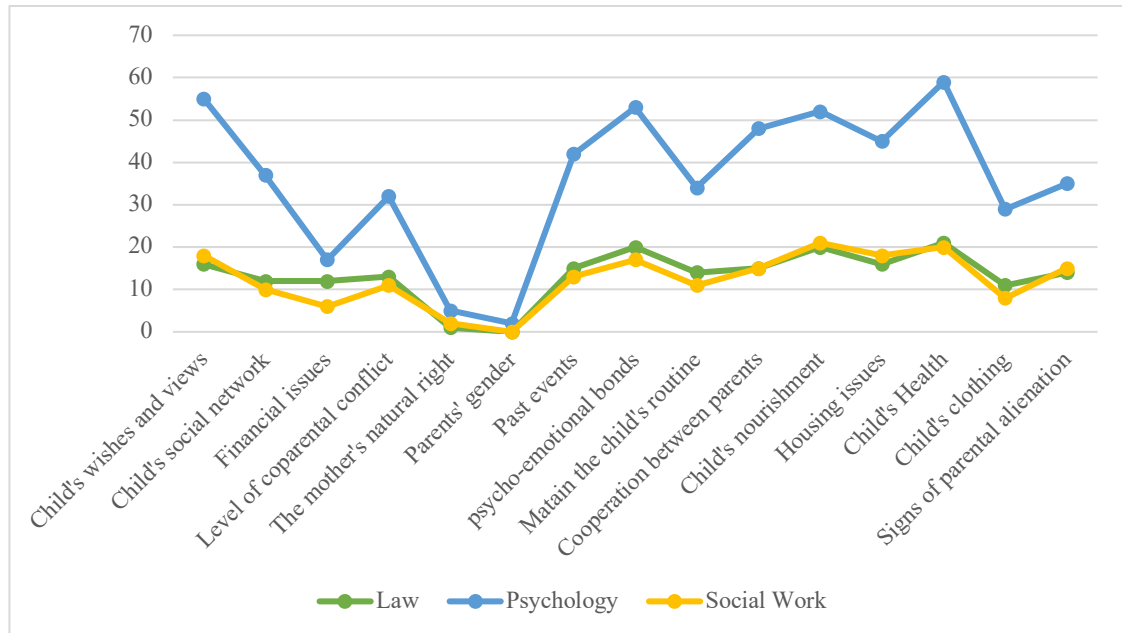
Decision Made	Law		Psychology		Social Work		TOTAL
	BR	EN	BR	EN	BR	EN	
Sole physical custody to Parent A (non-custodial parent)	-	4	3	1	-	2	10
Sole physical custody to Parent B (custodial parent)	6	2	15	13	3	4	43
Award joint custody	10	11	26	19	11	4	81
Award custody to a relative (siblings, aunt/uncle, grandparents, etc.)	-	-	-	-	-	-	-
Other	-	-	1	2	-	-	3
TOTAL	16	17	45	37	14	10	137

Participants from both countries and all fields selected factors evenly. The least chosen factors were: 1) parents’ gender; 2) the mothers’ natural right to have the custody; and 3) financial issues. Figure 26 shows the frequency for the other factors.

⁶⁸ The assembling of the responses did not reach a number of words that would make a word cloud accurate.

Figure 26

Case Factors Considered Important by Participants – Vignette C3 (Child’s Affectional Bonds)



Vignette C4 – Child’s Cultural/Religious Beliefs

The second most frequent decision was joint custody ($n = 41$; 30%). Almost half of Brazilian law students opted to award joint custody, whereas half of English law students opted to award the custody to parent B. This same pattern was observed amongst psychology and social work students – however, 100% of English social work students opted to award the custody to parent B. Eight percent of all students ($n = 11$) chose ‘other’⁶⁹. Their justification regarded the need to assess more information as well as to listen to the child’s wishes and feelings. Others also suggested that the parents should be encouraged to reach a settlement via mediation – see Table 34 below to check the frequency for the other options.

⁶⁹ Ibid 77.

Table 34

Custodial Decision Made for Vignette C4 (Child’s Cultural/Religious Beliefs) per Country and Field

Decision Made	Law		Psychology		Social Work		TOTAL
	BR	EN	BR	EN	BR	EN	
Sole physical custody to Parent A (non-custodial parent)	2	5	-	4	-	-	11
Sole physical custody to Parent B (custodial parent)	2	11	23	18	2	10	66
Award joint custody	6	2	27	1	5	-	41
Award custody to a relative (siblings, aunt/uncle, grandparents, etc.)	1	-	3	3	1	-	8
Other	2	5	-	4	-	-	11
TOTAL	13	23	53	30	8	10	137

The three most selected factors to weigh the case were: 1) child’s health; 2) child’s nourishment; and 3) child’s psychosocio-emotional bonds. The least chosen factors were: 1) parents’ gender; 2) the mothers’ natural right to have the custody; and 3) financial issues. Figure 27 in shows the frequency for the other factors:

Figure 27

Case Factors Considered Important by Participants – Vignette C4 (Child’s Cultural/Religious Beliefs)

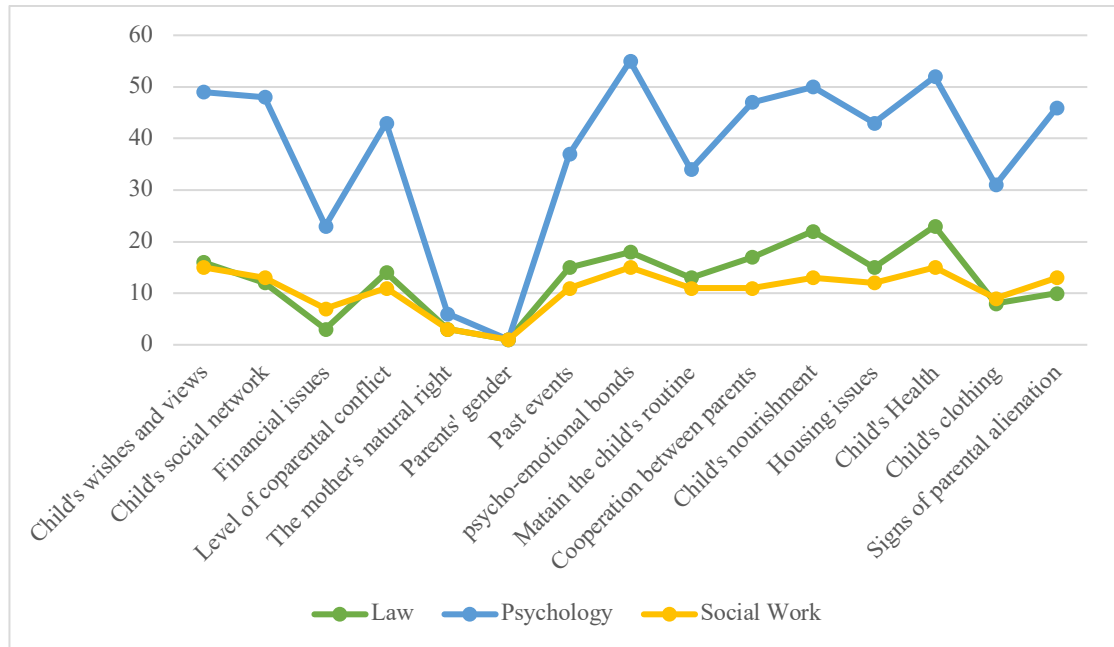


Table 35

Chi-square Test of Independence for the Interactions Between ‘Type of Contextual Vignette’, ‘Field’, ‘Country’ and the Decision Made

		Decision Made					p ^b	V ^c
		Sole physical custody Parent A (%; n)	Sole physical custody Parent B (%; n)	Joint Custody (%; n)	Award to a Relative (%; n)	Other (%; n)		
Type of Contextual Vignette								
Vignette C1 – <i>Child’s Mental Health</i>	AR ^a	14.4; 20	10.1; 14	45.3; 63	13.7; 19	16.5; 23	0.001	0.283
		2	-2.7	-3.1	5.8	2.4		
Vignette C2 – <i>Child’s Identity</i>	AR	16; 21	0.8; 1	61.8; 81	2.3; 3	19.1; 25		
		2.7	-5.8	1.4	-1.5	3.4		
Vignette C3 – <i>Affectional Bonds</i>	AR	7.3; 10	31.4; 43	59.1; 80	0;0	2.2; 3		
		-1.2	4.9	0.7	-3	-3.8		
Vignette C4 – <i>Cultural/Religious Beliefs</i>	AR	1.6; 2	28.6; 36	61.1; 77	2.4; 3	6.3; 8		
		-3.6	3.7	1.2	-1.4	-1.9		
Field								
Law	AR	10;13	15.4; 20	53.8; 70	8.5; 11	12.3; 16	0.068	0.117
		0	-0.8	-0.7	2.3	0.5		
Psychology	AR	11.4; 37	19.1; 62	54.3; 175	3.7; 12	11.4; 37		
		1.4	1.1	-1.4	-1.3	0.3		
Social Work	AR	3.8;3	15.2; 12	70.9; 56	2.5; 2	7.6; 6		
		-2.0	-0.6	2.8	-1.0	-1.1		
Country								
Brazil	AR	11; 33 0.9	19.9; 60	56.1; 169	3.7; 11	9.3; 28	0.174	0.109
			1.6	-0.3	-1.3	-1.5		
England	AR	8.6; 20 -0.9	14.7; 34	57.3; 133	6; 14	13.4; 31		
			-1.6	0.3	1.3	1.5		

^a Adjusted Residuals; ^b p value; ^c Cramer’s V.

Vignette MP1 – Child’s Nourishment

About 12% of participants chose ‘other’. Some of them wanted to have an assessment carried by professionals (e.g., doctor) before making any decision.

Similarly, others said that they would not change the current custodial arrangement until further assessment. One Brazilian participant also said that it would be important to listen to the child. See Table 36 below to check the frequency for the other options.

Table 36

Custodial Decision Made for Vignette MP1 (Child’s Nourishment) per Country and Field

Decision Made	Law		Psychology		Social Work		TOTAL
	BR	EN	BR	EN	BR	EN	
Sole physical custody to Parent A (non-custodial parent)	4	6	21	12	1	1	45
Sole physical custody to Parent B (custodial parent)	1	-	2	1	-	-	4
Award joint custody	7	2	9	7	5	6	56
Award custody to a relative (siblings, aunt/uncle, grandparents, etc.)	1	-	-	5	-	1	7
Other	1	4	3	3	1	3	15
TOTAL	14	12	55	28	7	11	127

Figure 28 displays a word cloud that summarises the participants’ responses:

Figure 28

Word Cloud with Participants’ Accountings for Choosing ‘Other’ – Vignette MPI

(Child’s Nourishment)

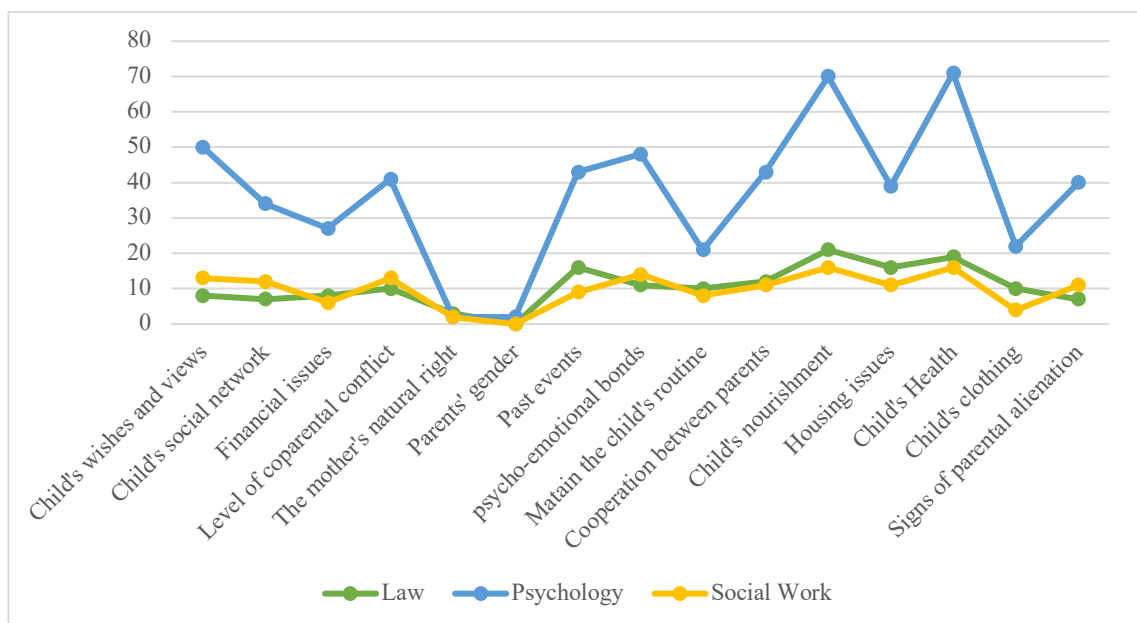


The least chosen factors were: 1) parents’ gender; 2) the mothers’ natural right to have the custody; and 3) child’s clothing. Figure 29 shows the frequency for the other factors.

Figure 29

Case Factors Considered Important by Participants – Vignette MPI (Child’s

Nourishment)



Vignette MP2 – Housing Issues

Only two English students opted to award the custody to a child’s relative – see Table 37 below to check the frequency for the other options.

Table 37

Custodial Decision Made for Vignette MP2 (Housing Issues) per Country and Field

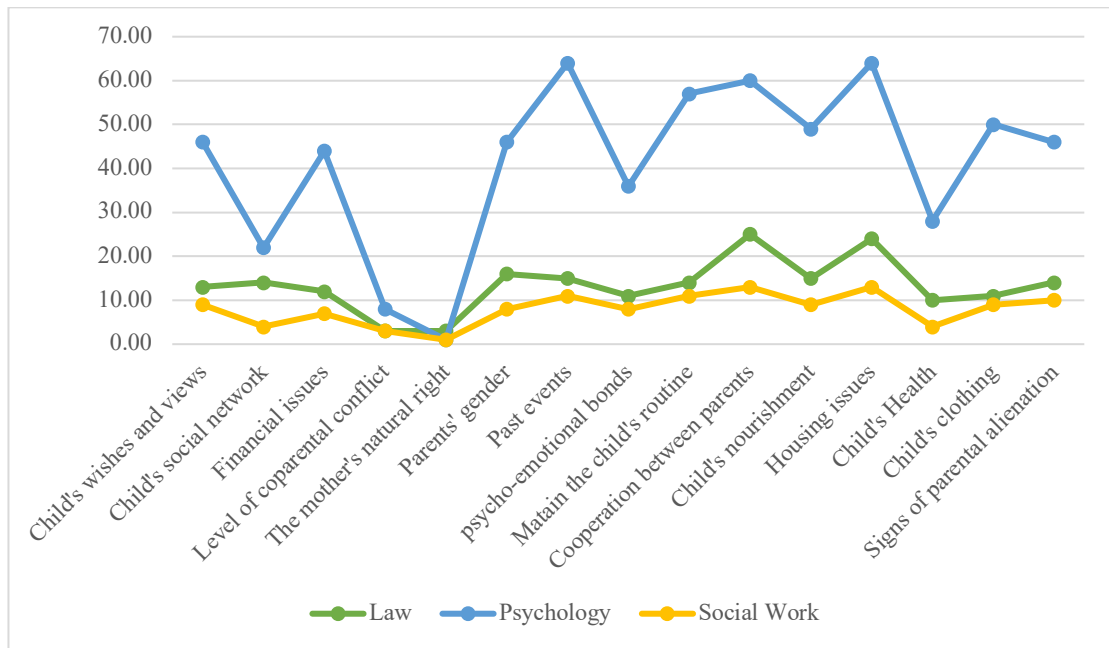
Decision Made	Law		Psychology		Social Work		TOTAL
	BR	EN	BR	EN	BR	EN	
Sole physical custody to Parent A (non-custodial parent)	-	3	7	8	-	-	18
Sole physical custody to Parent B (custodial parent)	6	2	19	1	2	2	32
Award joint custody	8	12	29	20	5	5	79
Award custody to a relative (siblings, aunt/uncle, grandparents, etc.)	-	1	-	1	-	-	2
Other	-	2	-	1	-	-	3
TOTAL	14	20	55	31	7	7	134

Only three English students chose ‘other’⁷⁰. All of them argued that an intermediary decision should be take place until parent B improves housing issues. The least chosen factors were: 1) parents’ gender; 2) the mothers’ natural right to have the custody; and 3) child’s social network. Figure 30 in shows the frequency for the other factors:

⁷⁰ Ibid 77.

Figure 30

Case Factors Considered Important by Participants – Vignette MP2 (Child’s Housing)



Vignette MP3 – Child’s Physical Integrity

The second most frequent decision was awarding joint custody (16%; n = 21) – see Table 38 below to check the frequency for the other options.

Table 38

Custodial Decision Made for Vignette MP3 (Child’s Physical Integrity) per Country and Field

Decision Made	Law		Psychology		Social Work		TOTAL
	BR	EN	BR	EN	BR	EN	
Sole physical custody to Parent A (non-custodial parent)	1	3	5	1	1	-	11
Sole physical custody to Parent B (custodial parent)	-	-	2	-	-	1	3
Award joint custody	4	4	5	7	-	1	21
Award custody to a relative (siblings, aunt/uncle, grandparents, etc.)	6	12	28	18	9	3	76

Other	2	6	9	4	-	2	23
TOTAL	13	25	49	30	10	7	134

Seventeen percent of participants ($n = 23$) chose ‘other’. The majority of participants chose ‘other’ because they wanted to have more information to probe the abuse allegations. Some of them also pointed the need to listen to the child and to retrieve information from social services. Other participants said that they would send the child to foster care. Figure 31 display a word cloud based on all participants’ responses:

Figure 31

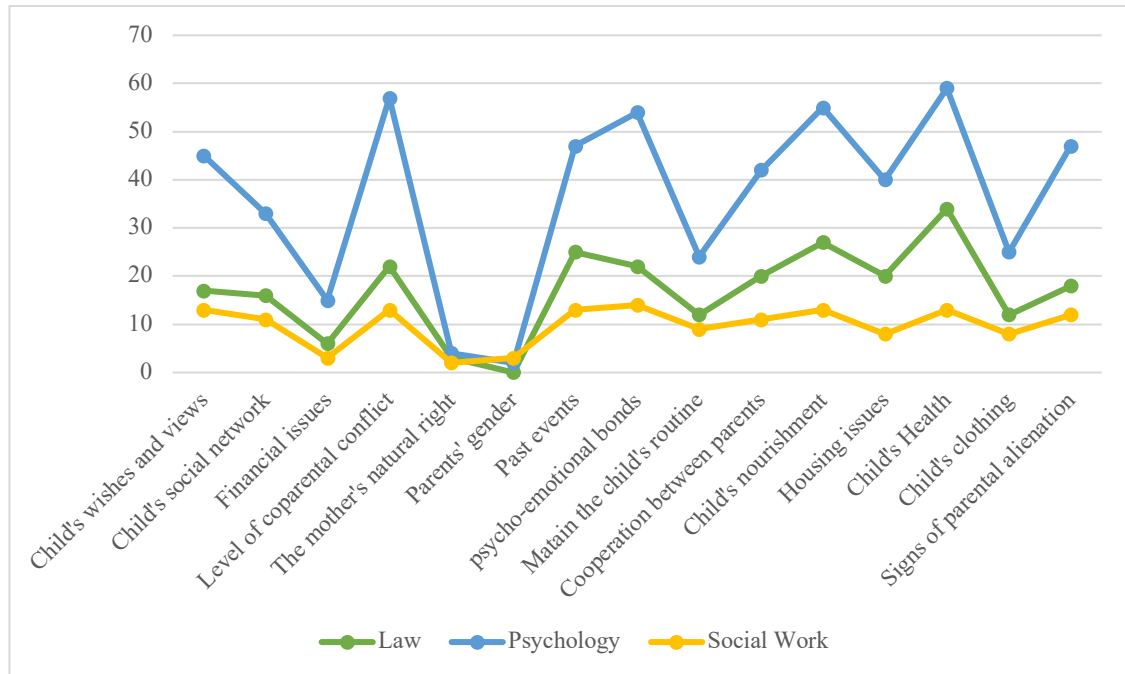
*Word Cloud with Participants’ Accountings for Choosing ‘Other’ – Vignette MP3
(Child’s Physical Integrity)*



The three most selected factors to weigh the case were: 1) child’s health; 2) child’s nourishment; and 3) level of coparental conflict. The least chosen factors were: 1) parents’ gender; 2) the mothers’ natural right to have the custody; and 3) financial issues. Figure 32 shows the frequency for the other factors:

Figure 32

Case Factors Considered Important by Participants – Vignette MP3 (Child’s Physical Integrity)



Vignette MP4 – Child’s Clothing

About 7% of participants chose ‘other’⁷¹. Their justifications regarded the need to access more information about the case (e.g., assessing both parents) and the need to listen to the child – see Table 39 below to check the frequency for the other options.

Table 39

Custodial Decision Made for Vignette MP4 (Child’s Clothing) per Country and Field

Decision Made	Law		Psychology		Social Work		TOTAL
	BR	EN	BR	EN	BR	EN	
Sole physical custody to Parent A (non-custodial parent)	1	2	6	5	-	-	14
Sole physical custody to Parent B (custodial parent)	2	4	5	1	3	1	16

⁷¹ Ibid 77.

Award joint custody	7	14	29	15	7	6	78
Award custody to a relative (siblings, aunt/uncle, grandparents, etc.)	2	5	3	4	2	1	17
Other	1	-	6	-	-	2	9
TOTAL	13	25	49	25	12	10	134

The least chosen factors were: 1) parents’ gender; 2) the mothers’ natural right to have the custody; and 3) financial issues. Figure 33 shows the frequency for the other factors:

Figure 33

Case Factors Considered Important by Participants – Vignette MP4 (Child’s Physical Integrity)

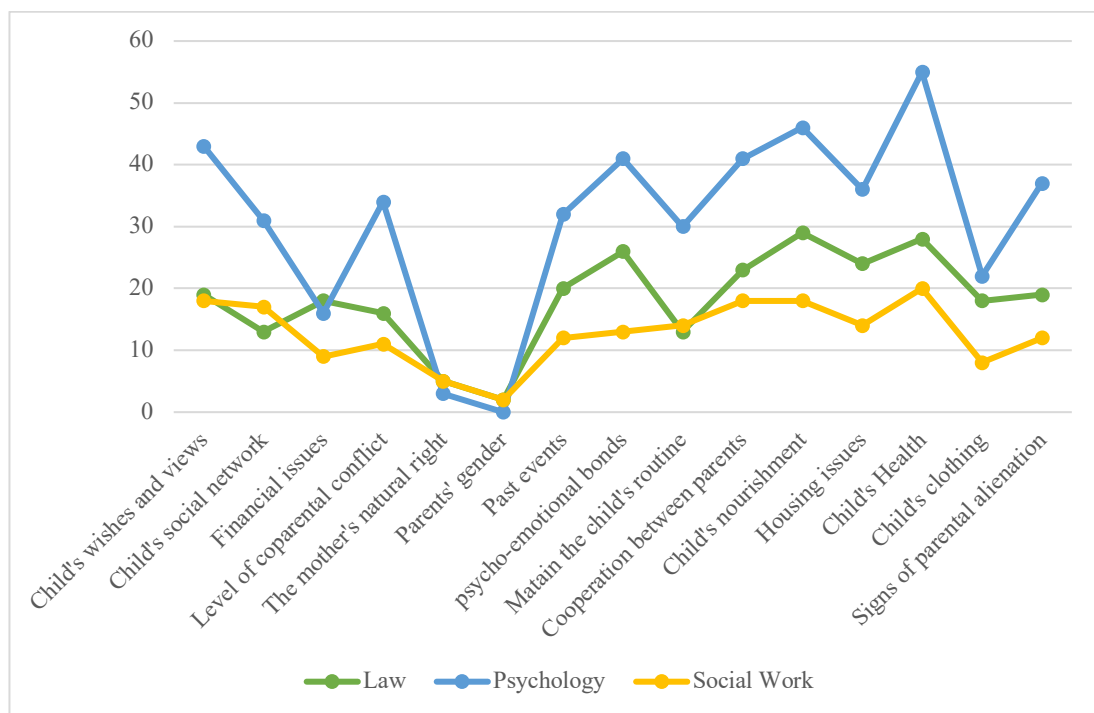


Table 40

Chi-square Test of Independence for the Interactions Between ‘Type of Material-physiological Vignette’, ‘Field’, ‘Country’ and the Decision Made

		Decision Made					p ^b	V ^c
		Sole physical custody Parent A (%; n)	Sole physical custody Parent B (%; n)	Joint Custody (%; n)	Award to a Relative (%; n)	Other (%; n)		
Type of Material-physiological Vignette								
Vignette MP1 – <i>Nourishment</i>	AR ^a	35.4; 45	3.1; 4	44.1; 56	5.5; 7	11.8;15	0.001	0.409
		6.5	-3.1	0	-4.5	1		
Vignette MP2 – <i>Housing</i>	AR	13.4; 18	23.9; 32	59; 79	1.5; 2	2.2; 3		
		-1.2	5.9	4	-6	-3.3		
Vignette MP3 – <i>Physical Integrity</i>	AR	8.2; 11	2.2; 3	15.7; 21	56.7; 76	17.20; 23		
		-3	-3.6	-7.5	12.7	3.5		
Vignette MP4 – <i>Clothing</i>	AR	10.4; 14	11.9; 16	58.2; 78	12.7; 17	6.7; 9		
		-2.2	0.7	3.8	-2.2	-1.3		
Field								
Law	AR	14.7; 20	11; 15	42; 58	19.9; 27	11.8; 16	0.125	0.109
		-0.7	0.3	-0.4	0.2	1.1		
Psychology	AR	20.2; 65	9.6; 31	43.8; 141	18.3; 59	8.1; 26		
		2.7	-0.7	-0.3	-0.7	-1.4		
Social Work	AR	4,2; 3	12.7; 9	49.3; 35	22.5; 16	11.3; 8		
		-3.0	0.7	0.9	0.7	0.6		
Country								
Brazil	AR	15.8; 47	14.1; 42	45; 135	17.1; 51	7.7; 23	0.10	0.158
		-0.6	3.2	0.6	-1.4	-1.5		
England	AR	17.7; 41	5.6; 13	42.9; 99	22.1; 51	11.7; 27		
		0.6	-3.2	-0.6	1.4	1.5		

^a Adjusted Residuals; ^b p value; ^c Cramer’s V.

Vignette C1 + MP1 – Child’s Mental Health & Nourishment

The second most frequent decision was joint custody (27%; n = 35) – see Table 41 below to check the frequency for the other options.

Table 41

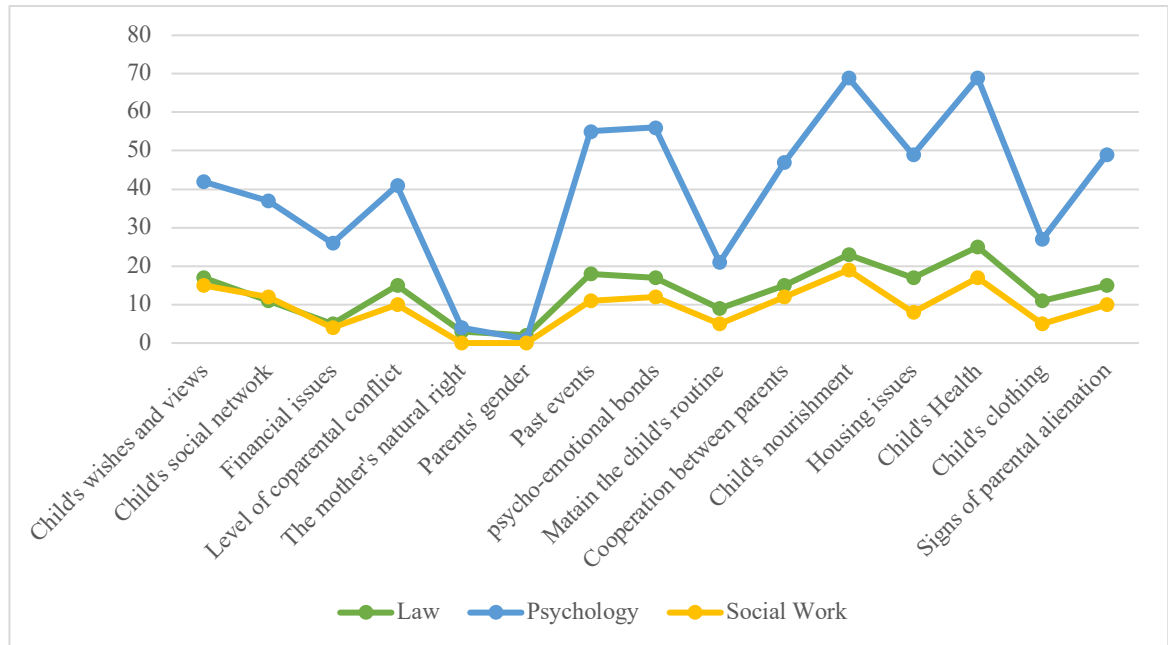
Custodial Decision Made for Vignette C1 + MP1 (Child’s Mental Health & Nourishment) per Country and Field

Decision Made	Law		Psychology		Social Work		TOTAL
	BR	EN	BR	EN	BR	EN	
Sole physical custody to Parent A (non-custodial parent)	9	6	28	8	4	4	59
Sole physical custody to Parent B (custodial parent)	1	1	2	-	-	2	6
Award joint custody	4	3	12	8	3	5	35
Award custody to a relative (siblings, aunt/uncle, grandparents, etc.)	1	3	10	8	1	-	23
Other	-	1	2	5	-	1	9
TOTAL	15	14	54	29	8	12	132

Seven percent of participants (n = 9) chose ‘other’. Their justification regarded the need to have further assessment. Meanwhile, some of them said that the child should stay where they were, whereas other said that the child should go to a temporary shelter until the assessment is completed. They also highlighted the need to have social services involved as well as listening to the child. Figure 34 shows a word cloud compiling all the responses:

Figure 35

Case Factors Considered Important by Participants – Vignette C1 + MP1 (Child’s Mental Health & Nourishment)



Vignette C2 + MP2 – Child’s Identity & Housing

The second most frequent decision was to choose ‘other’ (14%; n = 18) – see Table 42 below to check the frequency for the other options.

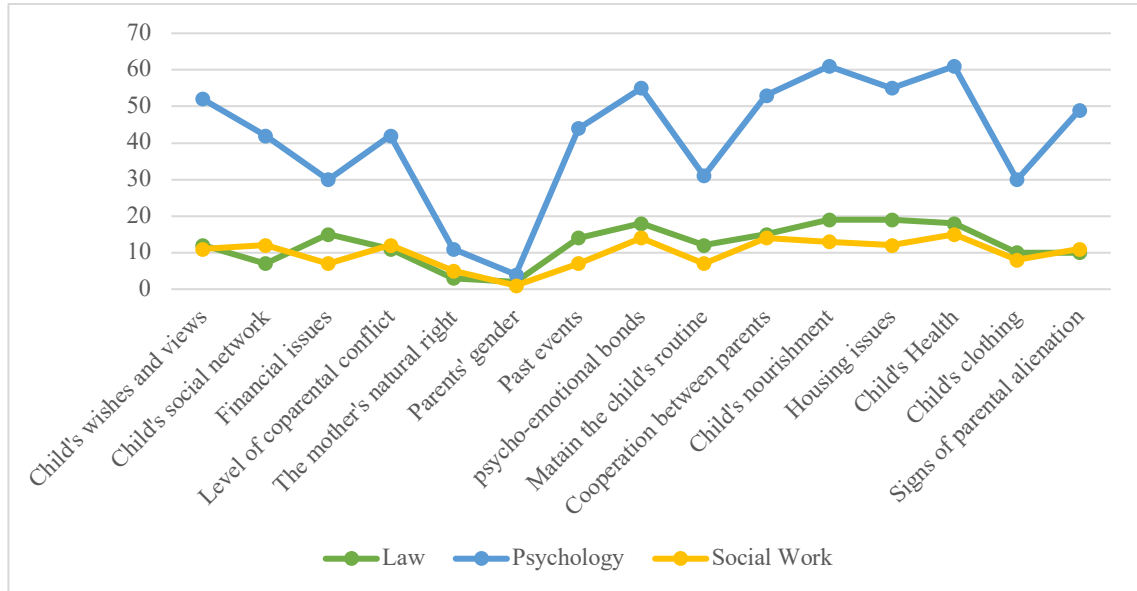
Table 42

Custodial Decision Made for Vignette C2 + MP2 – Child’s Identity & Housing per Country and Field

Decision Made	Law		Psychology		Social Work		TOTAL
	BR	EN	BR	EN	BR	EN	
Sole physical custody to Parent A (non-custodial parent)	-	2	6	2	-	1	11
Sole physical custody to Parent B (custodial parent)	-	-	3	1	1	-	5
Award joint custody	9	15	34	20	10	2	90

Figure 37

Case Factors Considered Important by Participants – C2 + MP2 (Child’s Identity & Housing)



Vignette C3 + MP3 – Child’s Affectional Bonds & Physical Integrity

The second decision most frequent was awarding joint custody (25%; n = 33) – see Table 43 below to check the frequency for the other options.

Table 43

Custodial Decision Made Vignette C3 + MP3 (Child’s Affectional Bonds & Physical Integrity) per Country and Field

Decision Made	Law		Psychology		Social Work		TOTAL
	BR	EN	BR	EN	BR	EN	
Sole physical custody to Parent A (non-custodial parent)	6	4	13	3	-	-	26
Sole physical custody to Parent B (custodial parent)	-	3	3	1	1	2	10
Award joint custody	4	9	7	8	2	3	33
Award custody to a relative (siblings, aunt/uncle, grandparents, etc.)	4	5	24	14	2	-	49

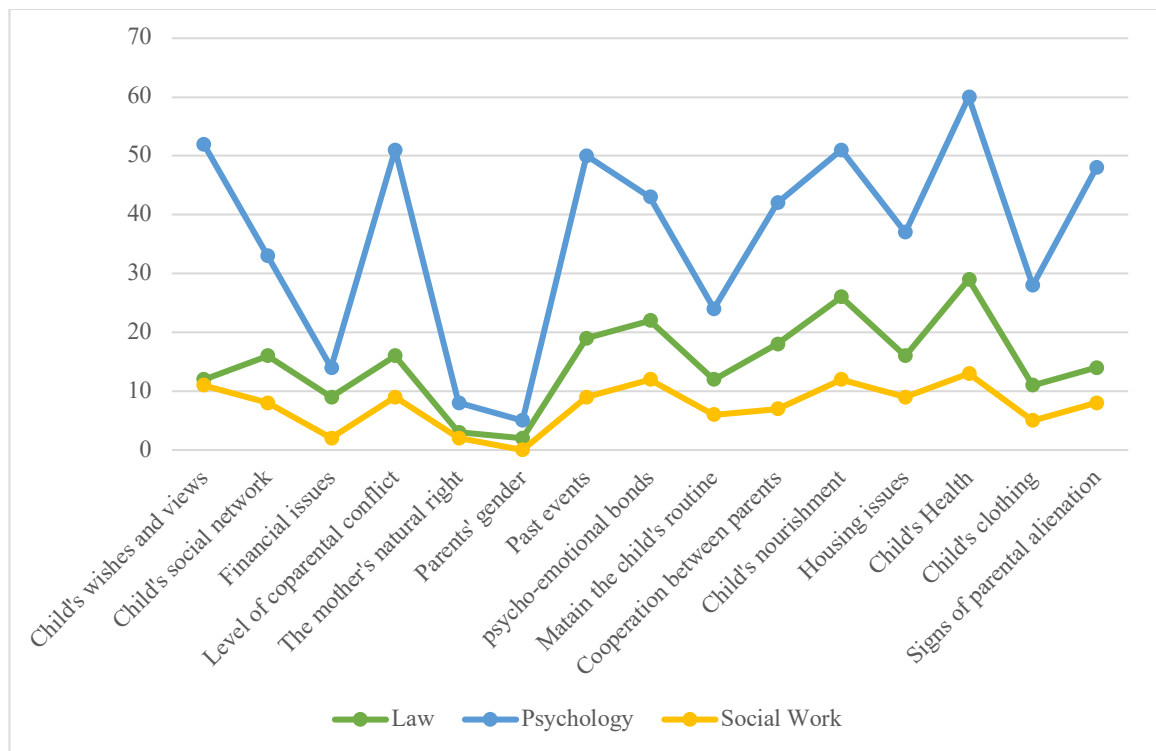
Other	2	-	3	3	2	2	12
TOTAL	16	21	50	29	7	7	130

Nine percent of participants ($n = 12$) decided to choose ‘other’⁷². Their justification regarded the need to assess more information/investigation. Others would either send the child to foster care until further assessment or listen to the child.

The least chosen factors were: 1) parents’ gender; 2) the mothers’ natural right to have the custody; and 3) child’ clothing. Figure 38 shows the frequency for the other factors:

Figure 38

Case Factors Considered Important by Participants – Vignette C3 + MP3 (Child’s Affectional Bonds & Physical Integrity)



⁷² Ibid 77.

Vignette C4 + MP4 – Child’s Cultural/Religious Beliefs & Clothing

The second one was awarding to parent B (34%; n = 44) – see Table 44 below to check the frequency for the other options.

Table 44

Custodial Decision Made Vignette C4 + MP4 (Child’s Cultural/Religious Beliefs & Clothing) per Country and Field

Decision Made	Law		Psychology		Social Work		TOTAL
	BR	EN	BR	EN	BR	EN	
Sole physical custody to Parent A (non-custodial parent)	2	2	3	2	2	-	11
Sole physical custody to Parent B (custodial parent)	6	-	17	14	4	3	44
Award joint custody	8	7	22	14	4	8	63
Award custody to a relative (siblings, aunt/uncle, grandparents, etc.)	-	-	-	2	1	-	3
Other	1	-	4	2	1	2	10
TOTAL	17	9	46	34	12	13	131

Eight percent of participants (n = 10) decided to choose ‘other’⁷³. Their justification regarded the need to listen to the child and have more information about the case. Others said that they would send parents to mediation or would not change the current custodial arrangement. The least chosen factors were: 1) parents’ gender; 2) the mothers’ natural right to have the custody; and 3) financial issues. Figure 39 shows the frequency for the other factors:

⁷³ Ibid 77.

Figure 39

Case Factors Considered Important by Participants – C4 + MP4 (Child’s Cultural/Religious Beliefs & Clothing)

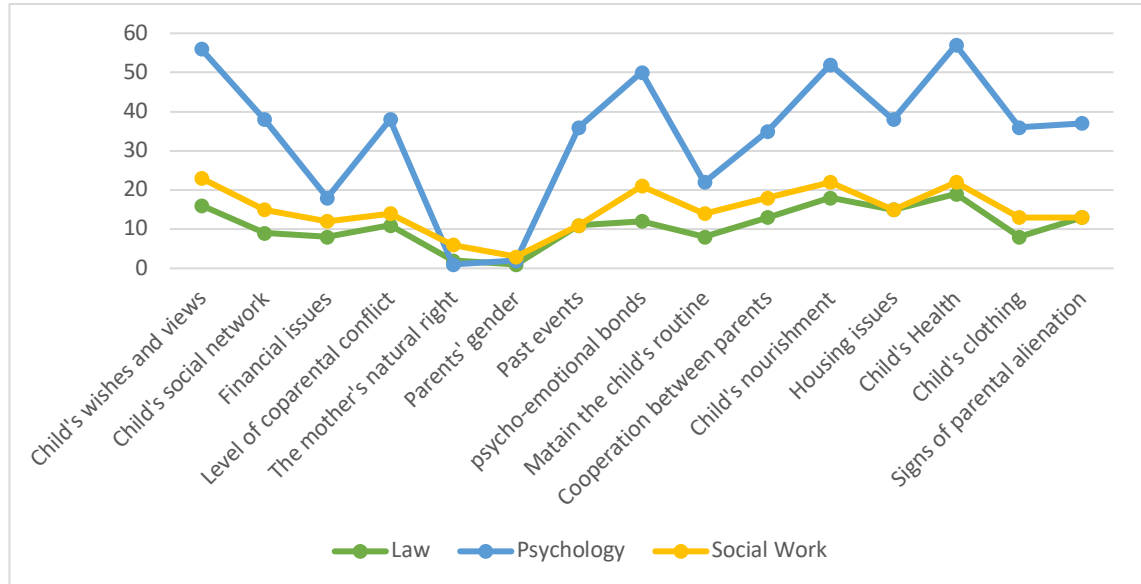


Table 45

Chi-square Test of Independence for the Interactions Between ‘Type of Contextual + Material-physiological Vignette’, ‘Field’, ‘Country’ and the Decision Made

		Decision Made					p ^b	V ^c
		Sole physical custody Parent A (%; n)	Sole physical custody Parent B (%; n)	Joint Custody (%; n)	Award to a Relative (%; n)	Other (%; n)		
Type of ‘Contextual + Material-physiological’ Vignette								
Vignette C1 + MP1 – <i>Child’s Mental Health & Nourishment</i>	AR ^a	44.7; 59 8.1	4.5; 6 -3.2	26.5; 35 -4.3	17.4; 23 0.7	6.8; 9 -1.2	0.001	0.385
Vignette C2 + MP2 – <i>Child’s Identity & Housing</i>	AR	7.8; 10 -4.1	3.9; 5 -3.4	69.8; 90 7.3	4.7; 6 -3.9	14; 18 2		
Vignette C3 + MP3 – <i>Affectional Bonds & Physical Integrity</i>	AR	20; 26 -0.1	7.7; 10 -1.9	25.4; 33 -4.5	37.7; 49 8.1	9.2; 12 -0.1		
Vignette C4 + MP4 – <i>Cultural/Religious Beliefs & Clothing</i>	AR	8.4; 11 -3.9	33.6; 44 8.5	48.1; 63 1.5	2.3; 3 -4.8	7.6; 10 -0.8		
Field								
Law	AR	24.6; 31 1.4	8.7; 11 -1.5	46.8; 59 1.2	12.7; 16 -1	7.1; 9 -1	0.024	0.13
Psychology	AR	19.9; 64 -0.3	12.8; 41 0.3	38.9; 125 -2	19; 61 2.8	9.3; 30 0		
Social Work	AR	14.7; 11 -1.3	17.3; 13 1.4	49.3; 37 1.3	5.3; 4 -2.6	13.3; 10 1.3		
Country								
Brazil	AR	24.3; 73 2.7	12.7; 38 0.2	39.7; 119 -1.4	14.7; 44 -0.6	8.7; 26 -0.7	0.109	0.120
England	AR	14.9; 33 -2.7	12.2; 27 -0.2	45.9; 102 1.4	16.7; 37 0.6	10.4; 23 0.7		

^a Adjusted Residuals; ^b p value; ^c Cramer’s V.

Appendix G

Interview Script

Participant: _____ Category: _____ Country/City: _____
 For how long have you been working in this field?

Understanding the concept of ‘the best interests of the child’ (BIC)

First, I would like to have an idea of how you understand the BIC in general, so I would like to know:

- 1) What do you understand by ‘the best interests of the child’ (BIC)?
- 2) There are some critiques arguing that BIC is too open, too subjective, too vague... what are your thoughts on it?

National and International Legislation regarding BIC

Now, I would like to know if you perceive the BIC related to national and international legislation, so:

- 3) How do you believe BIC is addressed by the legislation?
- 4) How do you think BIC relates to the child’s rights?

BIC, Parental Separation Context and its Evaluation

Now, I want to discuss how BIC is related and applied in a context of parental separation and child, so:

- 5) What are the child’s interests that are at more risk in ‘child arrangements’ disputes?
- 6) How to evaluate BIC in ‘child arrangements’ after parental separation?
- 7) How to safeguard BIC in ‘child arrangements’ after parental separation?
- 8) What are the ‘child arrangements’ disputes cases, after parental separation, in which the decision-making based on BIC is most difficult?

Child’s role in the BIC evaluation

Now, I want to understand how the child is integrated into the ‘child arrangement’ decision-making process, so:

- 9) What is the role of the child in the process of evaluation and safeguarding of their best interests in post parental separation disputes?
- 10) How the children’s ideas, desires, and yearnings are taken into account during the decision-making process?
- 11) Is there any difference between young children’s and adolescents’ interests in ‘child arrangements’ disputes after parental separation?

Parents’ role in the BIC evaluation

Now, I want to discuss how parents’ relationship and their parenthood are taken into account during the ‘child arrangement’ decision-making process, so:

APPENDIX G – INTERVIEW SCRIPT

- 12) How do you believe parents can affect a child's best interests in 'child arrangements' cases after parental separation?
- 13) In a situation of post parental separation, what are the main aspects of the parent-child relationship that have to be taken into account to make a decision?
- 14) Is there any kind of 'child arrangement' that fits better the best interests of the child after parental separation?

Other BIC factors

Now, I want to discuss other factors or characteristics that can impact the BIC and the 'child arrangement' decision-making process, so:

- 15) Do you believe that the child's development is related, somehow, to the BIC? (ask to explain)
- 16) What is the relationship between BIC and the child's social network (extended family, school, friends, community, etc.)?
- 17) **For judges:** how do you perceive the performance of the prosecutor, psychologist, social worker and lawyers in this process? How can they act to ensure the best interests of the child? **For prosecutors:** how do you perceive the performance of the judge, psychologist, social worker and lawyers in this process? How can they act to ensure the best interests of the child? **For psychologists:** how do you perceive the performance of the prosecutor, judge, social worker and lawyers in this case? How can they act to ensure the best interests of the child? **For social workers:** how do you perceive the performance of the prosecutor, judge, psychologists and lawyers in this process? How can they act to ensure the best interests of the child? **For lawyers:** how do you perceive the performance of the prosecutor, psychologist and social workers in this process? How can they act to ensure the best interests of the child?

Appendix H

Participants’ Demographics

English participants’ city is omitted to avoid any possibility of identification because, in many cases, there was just one participant per city. For the same reason, in Brazil, the prosecutors’ city is also not displayed as participants were mainly from the same city and just one prosecutor was from another city.

Table 46

Participants’ Basic Sociodemographic Information Per Country – Interviews Study

Country/City	Category	Gender	Years of Experience	Excerpt Reference Code	ID
Brazil/ Brasília	Judges	F	12	BR_BsB.Jd 01	P1
		F	5	02	P2
		F	5	03	P3
		M	3	04	P4
	Lawyers	F	9	BR_BsB.Lw 01	P5
		F	6	02	P6
		M	25	03	P7
	Psychologists	F	13	BR_BsB.Psy 01	P8
		F	18	02	P9
		F	18	03	P10
		F	15	04	P11
		F	10	05	P12
	Social Workers	F	13	BR_BsB.SW 01	P13
		F	18	02	P14
Brazil/ Porto Alegre	Judges	M	30	BR_POA.Jd 01	P15
		M	13	02	P16
	Lawyers	F	15	BR_POA.Lw 01	P17
		F	15	02	P18
		F	25	03	P19
	Psychologists	F	25	BR_POA.Psy 01	P20
		F	10	02	P21
		F	18	03	P22
		F	20	04	P23
	Social Workers	F	3	BR_POA.SW 01	P24
		F	3	02	P25
		M	2	03	P26
Brazil/ São Paulo	Judges	F	8	BR_SP.Jd 01	P27
		M	30	02	P28
		M	20	03	P29

Brazil	<i>Lawyers</i>	M	7	04	P30
				<i>BR_SP.Lw</i>	
		F	3	01	P31
		F	8	02	P32
		M	5	03	P33
	<i>Psychologists</i>	M	8	04	P34
				<i>BR_SP.Psy</i>	
		F	26	01	P35
		F	11	02	P36
		M	31	03	P37
		M	3	04	P38
	<i>Social Workers</i>			<i>BR_SP.SW</i>	
		F	30	01	P39
		F	44	02	P40
		F	5	03	P41
Brazil	<i>Prosecutors</i>			<i>BR_Pr</i>	
		F	14	01	P42
		F	15	02	P43
		M	5	03	P44
		M	6	04	P45
		M	2	05	P46
		M	16	06	P47
		M	25	07	P48
England	<i>Judges</i>			<i>EN_Jd</i>	
		F	30	01	P49
		F	12	02	P50
		M	16	03	P51
	<i>Lawyers</i>	M	23	04	P52
				<i>EN_Lw</i>	
		F	5	01	P53
		F	20	02	P54
		F	04	03	P55
		M	28	04	P56
		F	03	05	P57
		M	10	06	P58
	<i>Psychologists</i>	F	08	07	P59
				<i>EN_Psy</i>	
		F	26	01	P60
		F	14	02	P61
		F	11	03	P62
		M	9	04	P63
		M	30	05	P64
		M	9	06	P65
England	<i>Social Workers</i>	M	14	07	P66
		F	12	08	P67
		F	24	09	P68
				<i>EN_SW</i>	
		F	9	01	P69
		F	28	02	P70
	<i>Psychologists</i>	M	26	03	P71
		M	14	04	P72
		F	28	05	P73
TOTAL		F= 46 (64%); M= 27 (36%)	μ= 14.9 (SD=9.4)	-	73

Appendix I

Information Sheet – Interview Study



PARTICIPANT INFORMATION SHEET

STUDY TITLE

Child Custody decision-making processes: The role of the Best Interests of the Child Principle

You are being invited to take part in a research study. Before you decide whether or not to take part, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully.

WHAT IS THE PURPOSE OF THE STUDY?

Our study aims to better understand questions such as: who the child is going to stay with after parental separation? How to make better child arrangements ensuring the best interests of the child?

This qualitative study intends to discuss these questions and also aims to investigate how legal actors understand and apply the best interests of the child during the custody decision-making process.

WHY HAVE I BEEN INVITED TO PARTICIPATE?

As the main goal of this study is to understand how legal actors are involved in custody decision-making process, the participants of this study will be judges, prosecutors, psychologists, social workers and lawyers that have experience with child custody cases after parental separation.

DO I HAVE TO TAKE PART?

It is up to you to decide whether or not to take part. If you do decide to take part, you will be given this information sheet to keep and be asked to sign a consent form. If you decide to take part, you are still free to withdraw until the date informed in the consent form without giving a reason.

WHAT WILL HAPPEN TO ME IF I TAKE PART?

By agreeing to take part in this study, you will be interviewed and asked to answer some questions regarding the main topic of this study. The interview will be audio-recorded and then transcribed and analysed. The estimated duration is between 30 and 60 minutes per interview, depending on each participant.

WHAT ARE THE POSSIBLE BENEFITS OF TAKING PART?

There is no financial benefit or compensation by taking part in this study nor any other direct benefit. However, by agreeing to participate, you will contribute to

widening the understanding and promotion of the best interests of the child in custody dispute cases after parental separation.

WILL MY INFORMATION IN THIS STUDY BE KEPT CONFIDENTIAL?

All the data will be anonymous and confidential as the data will be de-identified. Thus, all information collected will be kept strictly confidential (subject to legal limitations). To protect participants' anonymity, signed consent terms will be stored separately from interview recordings and transcriptions to ensure that there is no possibility of identification. All data will also be encrypted and password protected and only the principal researchers will have access to.

WHAT SHOULD I DO IF I WANT TO TAKE PART?

Read this sheet information and then sign the Consent Form agreeing your participation.

WHAT WILL HAPPEN TO THE RESULTS OF THE RESEARCH STUDY?

The results of this study will be part of a PhD thesis and academic publications in journals and conferences. If you have an interest in receiving a copy of the results, please write your email address on the Consent Form.

WHO IS ORGANISING AND FUNDING THE RESEARCH?

This study is being conducted by Josimar Mendes, a doctoral researcher at the University of Sussex on the School of Psychology, under the supervision of Professor Thomas Ormerod. This study is funded by the Brazilian Ministry of Education (MEC/CAPES).

WHO HAS APPROVED THIS STUDY?

This study has been approved by the Sciences & Technology Cross-Schools Research Ethics Committee (crecscitec@sussex.ac.uk). The project reference number is ER/JA454/1. If you have any ethical concerns, please contact the researcher's supervisor Thomas Ormerod (T.Ormerod@sussex.ac.uk) in the first instance. The University of Sussex has insurance in place to cover its legal liabilities in respect of this study.

CONTACT FOR FURTHER INFORMATION

Please contact:

Josimar Mendes

Psychologist

MSc. Clinical Psychology and Culture

Doctoral Researcher

J.Alcantara-Mendes@sussex.ac.uk

THANK YOU

We thank you for your commitment and precious time by being part of this study.

DATE

Appendix J**Consent Form – Interview Study****CONSENT FORM**

PROJECT TITLE: **Child Custody decision-making processes: the role of the Best Interests of the Child Principle**

Project Approval Reference: ER/JA454/1

I agree to take part in the above University of Sussex research project. I have had the project explained to me and I have read and understood the Information Sheet, which I may keep for records. I understand that agreeing to take part means that I am willing to:

- Be interviewed by the researcher;
- Allow the interview to be audiotaped.

I understand that any information I provide is confidential, and that no information that I disclose will lead to the identification of any individual in the reports on the project, either by the researcher or by any other party.

I understand and agree that the anonymised data may be used in future research or by other researchers. I understand that all information I provide will remain confidential and de-identified.

I understand that my participation is voluntary, that I can choose not to participate in part or all of the project, and that I can withdraw my participation until 25th May of 2019 without being penalised or disadvantaged in any way.

I consent to the processing of my personal information for the purposes of this research study. I understand that such information will be treated as strictly confidential and handled in accordance with the Data Protection Act 1998.

Name: _____

Signature _____

Date: _____

I do want to receive a copy of the research final report by email: _____

Appendix K

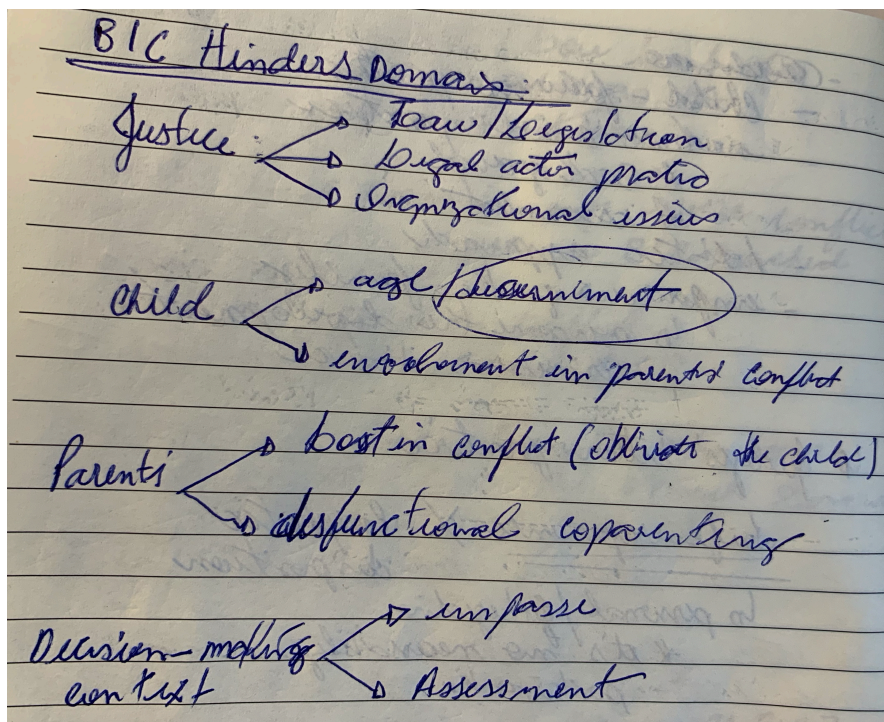
Memoing Notes⁷⁴ – Thematic Analysis

October/2019:

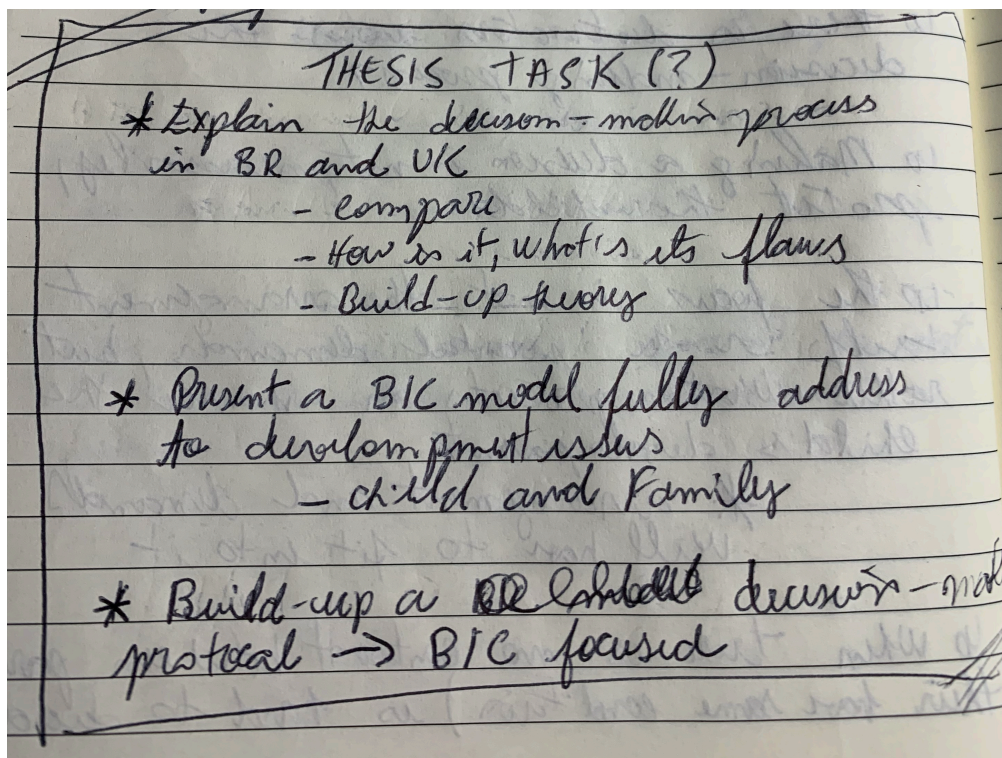
- ***Evaluating BIC***: check the child's routine, how is it and who takes part in it
 - Consider time availability (e.g. to go to school and the doctor)
- ***It is hard to evaluate BIC***: when there are allegations of violence against the child
 - Allegations of maltreatment and violence/abuse are hard to evaluate (check if it happened or not) because there is no objective proof of it; sometimes there is just both parents' allegations
 - It is impossible to find the truth (factual truth x subjective truth)
- ***It is impossible to ignore parental conflict*** as it will always affect the child (systemic relationships)
- ***Joint custody*** in Brazil is a way to "washing the hands" when facing parental disagreement and/or conflict?
- ***Different levels of parental conflict*** require different approaches within the Family Court?
 - Implications to the psychosocial evaluation?
 - What they do when the conflict is considered low?
- ***Is joint custody*** just a balance of power between the parents?
 - Does it improve BIC?
 - Is it parent-focused instead?
- ***Material and contextual needs*** are being addressed
- ***Child triangulation*** → alliances → psychological pressure (parental cooptation)
- ***The child is seen as a passive agent*** in the decision-making process
- ***Educating parents***: is a way to promote the best interests of the child
- ***Deciding the legal problem*** is not the same as solving the problem (child well-being)

⁷⁴ These notes were originally made by handwriting in a notebook. This document presents its transcripts. The content of these notes is product of brainstorm and insight processes held during the whole data analysis. In this sense, they might not represent the final definitions, concepts, perspective and/or approaches displayed throughout the final results (themes and features) and discussions presented in Chapter V.

- **Less complex cases** (i.e. low level of parental conflict) won't go to the psychosocial evaluation
 - Is it a way of triage?
 - Attesting no significant level of parental conflict is the same as attesting that BIC is being preserved?
- **The family's "dysfunctional" behaviours**, commonly associated with intractable cases, are, in fact, both a sign of a family crisis and sign of struggle to overcome it
- **What can legal professionals (i.e. judges, prosecutors, lawyers) really do to ensure BIC?**
 - Do they only rely on the psychosocial evaluation?
 - Do they do something else?
 - With that burden, how the psychosocial staff is affected?
- **What would be 'good practices' for the evaluation?**
 - Be child-focused
 - Be evidence-based
 - Have a holistic approach
 - Empowering the family
 - Also, help them to overcome the crisis moment they find themselves in (family life cycle)?
- **BIC hindering domains (drawing):**



- ***Maintaining a sense of stability*** is a very important task for the legal actors
 - Keep the contact with both parents → preserve emotional bonds
 - It is important to set up a “reference household” for the child
- ***Assessing BIC*** is always a risky task as it is impossible to access the child’s reality as a whole
- ***Are there any distractors within the decision-making process?***
 - Or would be stressors (issues that make it harder and or put on some pressure on it)?
- ***Does the decision made***, in fact, protect the child?
- ***The focus*** should not be the custodial arrangement itself or even the parental demands. It should be the protection of the child and their development
 - Arrangements and demands should fit into that principle, but do they?
- ***When the parents are similar in conditions*** (i.e. have similar conditions to take care of the child and promote the basic and emotional needs), it is hard to make a decision
 - Perhaps, because the decision-making is framed by the parents’ characteristics? If the focus was the child, would that be different?
- ***In Brazil, the alimony issue*** is something that can make the decision-making harder



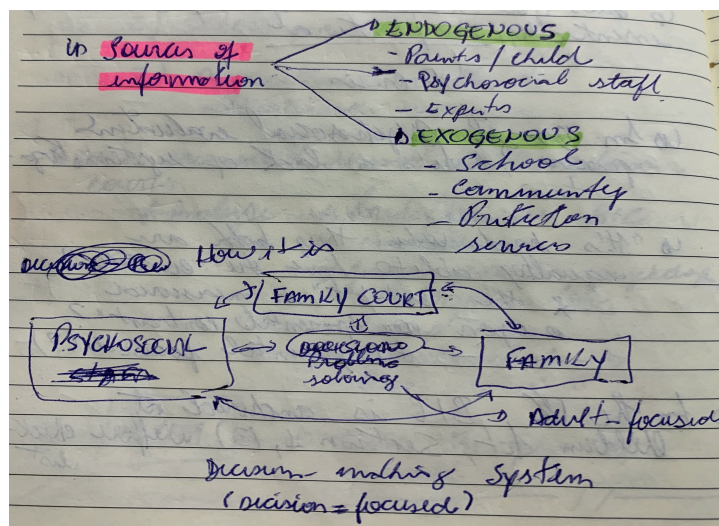
November/2019:

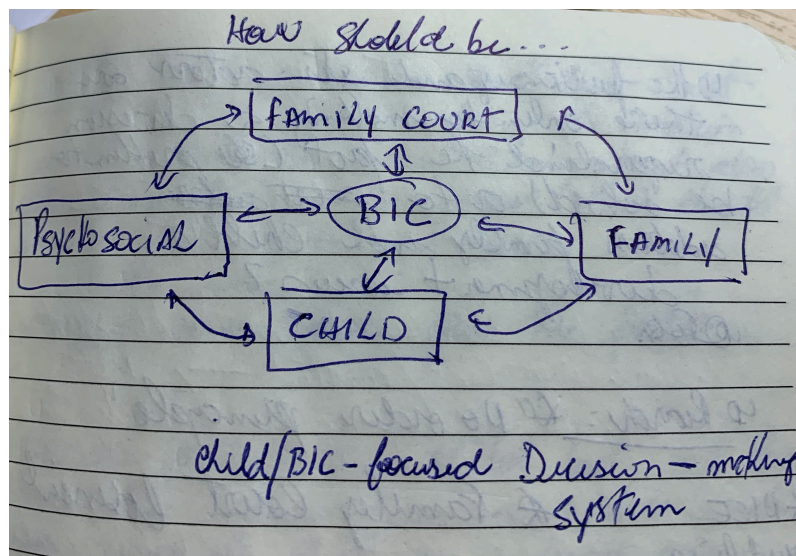
- ***The English legal system*** seems to be less patronising and tends to foster the families autonomy more than the Brazilian one
 - More open
 - Less intrusive
 - Child maintenance (“alimony” in Brazil) is not a judicial issue. It is regulated by the government
 - The name “child arrangements” to refer to the decisions and settlements that will be made regarding the child instead of “custody” or any other specific name for any specific custodial arrangement → it is not limited by the law (like in Brazil)
- ***“BIC speech”*** is used as another weapon to litigate
 - It is just rhetorical (?)
- ***“Hearing the child”*** is only “objectively”
 - They have to be mature enough to express (vocally) themselves
 - What about the non-verbal communication and information?
- ***Brazilian legal system and culture*** tend to stimulate the litigation between parents
- ***The maintenance of the emotional bonds with the child*** is referred differently in each country
 - Brazil: “family coexistence”
 - England: “contact with the child”
- ***It is important to set arrangements*** taking into account the child’s needs, especially those specifically related to their age
- ***Legal actors might know how to define BIC*** but struggle to put it on practice in child custody cases
- ***Source of information*** that the court takes into account (in order of importance) in Brazil:
 - 1) Psychosocial report
 - 2) School inputs
 - 3) Parents’ allegations
- ***There is some psychoeducation for parents*** before the hearing in Brazil; but it is a sparse initiative, only a few courts do it

- ***In Brazil, the psychosocial evaluation is*** potentially an opportunity to make some interventions with the parents
 - It is not a mere evaluation process
- ***Cases that reach the Family Court*** are essentially dysfunctional
 - They cannot solve their own problems and need a third party to help them
 - It might be related to the crisis moment that a divorce means to a family
- ***In Brazil, the psychosocial evaluation*** process does not have systematic procedures or guidelines
 - It pretty much varies from state court to state court and also from professional to professional

December/2019:

- ***“It is hard when they both are equally able to have the child custody”***
 - So the “best fit” is measured by ‘contrasting the parents’?
 - So the process is parent-focused?
- ***In England, BIC is anchored*** in the Children Act (1989), Section 1(3) → welfare check-list
- ***In England, legal actors*** rely strongly on the welfare check-list
 - “Quite slavishly” (Jude 1, England)
- ***Sometimes, it is not what is the best for the child*** but what is the less worse, given the high parental conflict and dysfunctional parenting dynamic
- ***Sources of information in the decision-making process (drawing)***





- ***In England, the welfare check-list*** is a beacon for decision makers
 - It is a guide
 - Reduce bias (?)
- ***The Family Court and legal actors*** are there to only make a decision regarding the custody (problem to be solved) or to address the family and the child's development issues too?
- ***England/Lawyers:*** welfare check-list not only constrains the notion of BIC and its evaluation but also helps lawyers to frame their clients' views towards the child's interests
- ***How to protect the child*** and, at the same time, give them a voice and recognise them as subjects of rights?
- ***In England, the evaluation is mainly carried by social workers (CAFCASS).*** ***Psychologists*** are only involved as an expert witness and in cases with high litigation and complexity
- ***Parental separation*** is a situation that is potentially risky to the child's development
 - Like any phase of the family development
- ***English legal actors*** see parental separation as just a "legal incident/matter". They do not see it as a developmental crisis to the family
- ***Child's physical integrity, drug misuse and parent's mental health*** tend to be very tricky issues to deal with in a child custody case

- Hard to assess
- Can lead to drastic measures (putting the child away from their parents; forensic evaluation)
- ***If it is an intractable case, courts in England*** can appoint a “guardian” for the child, which will represent them, make them a part in the case
- ***Reasons to justify the avoidance of interviewing both parents together:*** the high level of litigation; they cannot communicate with each other; they cannot hear the other part

January/2020:

- ***There are signs of emotional struggle on legal actors***
 - How it is addressed?
 - How can it impact the decision-making process?
- ***The custodial decision-making process in Brazil***
 - The default decision is joint custody → it is the best custodial arrangement
 - The options of custodial arrangements are limited: joint custody (default by law) or sole physical custody (when one of the parents does not want the custody)
 - Is it a “subtraction process”?
 - Making a decision is to exclude factors (selection)
- ***Decision-making process in England***
 - Starts with a *tabula rasa*, a clean slate
 - They fill the best possibilities amongst the circumstances (context) that arise in the decision-making process
- ***During the decision-making process,*** physical (observational, objective, measurable) needs are easier to assess and deal with. Psychological or intrapsychic ones are harder
- ***Collective decision-making (?)***
 - Hierarchy of decision makers (?)
- ***Decision-making tool (?)***: meta-cognition → self-assessment of legal actors
- ***BIC tend to be framed by not only adults’ perspective*** but also by their needs (e.g. solve the case, harm the other parent)

February/2020:

- ***What triggers parental conflict during child custody cases?***
 - Unsolved past conjugal issues
 - Patrimonial/financial issues
 - Parents' personal values/beliefs
- ***Proceedings' time:*** the time needed to wait until the case is evaluated seems to be an issue to secure BIC in child custody cases
- ***Child involvement in the parental conflict***
 - Parentalisation
 - Triangulation
- ***In Brazil, psychologists*** are afraid to be triangulated in the conflict → psychological suffering
- ***Hearing the child*** goes beyond "listen to them"
 - Observe the child
 - Be open to know the child
 - Understand the child
- ***"BIC is whatever the parents decide"***
 - Is it empowering the family or just avoiding the decision?
- ***How can the child participate more in the decision-making?***
 - Can there be a protagonism not to make a decision, but to help to make a decision?
 - Taking the child's perspective into account
 - Directly: their voice; emotional expressions; interaction with their parents
 - Indirectly: inputs from the school, social services and social network

March/2020:

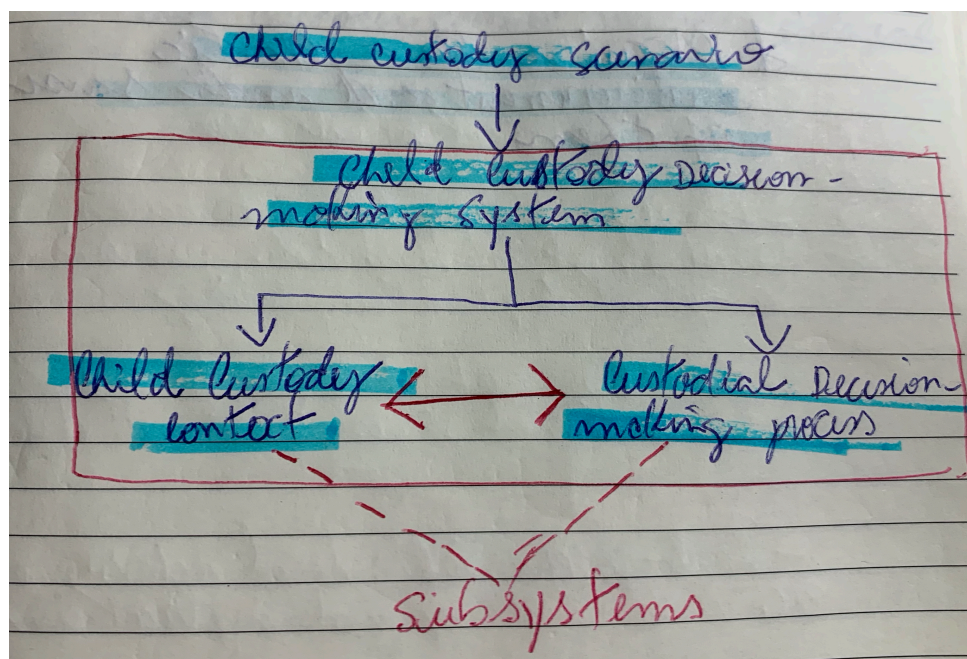
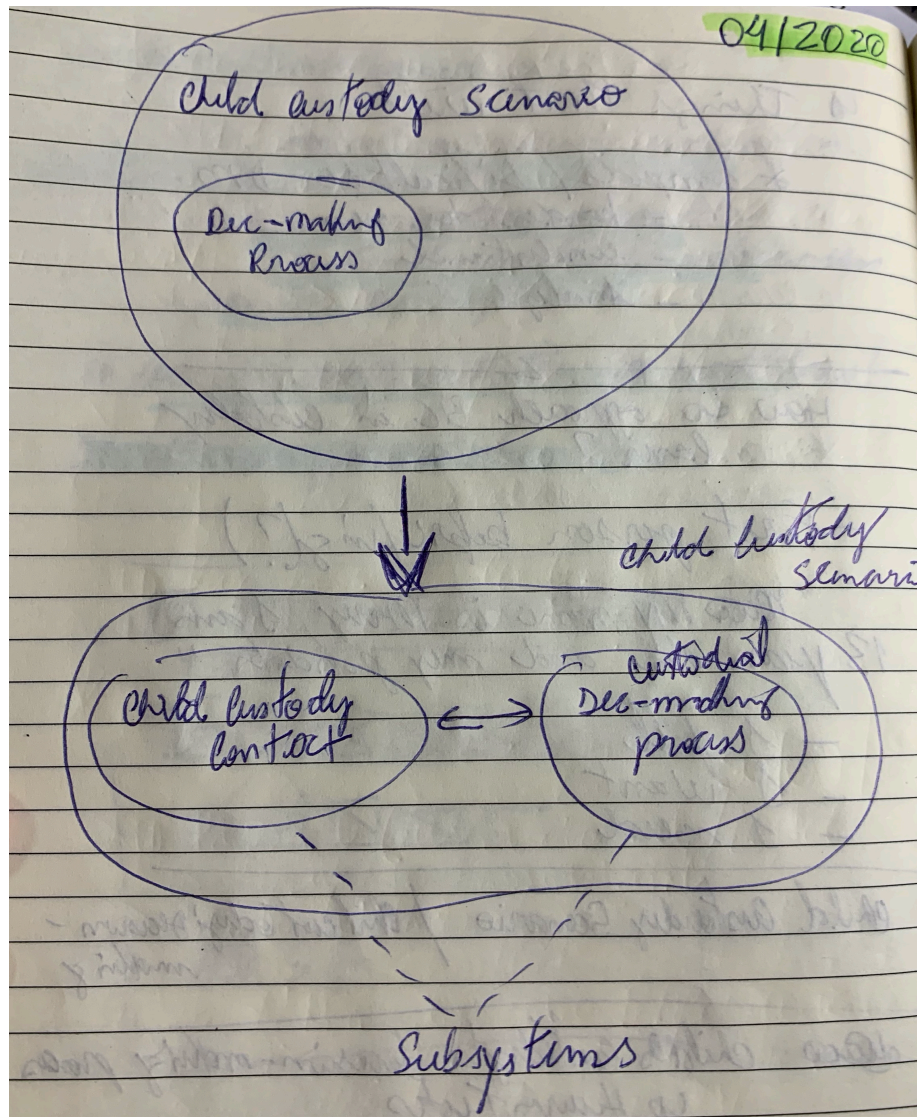
- ***Can the evaluation process not touch the family in an interventive way?***
 - No, as it is a human interaction that addresses personal and emotional content from the family, so it very unlikely
 - The questions themselves can lead to reflections
- ***The decision-making is usually not based on evidence***

- Biased (personal conceptions and beliefs)
- guesswork
- ***Is it possible to secure that the decision made*** will last after the case is closed?
 - How?
- ***Time limitation***
 - The evaluation is constrained by the time → usually, they have a couple of hours with the family and the child to collect the information
 - There is any way to compensate the short amount of time to evaluate the family and the child?
 - The evaluation is circumscribed on the time in which it is conducted → it is a photograph of the family at the very moment
 - Can change later on as the family is dynamic
- ***Things that might impede or complicate the decision-making***
 - Cases that are harder to assess due to its characteristics
 - Tools available to understand and analyse the case
- ***Would be “debriefing the case” a good tool*** to help legal actors, especially the legal professionals?
 - Like they were the child under evaluation
 - *I feel...*
 - *I want...*
 - *I need...*
- ***Civil Law*** → structured work process? (it is the opposite)
- ***Common Law*** → unstructured work process? (it is the opposite)
- ***Legal actors adapt their practices*** to their legal environment (the type of legal system and legislation) to make it more workable
 - Can introduce significant uncertainty in the decision-making process
 - Brazil: when going against the default procedures or bending the legislation to be able to make a decision → can be seen as an error
 - High-risk decisions
 - England: welfare checklist is based on case law and precedent → will never be complete or rigorous
 - Can lead to sloppy decisions

- Legal actors have to develop workarounds because the law is insufficient to instruct the decision-making process

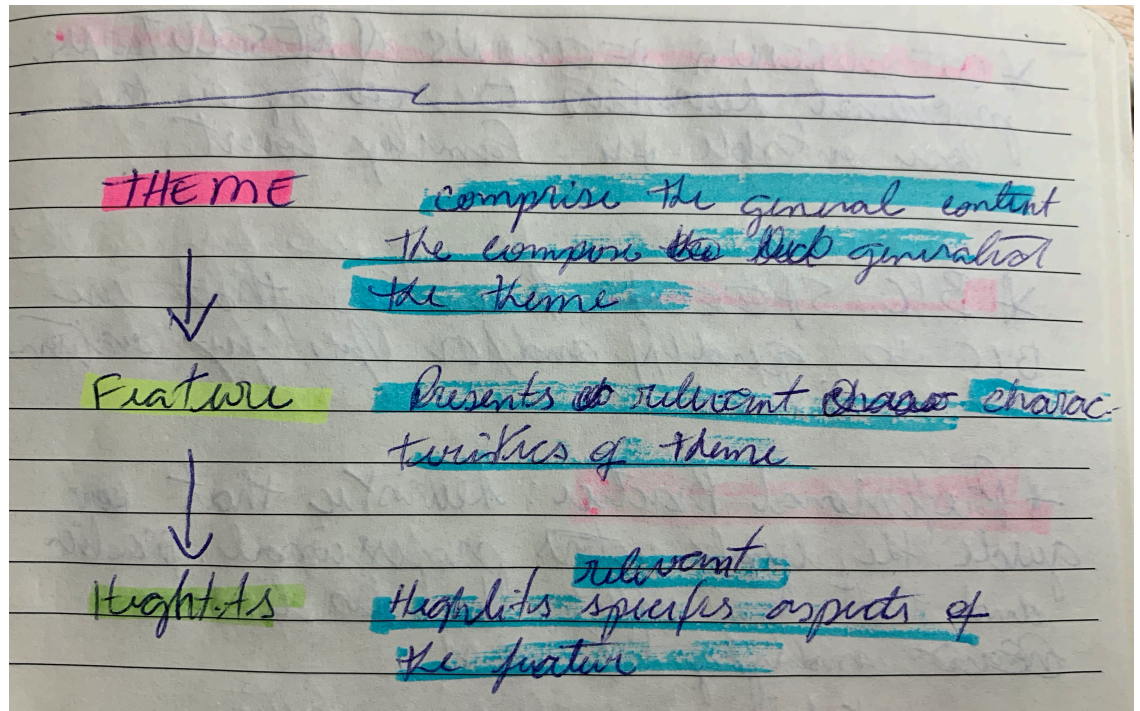
April/2020:

- ***In both countries, the main task in the decision-making process*** is to narrow down the complexity of the child custody case to make the process of making a decision easier → heuristics elements:
 - Default procedures
 - Default decisions
 - Not listen to the child in every case
 - Not taking school inputs
 - Not involving psychologists
- ***However, in some very complex cases, legal actors tend to increase the complexity of the analyse and evaluation as well*** → sending to the psychosocial evaluation; taking the school inputs; visiting the child's household; appointing a guardian for the child in the case (only in England)
- ***The heuristics*** draw the decision maker's attention and focus towards elements that can be understandable and manageable and, therefore, lead to a solution
 - Organise a chaotic environment and make sense out of them
- ***In both countries, the decision-making process*** is influenced by issues that cannot be controlled by the legal system but that still play a role in it → context elements:
 - The context of the family itself
 - Family crisis (parental separation)
 - Family dynamic (co-parenting; child-parent relationship)
 - Parental litigation
- ***Context elements are the ecological*** bit of the child custody cases
- ***The themes and its features present a "Child Custody Scenario" composed of***
 - Context elements
 - Heuristics elements



- ***Child Custody Decision-making System***: context and heuristics elements of the Child Custody Scenario encompass a system with two subsystems
 - 1) Child Custody Context
 - *Family*: family life; interactions; development; member roles; parenting; co-parenting; litigation; coping strategies (for the parental separation)
 - *Family Court*: law; legal applications; organisational issues; hearing the child
 - *Legal-psychosocial*: legal actors' activities, BIC understanding and application
 - 2) Custodial Decision-making Process
 - *Selection*: what is the priority? What should be addressed? What should be worked on?
 - *Evaluation*: general principles and/or guidelines used to conduct the evaluation
 - *Degrees of freedom*: issues that limit or constrain the decision-making process
 - *Outsourcing decisions & Resolution*: procedural heuristics to solve the case outside the family court
 - *BIC Speech*: metacognitive strategy that use BIC to justify and/or qualify actions and decisions
 - *Professional practice*: metacognitive strategy s that guide the legal actors' professional practice and that can affect the decision-making process
 - *Custodial arrangements*: legal actors' metacognitive strategy s that influence their view and/or preferences for a type of child arrangement
- ***Maybe create two versions of the CDMS model (?) or integrate them (?)***
 - Structural model of the Child Custody Decision-making System: how its parts organise and coordinate themselves
 - Functional model of the Child Custody Decision-making System: how its parts interact between themselves (how the system as a whole works?)
- ***Context elements can play a role as 'stressors' for the decision-making process***
 - Organisational issues

- Emotional struggle
- *If the judiciary cannot control (directly) context issues*, how could it better manage them?
- *Themes presentation hierarchy*:



Appendix L

Phase II (Open Coding): List of Codes – Thematic Analysis

Table 47

List of Codes Generated on Thematic Analysis' Phase II (Open Coding)

Code	Description	Units Of Analysis (Interviews)	Units Of Coding (Occurrences)
Assessing BIC	Strategies, methods and/or tools to assess BIC	55	188
Psychosocial Evaluation	Procedures, strategies, methods or tools used by psychologists and/or social workers to assess families (parents/children)	36	165
Hearing the Child	Procedures, strategies, methods or tools to hear children	51	160
Joint Custody	Issues regarding joint custody	50	148
BIC Hindering	Factors, characteristics, dynamics and/or events that might hinder BIC	52	115
BIC Definition	Any definition or description for BIC	52	98
Lawyers' Practice	Procedures, strategies, methods or tools carried by lawyers that characterise their practice	16	83
Parental Conflict	Statements regarding parental conflict	44	83
Contextual Needs	Statements regarding the child's context developmental needs	39	82
Material-physiological Needs	Statements regarding the child's material-physiological developmental needs	37	73
Challenges	Statements regarding factors, characteristics, dynamics and/or events that can appear as a challenge for legal actors	42	72
Adolescents	Statements regarding factors, characteristics, dynamics and/or events related to adolescents	34	70
Best Child Arrangement	Statements regarding the best child custody arrangement	46	68

Code	Description	Units Of Analysis (Interviews)	Units Of Coding (Occurrences)
Decision-making context	Statements regarding factors, characteristics, dynamics and/or events related to the decision-making context	26	58
Judiciary & Law	Statements regarding factors, characteristics, dynamics and/or events related to the judiciary and/or laws	31	58
Psychologists' Practice	Procedures, strategies, methods and/or tools carried by psychologists that characterise their practice	18	57
Expert Witness - Independent	Procedures, strategies, methods and/or tools that characterise independent expert witness' practice	22	54
Parental Alienation	Statements regarding 'parental alienation'	33	54
Child Involvement (in the parental conflict)	Statements regarding factors, characteristics, dynamics and/or events related to the child involvement in the parental conflict	29	52
BIC & Development	Statements addressing the relationship between BIC and child development	41	51
Empowering Parents	Statements regarding factors, characteristics, dynamics and/or events related to parental empowerment	23	49
Stability	Statements regarding factors, characteristics, dynamics and/or events related to the continuity or stability elements linked to the child development	25	49
Parenthood Vs. Conjuality	Statements regarding factors, characteristics, dynamics and/or events related to the relationship between parental roles and conjugal roles	32	48
BIC Characteristics	Any characteristics attributed to BIC	30	47

Code	Description	Units Of Analysis (Interviews)	Units Of Coding (Occurrences)
Child's Role	Statements regarding factors, characteristics, dynamics and/or events related to the relationship between parental roles and conjugal roles	27	45
Decision-making process	Statements regarding factors, characteristics, dynamics and/or events related to the decision-making process	18	45
Family Coexistence & Contact Child	Statements regarding factors, characteristics, dynamics and/or events related to the maintenance of the family bonds and the contact of the child with both parents	28	44
Applying BIC	Procedures, rules and/or characteristics for the application of BIC	26	38
BIC & Family and Community	Factors, characteristics and/or dynamics related to the relationship between BIC, the family and the community	22	37
BIC & Child's Rights	Factors, characteristics and/or dynamics related to the relationship between BIC and the child's rights	26	36
Gender	Factors, characteristics and/or dynamics related to gender issues	16	36
CAFCASS	Factors, characteristics, dynamics and/or events related to CAFCASS	14	35
Educating Parents	Procedures, rules and/or characteristics related to psychoeducation, orientation and/or guidance to parents	20	32
BIC & Legislation	Statements regarding the relationship between BIC and legislation	23	31
Lawyers' Practice (Others' Perception)	Procedures, strategies, methods and/or tools pointed by other legal actors, which characterise lawyers' practice	11	29

Code	Description	Units Of Analysis (Interviews)	Units Of Coding (Occurrences)
Judges' Practice	Procedures, strategies, methods and/or tools carried by judges that characterise their practice	10	27
The decision made	Statements regarding factors, characteristics, dynamics and/or events related to the decision made by the court	16	26
Social Worker's Practice	Procedures, strategies, methods and/or tools carried by social workers that characterise their practice	9	25
50-50 Arrangement (time divided equally)	Any conceptualisation, definition, description or statement regarding the equal-division-of-time type of child custody arrangement	18	24
Legal Actors' Biases	Statements regarding legal actors' biases	17	23
Family Crisis	Statements regarding factors, characteristics, dynamics or events related family developmental crisis	16	22
Judges' practice (others' views)	Procedures, strategies, methods or tools pointed by other legal actors, which characterise judges' practice	9	22
Mediation	Statements regarding family mediation practices	11	21
Child as a Subject	Statements regarding the assumption and/or necessity to see and/or reinforce the child as an active subject of rights	12	19
Limitations	Statements regarding factors, characteristics, dynamics or events related to decision-making limitations	8	16
Legal Actors' Practice	Procedures, strategies, methods or tools carried by legal actors that characterise their practice	12	14
Future-oriented BIC	Statements addressing BIC's understanding and/or application that considers the future	5	11

Code	Description	Units Of Analysis (Interviews)	Units Of Coding (Occurrences)
Types of Arrangement	Statements addressing types of child custody arrangement	7	10
Psychologists' Practice (other's views)	Procedures, strategies, methods or tools pointed by other legal actors, which characterise psychologists' practice	2	9
Social Worker's Practice (other's views)	Procedures, strategies, methods or tools identified by other legal actors, which characterise social workers' practice	3	8
Custody Dispute Scenario	Statements regarding factors, characteristics, dynamics and/or events related to the custody dispute scenario	4	7
Pre-hearing	Factors, characteristics and/or dynamics related to events before the first hearing in the court	4	6
Trading-off Needs	Procedures, strategies, methods and/or tools used to trade-off child's needs	4	6
Parental Equal Rights	Factors, characteristics and/or dynamics related parental equal rights issues	4	5
Before going to the Judiciary	Factors or characteristics related to the family's dynamics and/or events before the family goes to the court	4	4
Child Maltreatment	Statements regarding factors, characteristics, dynamics and/or events related to child maltreatment allegations	1	3
After the Decision	Factors or characteristics related to the family dynamic and/or child welfare after the decision is made and the case is closed	2	2
Present-oriented BIC	Statements addressing BIC's understanding and/or application that considers the present	2	2
Protecting the Child	Procedures, strategies, methods or tools used preserve the child from the parental conflict	1	2

Code	Description	Units Of Analysis (Interviews)	Units Of Coding (Occurrences)
Prosecutors' Practice	Procedures, strategies, methods and/or tools carried by prosecutors that characterise their practice	2	2
Prosecutors' Practice (others' views)	Procedures, strategies, methods and/or tools pointed by other legal actors, which characterise prosecutors' practice	2	2
Religion	Statements regarding religious beliefs and/or issues related to the child custody dispute	1	2

Appendix M

Phase III (Searching for Themes): List of Codes – Thematic Analysis

This document presents the Phase III's outcomes. It is comprised of 21 candidate themes and 72 features that were based on the analysis of all initial (open) codes created in Phase II. It was a recurrent and dynamic analysis process that focused on meanings expressed by those codes and how they were connected (patterns), leading to the construction of candidate themes and their features.

Candidate Theme 1: (Mis)Understanding BIC

General description: elements of child custody decision-making that lead to misunderstanding and/or misuse of the BIC framework in order to justify conceptions, attitudes, ideas, and/or thoughts.

Feature (a): BIC as a rhetorical resources

Description: rhetorical use of 'the best interests of the child' to justify any action and/or argument within the dispute. Usually, this rhetorical use does not address BIC properly and/or does not focus on the child's needs

Source/Units of analysis: [P9, P11, P14, P18, P31, P32, P37, P43]

Feature (b): "It has nothing to do with Psychology"

Description: psychologists' ideas and/or conceptions that do not recognise BIC as part of their practice

Source: [P2, P8, P10, P35, P37]

Feature (c): Focusing on and addressing parents' interests instead

Description: attitudes and/or practices that use "BIC speech" to address and/or highlight adult's interests instead of the child's

Source: [P4, P5, P7, P8, P9, P10, P11, P15, P18 P33, P34, P35, P42, P43, P54, P65, P73]

Feature (d): “No ‘child maintenance’, no contact with the child”

Description: parents’ perspectives that misunderstand BIC by making the contact between the child and the non-custodial parent conditional upon the making of maintenance payments

Source: [P2, P3, P5, P27, P29, P31, P45, P50]

Candidate Theme 2: Hindering BIC

General description: parenting issues towards the child during a custody dispute that can hinder the child’s best interests.

Feature (a): Conjugal Vs. Parenthood

Description: co-parental dynamic after the separation that overlaps conjugal and parental issues and so can jeopardise the child’s needs

Source: [P1, P2, P3, P4, P5, P7, P11, P14, P15, P17, P18, P22, P23, P24, P25, P26, P27, P34, P36, P38, P41, P42, P43, P45, P50, P54, P56, P57, P58, P62, P63, P66, P67, P68, P70, P72, P73]

Feature (b): Detaching from the child and attaching to the litigation

Description: parent’s attitudes and behaviours that show they are more committed to litigate against each other than to address the child’s needs and preserve their well-being

Source: [P1, P2, P3, P4, P5, P6, P7, P8, P12, P13, P15, P16, P17, P20, P21, P24, P25, P27, P28, P29, P30, P33, P37, P34, P42, P44, P47, P49, P50, P51, P53, P56, P58, P59, P63, P64, P65, P68, P70, P72, P73]

Feature (c): Involving the child in the parental conflict

Description: parents’ attitudes and behaviours to try to involve and/or triangulate the child into their conflict. Another possibility is when the children start to perform parental roles and functions because their parents are too busy litigating against each other

Source: [P1, P2, P3, P5, P8, P10, P11, P12, P13, P14, P17, P24, P31, P34, P35, P36, P37, P39, P40, P41, P42, P43, P44, P47, P50, P54, P56, P57, P60, P62, P66, P68, P69, P73]

Feature (d): Lack of parenting skills

Description: cases in which the parents do not have the needed parental skills to protect the child

Source: [P1, P2, P3, P14, P15, P16, P36, P46]

Feature (e): Misconduct, maltreatment and abuse

Description: cases in which the parents represent a considerable risk to the child's welfare by means of behaviours that end up in misconduct, maltreatment and/or abuse

Source: [P2, P3, P6, P9, P18, P24, P56, P57, P63, P65]

Candidate Theme 3: Strategies to Avoid 'BIC-Harming Parental Litigation'

General description: strategies that legal actors use to shield the child from the parental litigation dynamic.

Feature (a): Self-arrangement: empowering the family

Description: advocating for self-arrangements for child custody by prioritising the family's capacity and competency to know and understand its own reality and needs. Therefore, the best decision regarding child custody will be made by the family itself

Source: [P2, P4, P5, P7, P13, P14, P20, P24, P27, P31, P34, P35, P42, P43, P44, P46, P49, P50, P51, P52, P53, P54, P55, P72, P73]

Feature (b): Educating Parents

Description: the need to orientate and educate parents going through a child custody dispute. This process would address issues regarding positive and effective parenting skills, roles and duties

Source: [P1, P3, P5, P16, P37, P25, P26, P27, P39, P41, P42, P43, P46, P47, P49, P55, P57, P60, P66, P67, P70]

Feature (c): Mediation & Conciliation

Description: practices toward family mediation and/or conciliation

Source: [P9, P16, P20, P27, P28, P29, P31, P42, P43, P47, P50, P51, P53, P54, P56, P59, P63, P66, P58, P70, P72]

Candidate Theme 4: Promoting BIC in Custody Dispute Cases

General description: how legal actors preserve the child's biopsychosocial and emotional needs during the child custody dispute

Feature (a): Preserving basic (material-physiological) needs and rights

Description: provision of the child's basic needs related to material-physiological issues

Source: [P2, P3, P4, P5, P6, P7, P8, P9, P11, P12, P13, P14, P16, P17, P22, P24, P26, P27, P29, P31, P32, P33, P34, P39, P42, P43, P44, P45, P46, P47, P48, P49, P50, P53, P55, P59, P64, P65, P69, P70, P71, P73]

Feature (b): Enhancing the child's psychosocio-emotional well-being

Description: enhance the child's needs related to psychosocio-emotional issues

Source: [P2, P3, P4, P5, P6, P7, P8, P9, P11, P13, P14, P17, P20, P22, P26, P27, P29, P31, P33, P42, P43, P44, P45, P48, P49, P53, P54, P55, P56, P59, P63, P64, P65, P66, P70, P72, P73]

Feature (c): Preserving the relationship with both parents

Description: strategies to protect the emotional bond between parents and children

Source: [P1, P2, P3, P4, P7, P10, P11, P13, P16, P17, P18, P21, P22, P24, P25, P30, P31, P34, P37, P38, P39, P42, P43, P44, P45, P46, P49, P50, P51, P52, P54, P55, P56, P62, P63, P65, P66, P69, P70, P71, P72, P73]

Feature (d): Protecting the child from parental conflict

Description: strategies to protect the children from parents' litigating attitudes and behaviours

Source: [P2, P14, P21, P24, P38, P42, P59, P63, P69]

Feature (e): Maintaining a sense of stability

Description: children need to have their perception of stability protected throughout the dispute and after the case is closed

Source: [P2, P4, P7, P10, P11, P13, P15, P16, P17, P18, P21, P22, P23, P24, P25, P26, P30, P33, P40, P42, P43, P47, P48, P49, P52, P54, P55, P60, P63, P67, P69, P72]

Feature (f): Addressing the Children Act's welfare check-list

Description: the tool used by English legal actors to address the best interests of the child

Source: [P49, P50, P51, P52, P53, P54, P55, P56, P57, P58, P59, P65, P66, P70, P71, P72]

Candidate Theme 5: Applying BIC

General description: characteristics of child custody decision-making regarding the application of BIC.

Feature (a): Indeterminacy

Description: legal and conceptual limitations that make BIC an unclear and vague construct to be applied

Source: [P5, P8, P9, P10, P20, P37, P41, P45, P46, P47, P59, P62, P64, P69]

Feature (b): Idiosyncratic

Description: BIC characteristics that make its application very idiosyncratic

Source: [P3, P5, P6, P7, P14, P15, P17, P24, P27, P36, P39, P40, P42, P43, P44, P47, P51, P56, P57, P59, P63, P64, P71, P72]

Candidate Theme 6: The Child's Role in the Decision-making process

General description: elements of the decision-making process regarding the child's role during a child custody dispute case

Feature(a): Passive Role

Description: impressions regarding the child's secondary role in the decision-making process

Source: [P1, P2, P7, P9, P10, P18, P19, P26, P31, P41, P49, P51, P55, P58, P69, P73]

Feature (b): "The child is heard only through a Psychosocial/CAFCASS Evaluation"

Description: perceptions that the child can only be heard when they are evaluated by a psychologist and/or social worker

Source: [P1, P2, P3, P5, P6, P9, P24, P27, P31 P34, P42, P44, P45, P50, P55, P65]

Feature (c): The children as subjects of rights and as an active actor of their reality

Description: legal actors' perceptions regarding the child's relevant role in the decision-making process

Source: [P9, P10, P13, P16, P18, P21, P24, P35, P38, P39, P42, P44, P49, P50, P51, P54, P53, P67, P73]

Feature (d): "There is no need to hear the child if there is a parental agreement"

Description: legal actors' perceptions that see young children speaking of wishes and views as valueless

Source: [P4, P35, P42, P44, P49]

Feature (e): Between inadequacy and lack of skills: "I do not hear the child"

Description: legal actors' perceptions that articulate their inability to properly hear the child and/or the inadequacy of doing so

Source: [P1, P2, P5, P7, P24, P27, P28, P42, P44, P46]

Feature (f): Child's perspective crucial for the decision-making

Description: legal actors' perception that sees young child's speaking of wishes and views as very important during the child custody dispute

Source: [P2, P4, P8, P9, P20, P24, P31, P35, P38, P45]

Feature (g): Listening to the Child's voice: the older, the better

Description: legal actors' perceptions that see the older child as easier informants of their wishes and views during the child custody dispute

Source: [P7, P24, P25, P27, P47, P49, P50, P51, P52, P53, P54, P55, P56, P57, P58, P64, P67, P69, P70, P71]

Candidate Theme 7: Divorce, Crisis and Family Life Cycle

Description: elements that inform issues regarding the family's development as well as their strategies to cope with parental separation

Feature (a): Divorce as part of the family life cycle

Description: understandings that highlight the developmental phase that divorce is for a family

Source: [P1, P2, P12, P14, P18, P19, P24, P26]

Feature (b): Dysfunctionally in coping divorce: family crisis

Description: family strategies to cope with parental separation that can worsen the family's interactions and potentially harm the child's and the family's psychosocial well-being. This dynamic indicates a crisis within the family, which seeks the Family Court to sort it out

Source: [P2, P8, P9 P11, P12, P17, P20, P21, P24, P31, P35, P39, P42, P44, P45, P49, P55, P57, P58, P62, P67]

Feature (c): Intractable Disputes

Description: cases with a high level of parental litigation

Source: [P50, P52 P56, P59, P62, P69]

Candidate Theme 8: Judiciary's Constraints

General description: characteristics of the child custody scenario that highlight Judiciary's legal, epistemological and organisational issues impacting the decision-making process

Feature (a): The limits of Law

Description: judicial and legislative thresholds of the Law

Source: [P2, P4, P13, P14, P32, P37, P42, P44, P45, P48, P49, P59]

Feature (b): Organisational issues

Description: organisational issues within the Judiciary related to career, workflow, workload, time to deliver, training, staff and structure

Source: [P4, P7, P11, P12, P18, P19, P20, P22, P25, P29, P31, P34, P42, P54, P57, P59, P71, P72, P73]

Feature (c): Litigious mindset

Description: intrinsic litigation *modus operandi* of Law

Source: [P4, P11, P16, P21, P44, P45, P48]

*Feature (d): Legal actors' Practice***Description:** legal actors' practices during the decision-making process**Source:** [P2, P7, P19, P42, P47, P48]**Candidate Theme 9: Perspectives on Parental Alienation****General description:** understandings of parental alienation*Feature (a): Tricks the Decision-Making***Description:** parental alienation issues that would make the decision-making harder**Source:** [P1, P2, P4, P11, P17, P22, P30, P32, P24, P42, P36, P43, P50, P62]*Feature (b): Impairs the Child's Role***Description:** parental co-opting that limits and/or distorts the child role (expressions of desires and wishes) in the custodial decision-making process**Source:** [P1, P2, P3, P5, P16, P23, P36, P40, P54, P60]*Feature (c): Gender Bias***Description:** frequently, parental alienation is seen as something mainly perpetrated by women**Source:** [P5, P21, P47]**Candidate Theme 10: Assessing BIC in Custody Cases: Context, Procedures and Professional Practice****General description:** context and procedural issues regarding the assessment process carried out by psychosocial staff*Feature (a): 'Psychosocial Study': the Brazilian model***Description:** characteristics of the 'psychosocial study' carried by Brazilian psychologists and social workers during the child custody dispute**Source:** [P2, P3, P4, P8, P10, P12, P13, P14, P21, P22, P23, P24, P26, P31, P34, P35, P36, P39, P41, P42, P43]*Feature (b): 'Children and Family Court Advisory and Support Service – CAFCASS': the English model*

Description: characteristics of the assessment carried by English social workers from CAFCASS during the child custody dispute

Source: [P49, P50, P51, P52, P53, P54, P56, P57, P59, P60, P67, P69]

Feature (c): Procedures, tools and practices to assess BIC

Description: legal actors' procedures, sources and tools to assess BIC in a custody decision-making scenario

(c.1) What is assessed?

(c.1.1) Child's Perspective [P13]

(c.1.2) Child's Development Stage and Specific Needs [P10, P12, P13, P17, P24, P44, P70]

(c.1.3) Child's Daily Life and Routine [P1, P3, P8, P11, P13, P24, P34, P39, P40, P44, P70]

(c.1.4) Family Dynamic and its Reality [P4, P5, P8, P12, P17, P24, P27, P42]

(c.1.5) Child-parent Relationship [P5, P8, P11, P13, P14, P15, P24, P33, P34, P35, P37, P38, P39, P43, P44, P45, P53, P64, P66, P72, P73]

(c.1.6) Parenthood & Co-parenting Skills [P3, P8, P10, P11, P13, P17, P20, P24, P35, P37, P43, P50, P64, P68, P69, P70, P72]

(c.1.7) Health Care [P1, P11, P13, P24, P42]

(c.1.8) Neglect, Maltreatment & Risk Factors [P6, P10, P44, P42, P56, P62, P63, P69]

(c.2) Sources of Information

(c.2.1) School & Carer and Protection Network [P1, P14, P15, P17, P20, P22, P24, P26, P28, P36, P37, P39, P40, P41, P42, P43, P44, P46, P47, P52, P68, P69, P70]

(c.3) Tools and Strategies to Assess BIC

(c.3.1) Interviewing Parents and Other Family Members [P8, P9, P12, P16, P24, P25, P26, P35, P36, P38, P39, P43, P44, P64, P67]

(c.3.2) Interviewing the Child [P8, P9, P12, P16, P24, P35, P37, P38, P41, P43, P66, P69, P71]

(c.3.3) Visiting the Family Home [P2, P9, P26, P39, P40, P41]

Candidate Theme 11: Psychologists' practice

General description: roles, characteristics, procedures and/or strategies that depict the psychologists' practice in child custody cases

Source: [P9, P12, P21, P35, P36, P38, P49, P61, P62, P64, P65, P67, P68, P69]

Candidate Theme 12: Social Workers' practice

General description: roles, characteristics, procedures and/or strategies that depict the social workers' practice in child custody cases

Source: [P13, P14, P24, P26, P63, P65, P70, P72, P73]

Candidate Theme 13: Independent experts' practice

General description: roles, characteristics, procedures and/or strategies that depict the independent experts' practice in child custody cases

Source: [P37, P40, P51, P59, P60, P63, P64, P65, P66]

Candidate Theme 14: Lawyers' Practice

General description: roles, characteristics, procedures and/or strategies that depict the lawyers' practice in child custody cases

Source: [P1, P3, P5, P15, P18, P24, P27, P29, P32, P33, P34, P42, P45, P47, P53, P54, P55, P56, P57, P58, P72]

Candidate Theme 15: Judges' Practice

General description: roles, characteristics, procedures and/or strategies that depict the judges' practice in child custody cases

Source: [P5, P16, P19, P27, P34, P35, P42, P46, P50]

Candidate Theme 16: Making a Child's Arrangement Decision

Involving Adolescents

General description: legal actors' perceptions regarding making a custodial decision involving adolescents

Feature (a): "It is easier to deal with": they can speak their minds

Description: legal actors' perceptions that it is easier to capture wishes and views from adolescents in a child custody dispute

Source: [P1, P3, P4, P5, P7, P8, P9, P15, P18, P29, P41, P44, P45, P46, P47, P50, P54, P55]

Feature (b): It's quite impossible to go against their will

Description: legal actors' perceptions that understand that it is impossible to bend an adolescent's will and/or behaviours to a legal decision regarding their custody

Source: [P1, P3, P15, P16, P21, P23, P27, P43, P44, P49, P50, P51, P52, P55, P66, P69, P71]

Feature (c): "They can also play the game": getting into the litigating parents' dynamic

Description: legal actors' perceptions that understand that adolescents can consciously and intentionally involve themselves in the parental conflict

Source: [P2, P35, P42, P43, P44, P45, P47, P73]

Candidate Theme 17: Decision-making Process

General description: characteristics related to the process of making a decision regarding child custody

Feature (e) Trading-off interests

Description: legal actors' perceptions on how to trade off child's needs during the child custody dispute

Source: [P10, P14, P25, P29, P42]

Feature (f): Address the child's interpersonal contexts

Description: legal actors' perceptions that see the child's interpersonal relationships and interactions as important inputs during the child custody dispute

Source: [P2, P13, P15, P18, P36, P44, P45, P49, P54, P55, P63]

Candidate 18: Child Arrangements

General description: types of child arrangements after parental separation

Feature (a): Joint Custody

Description: legal actors' perceptions of joint custody

(a.1) Concept [P5, P44, P45]

(a.2) Misunderstanding joint custody [P6, P9, P15, P16, P22, P25, P31, P34, P43, P44]

(a.3) The perfect arrangement [P1, P3, P11, P18, P29, P42, P46]

(a.4) “It is settable regardless of the parental dynamic” [P1, P11, P16, P21]

(a.5) Conditional Joint Custody [P2, P4, P5, P6, P7, P15, P17, P19, P23, P24, P27, P29, P30, P31, P34, P35, P39, P44, P50, P63, P67, P73]

(a.6) “It is not to every family” [P4, P5, P6, P7, P8, P9, P12, P13, P14, P15, P17, P19, P20, P21, P23, P24, P26, P28, P30, P31, P35, P36, P39, P40, P41, P44, P57, P62, P63, P72, P73]

Feature (b): “The best arrangement is the one that fits the family best”

Description: legal actor’s perceptions that understand the best arrangement is the one that fits the family’s reality and possibilities

Source: [P6, P7, P8, P9, P10, P12, P15, P20, P22, P27, P36, P37, P38, P39, P41, P45, P49, P50, P51, P52, P53, P55, P57, P59, P62, P63, P64, P65, P66, P68, P69, P70, P71, P73]

Feature (c): Shared Caring

Description: legal actor’s perceptions on shared care

Source: [P8, P15, P16, P17, P22, P24, P27, P38, P39, P43, P44, P45, P47, P48, P49, P65, P73]

Candidate Theme 19: Making the Decision-Making Process Harder

General description: characteristics of the child custody that can make the process of making a decision in this scenario even harder

Feature (a): Misconduct, maltreatment and abuse allegations

Description: allegations of abuse, violence and/or maltreatment against the child that make it harder to make a decision

Source: [P13, P16, P18, P24, P25, P35, P36, P37, P38, P44, P45, P54, P57, P59, P62, P63, P66, P67, P71, P72]

Feature (b): Tied Parents: “I cannot pick one”

Description: parents’ characteristics that are similar and that make the decision-making harder

Source: [P1, P27, P28, P44]

Candidate Theme 20: Legal actors' biases and BIC

General description: legal actors' biases during the process of making a custodial decision

Feature (a): Gender

Description: legal actors' biases related to the parent's gender

Source: [P3, P4, P17, P28, P31, P42, P45, P47, P67]

Feature (b) Personal beliefs

Description: legal actors' biases related to their personal beliefs

Source: [P3, P7, P9, P10, P38, P47, P49, P50, P71]

Appendix N

Data Anchoring – Thematic Analysis

Table 48 shows how each theme, feature and highlight are anchored in the data, taking into account each participant's ID. This ID is shown on Appendix H. As explained on the method section, the anchoring is just a tool used to provide the results' confirmability. **It should not be seen as a quantitative measure in which “the larger the number of supporters (participants) pointed, the more significant is the theme”.**

Table 48

Themes' Data Anchoring According to Each Participant

Theme	Participant ID
Theme 1: Parental Separation: Crisis and Family Life Cycle	
(1.1) <i>Dysfunctionally coping divorce: family crisis</i> ¹	1 – P2, P8, P9, P11, P17, P20, P21, P24, P31, P35, P39, P42, P44, P45, P49, P55, P57, P58, P62, P67
(1.2) <i>Misunderstanding and pathologisation of family interactions and coping strategies in the context of custody dispute: perspectives on parental alienation</i>	2 – P1, P2, P4, P11, P17, P22, P24, P30, P32, P36, P42, P43, P50, P62
(1.2.1) Tricks the decision-making ²	3 – P1, P2, P3, P5, P16, P23, P36, P40, P54, P60
(1.2.2) Impairs the child's role ³	4 – P1, P2, P12, P14, P18, P19, P24, P26
(1.3) <i>Parental separation as part of the family life cycle</i> ⁴	
Theme 2: Hindering BIC	
(2.1) <i>Conjugality Vs. Parenthood</i> ⁵	5 – P1, P2, P3, P4, P5, P7, P11, P14, P15, P17, P18, P22, P23, P24, P25, P26, P27, P34, P35, P36, P38, P41, P42, P43, P45, P50, P54, P56, P57, P58, P62, P63, P66, P67, P68, P70, P72, P73
(2.2) <i>Detaching from the child and attaching to the litigation</i> ⁶	6 – P1, P2, P3, P4, P5, P6, P7, P8, P12, P13, P15, P16, P17, P20, P21, P24, P25, P27, P28, P29, P30, P33, P34, P37, P44, P47, P49, P50, P51, P52, P53, P56, P58, P59, P62, P63, P64, P65, P68, P69, P70, P72, P73
(2.3) <i>Lack of parenting skills</i> ⁷	7 – P1, P2, P3, P14, P15, P16, P36, P46
(2.4) <i>“No ‘child maintenance’, no contact with the child”</i> ⁸	8 – P2, P3, P5, P27, P29, P31, P45
(2.5) <i>Exclusion position</i> ⁹	9 – P1, P2, P7, P9, P10, P18, P26, P49, P51, P58, P73
(2.6) <i>Misunderstanding joint custody</i> ¹⁰	10 – P6, P9, P15, P16, P22, P25, P31, P34, P43, P44
(2.7) <i>Involving the child in parental conflict</i> ¹¹	11 – P1, P2, P3, P5, P8, P11, P12, P13, P14, P17, P24, P34, P35, P36, P37, P39, P40, P41, P42, P43, P44, P47, P50, P54, P56, P57, P60, P62, P66, P68, P69, P73

Theme 3: The Judiciary's Constraints & Practices

(3.1) *"The Law is powerless": legal and epistemological limitations of Law*

(3.1.1) Limits of Law¹²

(3.1.2) Litigious mindset¹³

(3.2) *Organisational issues*

(3.2.1) Time & Workflow¹⁴

(3.2.2) Staff & Workload¹⁵

(3.2.3) Judges' career & Courts¹⁶

(3.2.4) Lack of training and knowledge¹⁷

(3.3) *Between fear and bravery: the psychologists' practice in Brazil*¹⁸

(3.4) *An advocate in intractable cases: the psychologists' practice in England*¹⁹

12 – P2, P4, P13, P14, P42, P44, P45, P48, P49

13 – P4, P11, P16, P21, P44, P45, P48

14 – P8, P12, P18, P25, P26, P29, P34, P35, P42, P57, P59, P71, P72, P73

15 – P20, P22, P54, P59, P72

16 – P7, P31, P34

17 – P18, P19, P25, P26, P59

18 – P9, P12, P36, P38

19 – P49, P51, P56, P61, P65, P68

Theme 4: (Mis)Understanding BIC

(4.1) *Focusing on and addressing parents' interests instead of child's*²⁰

(4.2) *"It has nothing to do with Psychology"*²¹

(4.3) *BIC as a rhetorical resource*²²

20 – P2, P8, P10, P35, P37

21 – P4, P5, P7, P8, P9, P10, P11, P15, P33, P34, P35, P42, P43, P54, P65, P73

22 – P9, P11, P14, P18, P31, P32, P37, P43

Theme 5: Promoting BIC in Child Custody Cases

(5.1) *Preserving basic (material-physiological) needs and rights*²³

(5.2) *Enhancing the child's psychosocio-emotional well-being*²⁴

(5.3) *Preserving the relationship with both parents*²⁵

(5.4) *Protecting the child from parental conflict*²⁶

(5.5) *Maintaining the sense of stability*²⁷

(5.6) *Addressing the Children Act (1989)'s welfare check-list*²⁸

23 – P2, P3, P4, P5, P6, P7, P8, P9, P11, P12, P13, P14, P16, P17, P22, P24, P26, P27, P29, P31, P32, P33, P34, P39, P42, P43, P44, P45, P46, P47, P48, P49, P50, P53, P55, P59, P64, P69, P70, P71, P73

24 – P2, P3, P4, P5, P6, P7, P8, P9, P11, P13, P14, P17, P20, P22, P26, P27, P29, P31, P33, P42, P43, P44, P45, P48, P49, P53, P54, P55, P56, P59, P63, P64, P65, P66, P70, P72, P73

25 – P1, P2, P3, P4, P7, P10, P11, P13, P16, P17, P18, P21, P22, P24, P25, P30, P31, P34, P37, P38, P39, P42, P43, P44, P45, P46, P49, P50, P51, P52, P54, P55, P56, P62, P63, P65, P66, P69, P70, P71, P72, P73

26 – P2, P14, P21, P24, P38, P42, P59, P63, P69

27 – P2, P4, P7, P10, P11, P13, P15, P16, P17, P18, P21, P22, P23, P24, P25, P26, P30, P33, P40, P42, P43, P47, P48, P49, P52, P54, P55, P60, P63, P67, P69, P72

28 – P49, P50, P51, P52, P53, P54, P55, P56, P57, P58, P59, P65, P66, P70, P71, P72

Theme 6: Applying BIC

(6.1) *Indeterminacy*²⁹

(6.2) *Idiosyncrasy*³⁰

29 – P3, P5, P8, P9, P10, P20, P37, P41, P45, P46, P47, P59, P62, P64, P69

30 – P3, P5, P6, P7, P14, P15, P17, P24, P27, P36, P39, P40, P42, P43, P44, P47, P51, P56, P57, P59, P63, P64, P71, P72

Theme 7: Decision-making Process

(7.1) *"There is no need to hear the child if there is a parental agreement"*³¹

(7.2) *Between inadequacy and lack of skills: "I do not hear the child"*³²

(7.3) *Listening to the child's voice: the older, the better*³³

(7.3.1) *"It is easier to deal with": they can speak their minds*³⁴

31 – P4, P35, P42, P44, P49

32 – P1, P2, P5, P7, P24, P26, P27, P28, P31, P42, P44, P46

33 – P7, P24, P25, P27, P47, P49, P50, P51, P52, P53, P54, P55, P57, P58, P64, P67, P69, P70, P71

34 – P1, P3, P4, P5, P7, P8, P9, P15, P18, P29, P41, P44, P45, P46, P47, P50, P54, P55

35 – P10, P14, P25, P29, P42

(7.4) *Trading-off interests*³⁵

(7.5) *Addressing the child's interpersonal contexts*³⁶

(7.6) *The children as subjects of rights and as an active agent in their reality*³⁷

36 – P2, P13, P15, P18, P36, P44, P45, P49, P54, P55, P63

37 – P2, P4, P8, P9, P10, P13, P16, P18, P20, P21, P24, P31, P35, P38, P39, P42, P45 P44, P49, P50, P51, P53, P67, P73

Theme 8: Making the Decision-Making Process Harder

(8.1) *Misconduct, maltreatment and abuse allegations*³⁸

(8.2) *Tied Parents: "I cannot pick one"*³⁹

(8.3) *Legal actors' emotional struggles*⁴⁰

38 – P2, P3, P6, P9, P13, P16, P18, P24, P25, P35, P36, P37, P38, P44, P45, P54, P56, P57, P59, P62, P63, P65, P66, P67, P71, P72

39 – P1, P27, P28, P44

40 – P16, P27, P34

Theme 9: Assessing BIC in Child Custody Cases: Evaluation Services

(9.1) *'Psychosocial Study': the Brazilian model*

(9.1.1) Family Firefighters: the role of psychosocial evaluation⁴¹

(9.1.2) To intervene or not to intervene, that is the question⁴²

(9.1.3) Interdisciplinarity⁴³

(9.1.4) Non-protocol-based practice⁴⁴

(9.2) *'Children and Family Court Advisory and Support Service – CAFCASS': the English model*

(9.2.1) Protocol-based practice: Children Act's Section 7 Report⁴⁵

(9.2.2) Non-evidence based practice⁴⁶

(9.2.3) Risk-avoidance practice⁴⁷

41 – P2, P3, P4, P42

42 – P8, P13, P21, P22

43 – P8, P12

44 – P10, P12, P22, P23, P24, P26, P35, P36, P39, P41

45 – P49, P50, P52, P53, P54, P56

46 – P54, P57, P59, P60, P69

47 – P56, P67

Theme 10: Assessing BIC in Child Custody Cases: Procedures, Sources and Tools

(10.1) *What is assessed?*

(10.1.1) Child's development stage and specific needs⁴⁸

(10.1.2) Child's daily life and routine⁴⁹

(10.1.3) Family dynamic and its reality⁵⁰

(10.1.4) Family-parent relationship⁵¹

(10.1.5) Parenthood & Co-parenting skills⁵²

(10.1.6) Health care⁵³

(10.1.7) Neglect, Maltreatment & Risk factors⁵⁴

(10.2) *Sources of information: school, caregivers and protection network*⁵⁵

(10.3) *Tools and strategies to assess BIC*

(10.3.1) Interviewing parents and/or other family members⁵⁶

(10.3.1.1) Aspects that are looked for during the interview⁵⁷

(10.3.2) Interviewing the child⁵⁸

(10.3.3) Visiting the family household⁵⁹

48 – P10, P12, P13, P17, P24, P44, P70

49 – P1, P3, P8, P11, P13, P24, P34, P39, P40, P44, P70

50 – P4, P5, P8, P12, P17, P24, P27, P42

51 – P5, P8, P11, P13, P14, P15, P24, P33, P34, P35, P37, P38, P39, P43, P44, P45, P53, P64, P66, P72, P73

52 – P3, P8, P10, P11, P13, P17, P20, P24, P35, P37, P43, P50, P64, P68, P69, P70, P72

53 – P1, P11, P13, P24, P42

54 – P6, P10, P44, P42, P56, P62, P63, P69

55 – P1, P14, P15, P17, P20, P22, P24, P26, P28, P36, P37, P39, P40, P41, P42, P43, P44, P46, P47, P52, P68, P69, P70

56 – P8, P9, P12, P16, P21, P24, P25, P26, P35, P36, P38, P39, P43, P44, P63, P64, P65, P66, P67, P68, P70

57 – P12, P21, P24, P39, P68

58 – P8, P9, P12, P16, P24, P35, P37, P38, P41, P43, P66, P69, P71

59 – P2, P9, P24, P26, P39, P40, P41

Theme 11: Dichotomies in Lawyers' Practice

(11.1) *Enrolling the dispute*⁶⁰

(11.2) *Putting parents' interests first*⁶¹

(11.3) *Safeguarding the child's welfare*⁶²

(11.4) *Seeing and addressing the child's best interests through the parents' interests*⁶³

60 – P1, P3, P5, P15, P18, P27, P29, P45, P47, P54, P56, P58, P72

61 – P1, P18, P24, P29, P54, P57, P61

62 – P5, P27, P32, P33, P34, P55, P56, P58

63 – P34, P53, P54, P56, P57

Theme 12: Legal actors' biases and BIC

(12.1) *Gender*⁶⁴

64 – P3, P4, P5, P7, P17, P28, P31, P42, P45, P47, P67

(12.1.1) Misogyny ⁶⁵	65 – P5, P21, P47
(12.2) <i>Personal beliefs</i> ⁶⁶	66 – P3, P7, P9, P10, P38, P47, P49, P50, P71
Theme 13: Strategies to Avoid ‘BIC-Harming Parental Litigation’	
(13.1) <i>Self-arrangement: empowering the family</i> ⁶⁷	67 – P2, P4, P5, P7, P13, P14, P20, P24, P27, P31, P34, P35, P42, P43, P44, P46, P49, P50, P51, P52, P53, P54, P55, P72, P73
(13.2) <i>Educating parents</i> ⁶⁸	68 – P1, P3, P5, P16, P25, P26, P27, P37, P39, P41, P42, P43, P46, P47, P49, P55, P57, P60, P66, P67, P70
(13.3) <i>Mediation & Conciliation</i> ⁶⁹	69 – P16, P20, P28, P29, P31, P42, P43, P47, P50, P51, P53, P54, P56, P58, P59, P63, P66, P70, P72
Theme 14: Child Custody Arrangements	
(14.1) <i>Joint Custody: between parental dynamics and conditions</i>	70 – P1, P3, P11, P18, P29, P42, P46
(14.1.1) “It is what the Law determines” ⁷⁰	71 – P2, P3, P4, P5, P6, P11, P12, P15, P16, P18, P20, P21, P24, P28, P29, P34, P43, P44, P45, P46, P47
(14.1.2) The perfect arrangement ⁷¹	72 – P1, P11, P16, P21
(14.1.3) “It is settable regardless of the parental dynamic” ⁷²	73 – P2, P4, P5, P6, P7, P15, P17, P19, P23, P24, P27, P29, P30, P31, P34, P35, P39, P44, P50, P63, P67, P73
(14.1.4) Conditional joint custody: “It is not to every family” ⁷³	74 – P6, P7, P8, P9, P10, P12, P15, P20, P22, P27, P36, P37, P38, P39, P41, P45, P49, P50, P51, P52, P53, P55, P57, P59, P62, P63, P64, P65, P66, P68, P69, P70, P71, P73
(14.2) “The best arrangement is the one that fits the family best” ⁷⁴	75 – P8, P15, P16, P17, P22, P24, P27, P38, P39, P43, P44, P45, P47, P48, P49, P65, P73
(14.3) <i>Shared Caring: not good enough to be applied but not too bad if the child has already adapted</i> ⁷⁵	
Theme 15: Making a Child’s Arrangement Decision Involving Adolescents	
(16.2) “It’s quite impossible to go against their will” ⁷⁶	76 – P1, P15, P16, P21, P23, P27, P43, P44, P49, P50, P51, P52, P55, P66, P69, P71
(16.3) “They can play the game too”: getting into the litigating parents’ dynamic ⁷⁷	77 – P2, P35, P42, P43, P44, P45, P47, P73

According to Table 49 data from ‘psychologists’, ‘judges’ and ‘lawyers’ categories were the most represented within the themes, with a total of 69% predominance. The same pattern was observed in relation to their representativeness within the number of participants, where they also presented as the top three categories.

Table 49*Representativeness of Each Participant Category Within the Themes*

Representativeness Within the Themes		
Category	n¹	%
<i>Psychologists</i>	243	25
<i>Judges</i>	214	22
<i>Lawyers</i>	214	22
<i>Social Workers</i>	171	18
<i>Prosecutors</i>	128	13
TOTAL	970²	100

¹Refers to the number of excerpt data from a participant category used to anchor a theme. Source: Table 48²Total of excerpt data-anchoring according to Tale 48

Table 50 shows how each theme is anchored in the data, taking into account each country and also each participant category. It was based on information from the table on Appendix H and also on the table above. As explained on the method section, the anchoring is just a tool used to provide the results' confirmability. **It should not be seen as a quantitative measure in which “the larger the number of supporters (participants) pointed, the more significant is the theme”.**

Table 50*Themes' Data Anchoring According to Each Country and Participant Category*

Theme	Data Anchoring
Theme 1: Parental Separation: Crisis and Family Life Cycle (1.1) <i>Dysfunctionally coping divorce: family crisis</i> ¹ (1.2) <i>Misunderstanding and pathologisation of family interactions and coping strategies in the context of custody dispute: perspectives on parental alienation</i> ² (1.2.1) Tricks the decision-making (1.2.2) Impairs the child's role (1.3) <i>Parental separation as part of the family life cycle</i> ³	1 – anchored on data from 27% (n = 20) of interviews. Of these, 40% (Br= 6; EN= 2) were psychologists, 30% (BR= 2; EN= 3) lawyers, 15% (BR = 3) prosecutors, judges (BR = 1; EN= 1) and social workers (BR= 2) were 10% each 2 – anchored on data from 31% (n = 23) of interviews. Of these, 30% were judges (BR = 6; EN = 1), 30% (BR = 5; EN = 2) psychologists, 17% (BR = 3; EN = 1) lawyers, 13% (n = 3) prosecutors and 9% social workers (BR = 2) 3 – anchored on data from 11% (n = 8) of interviews. Of these, 62% (BR = 5) were social workers and judges, lawyers were 25% (BR = 2) and psychologists were 12% (BR = 1)
Theme 2: Hindering BIC (2.1) <i>Conjugality Vs. Parenthood</i> ⁴ (2.2) <i>Detaching from the child and attaching to the litigation</i> ⁵ (2.3) <i>Lack of parenting skills</i> ⁶ (2.4) <i>"No 'child maintenance', no contact with the child"</i> ⁷ (2.5) <i>Exclusion position</i> ⁸ (2.6) <i>Misunderstanding joint custody</i> ⁹ (2.7) <i>Involving the child in parental conflict</i> ¹⁰	4 – anchored on data from 52.1% (n = 38) of interviews. Of these, 29% (BR = 6; EN = 5) were psychologists, 24% (BR = 5; EN = 4) lawyers, 21% (BR = 5; EN = 3) social workers, 18% (BR = 6; EN = 1) judges and 8% (n = 3) prosecutors 5 – anchored on data from 58.9% (n = 43) of interviews. Of these, 33% (BR = 10; EN = 4) were judges, 23% (BR = 6; EN = 4) lawyers, 23% (BR = 5; EN = 5) psychologists, 16% (BR = 3; EN = 4) social workers and 5% (n = 2) prosecutors 6 – anchored on data from 11% (n = 8) of interviews. Of these, 62% (BR = 5) were judges and psychologists, social workers and prosecutors were 12% (BR = 1) each 7 – anchored on data from 10% (n = 7) of interviews. Of these, 57% (BR = 4) were judges, 28% (BR = 2) lawyers and 14% (n = 1) prosecutors 8 – anchored on data from 16% (n = 12) of interviews. Of these, 33% (BR = 2; EN = 2) were judges, 25% (BR = 2; EN = 1) lawyers, 25% (BR = 1; EN = 2) social workers and 17% (BR = 2) psychologists 9 – anchored on data from 8% (n = 6) of interviews. Of these, 66% were lawyers (BR= 2) and prosecutors (BR= 2), judge and social worker were 16% (n= 1) each 10 – anchored on data from 45% (n = 33) of interviews. Of these, 30% (BR = 6; EN = 4) were psychologists, 24% (BR = 6; EN = 2) social workers, 21% (BR = 4; EN = 3) lawyers, 12% (BR = 3; EN = 1) judges and 12% (n = 4) prosecutors

Theme 3: The Judiciary's Constraints & Practices

(3.1) *"The Law is powerless": legal and epistemological limitations of Law*¹¹

(3.1.1) Limits of Law

(3.1.2) Litigious mindset

(3.2) *Organisational issues*¹²

(3.2.1) Time & Workflow

(3.2.2) Staff & Workload

(3.2.3) Judges' career & Courts

(3.2.4) Lack of training and knowledge

(3.3) *Between fear and bravery: the psychologists' practice in Brazil*¹³

(3.4) *An advocate in intractable cases: the psychologists' practice in England*¹⁴

11 – anchored on data from 18% (n = 13) of interviews. Of these, 38% (n = 5) were prosecutors, 31% judges (BR = 3; EN = 1), psychologists and social workers were 15% (BR = 2) each

12 – anchored on data from 30 % (n = 22) of interviews. Of these, 41% (BR = 5; EN = 4) lawyers, 27% (BR = 2; EN = 4) social workers, 23% (BR = 5) psychologists, judges and prosecutors were 4% (BR = 1) each

13 – anchored on data from 5% (BR = 4 psychologists) of interviews

14 – anchored on data from 8% (BR = 6) of interviews. Of these, 50% (n = 3) were judges and 50% (n = 3) psychologists

Theme 4: (Mis)Understanding BIC

(4.1) *Focusing on and addressing parents' interests instead of child's*¹⁵

(4.2) *"It has nothing to do with Psychology"*¹⁶

(4.3) *BIC as a rhetorical resource*¹⁷

15 – anchored on data from 22% (n = 16) of interviews. Of these, 37% (BR = 5; EN = 1) were psychologists, 31% (BR = 4; EN = 1) lawyers, judges and prosecutors were 12% (BR = 2) each and 6% (EN = 1) were social workers

16 – anchored on data from 7% (n = 5) of interviews. Of these, 80% (BR = 4) were psychologists and 20% (BR = 1) judges

17 – anchored on data from 11% (n = 8) of interviews. Of these, lawyers and psychologists were 37% (BR = 3) each, social workers and prosecutors were 12% (BR = 1) each

Theme 5: Promoting BIC in Child Custody Cases

(5.1) *Preserving basic (material-physiological) needs and rights*¹⁸

(5.2) *Enhancing the child's psychosocio-emotional well-being*¹⁹

(5.3) *Preserving the relationship with both parents*²⁰

(5.4) *Protecting the child from parental conflict*²¹

(5.5) *Maintaining the sense of stability*²²

(5.6) *Addressing the Children Act (1989)'s welfare check-list*²³

18 – anchored on data from 56% (n = 41) of interviews. Of these, 27% (BR = 8; EN = 3) were lawyers, 22% (BR = 5; EN = 4) social workers, 19% (BR = 6; EN = 2) judges, 17,1% (n = 7) prosecutors and 15% (BR = 5; EN = 1) psychologists

19 – anchored on data from 53% (n = 39) of interviews. Of these, 28% (BR = 6; EN = 5) were lawyers, 28% (BR = 5; EN = 6) psychologists, 15% (BR = 5; EN = 1) judges, 15% (BR = 3; EN = 3) social workers and 12,8% (n = 5) prosecutors

20 – anchored on data from 57% (n = 42) of interviews. Of these, judges and psychologists were 24% (BR = 6; EN = 4) each, 21% (BR = 4; EN = 5) were social workers, 19% (BR = 5; EN = 3) lawyers and 12% (n = 5) prosecutors

21 – anchored on data from 12% (n = 9) of interviews. Of these, psychologists and social workers were 33% (BR = 2; EN = 1) each, 11% (EN = 1) were lawyers, judges and prosecutors were 11% (BR = 1) each

22 – anchored on data from 44% (n = 32) of interviews. Of these, 25% (BR = 5; EN = 3) were psychologists, judges and social workers were 22% (BR = 5; EN = 2) each, 18,8% (BR = 4; EN = 2) lawyers and 12% (n = 4) prosecutors

Theme 6: Applying BIC(6.1) *Indeterminacy*²⁴(6.2) *Idiosyncrasy*²⁵

23 – anchored on data from 22% (n = 16) of interviews. Of these, 44% (EN = 7) were lawyers, 25% (EN = 4) judges, 19% (EN = 3) social workers and 12% (EN = 2) psychologists

24 – anchored on data from 20% (n = 15) of interviews. Of these, 47% (BR = 5; EN = 2) were psychologists, 20% (n = 3) prosecutors, lawyers and social workers were 13% (BR = 1; EN = 1) each, 7% (BR = 1) were judges

25 – anchored on data from appears in 33% (n = 24) of interviews. Of these, 29% (BR = 4; EN = 3) were lawyers, 25% (BR = 4; EN = 2) social workers, 17% (BR = 3; EN = 1) judges, 17% (n = 4) prosecutors and 12% (BR = 1; EN = 2) psychologists

Theme 7: Decision-making Process(7.1) *“There is no need to hear the child if there is a parental agreement”*²⁶(7.2) *Between inadequacy and lack of skills: “I do not hear the child”*²⁷(7.3) *Listening to the child’s voice: the older, the better*²⁸(7.3.1) *“It is easier to deal with”: they can speak their minds*(7.4) *Trading-off interests*²⁹(7.5) *Addressing the child’s interpersonal contexts*³⁰(7.6) *The children as subjects of rights and as an active agent in their reality*³¹

26 – anchored on data from appears in 7% (n = 5) of interviews. Of these, 40% (BR = 1; EN = 1) were judges, 40% (n = 2) prosecutors and 20% (BR = 1) psychologists

27 – anchored on data from 16% (n = 12) of interviews. Of these, 33% (BR = 4) were judges, lawyers and prosecutors were 25% (BR = 3) each, 17% (BR = 2) were social workers

28 – anchored on data from 26% (n = 19) of interviews. Of these, 32% (BR = 1; EN = 5) were lawyers, 26% (BR = 1; EN = 4) judges, 26% (BR = 2; EN = 3) social workers, 10% (EN = 2) psychologists and 5% (n = 1) prosecutors

29 – anchored on data from 7% (n = 5) of interviews. Of these, 40% (BR = 2) were social workers, judges, psychologists and prosecutors were 20% (BR = 1) each

30 – anchored on data from 15% (n = 11) of interviews. Of these, 27% (BR = 2; EN = 1) were judges, 27% (BR = 1; EN = 2) lawyers, 18% (BR = 1; EN = 1) psychologists, 18% (n = 2) prosecutors and 9% (BR = 1) social workers

31 – anchored on data from 34% (n = 25) of interviews. Of these, 36% (BR = 8; EN = 1) were psychologists, 24% (BR = 3; EN = 3) judges, 16% social workers (BR = 3; EN = 1), lawyers (BR = 2; EN = 1) and prosecutors (n = 3) were 12% each

Theme 8: Making the Decision-Making Process Harder(8.1) *Misconduct, maltreatment and abuse allegations*³²(8.2) *Tied Parents: “I cannot pick one”*³³(8.3) *Legal actors’ emotional struggles*³⁴

32 – anchored on data from 36% (n = 26) of interviews. Of these, 38% (BR = 5; EN = 5) were psychologists, 23% (BR = 2; EN = 4) lawyers, 19% (BR = 3; EN = 2) social workers, 11% (BR = 3) judges and 8% (n = 2) prosecutors

33 – anchored on data from 5% (n = 4) of interviews. Of these, 75% (BR = 3) were judges and 25% (n = 1) prosecutors.

Theme 9: Assessing BIC in Child Custody Cases: Evaluation Services

- (9.1) *'Psychosocial Study': the Brazilian model*³⁵
- (9.1.1) Family Firefighters: the role of psychosocial evaluation
 - (9.1.2) To intervene or not to intervene, that is the question
 - (9.1.3) Interdisciplinarity
 - (9.1.4) Non-protocol-based practice
- (9.2) *'Children and Family Court Advisory and Support Service – CAFCASS': the English model*³⁶
- (9.2.1) Protocol-based practice: Children Act's Section 7 Report
 - (9.2.2) Non-evidence based practice
 - (9.2.3) Risk-avoidance practice

Theme 10: Assessing BIC in Child Custody Cases: Procedures, Sources and Tools

- (10.1) *What is assessed?*³⁷
- (10.1.1) Child's development stage and specific needs
 - (10.1.2) Child's daily life and routine
 - (10.1.3) Family dynamic and its reality
 - (10.1.4) Child-parent relationship
 - (10.1.5) Parenthood & Co-parenting skill
 - (10.1.6) Health care
 - (10.1.7) Neglect, Maltreatment & Risk factors
- (10.2) *Sources of information: school, caregivers and protection network*³⁸
- (10.3) *Tools and strategies to assess BIC*³⁹
- (10.3.1) Interviewing parents and/or other family members
 - (10.3.1.1) Aspects that are looked for during the interview
 - (10.3.2) Interviewing the child
 - (10.3.3) Visiting the family household

Theme 11: Dichotomies in Lawyers' Practice

- (11.1) *Enrolling the dispute*⁴⁰
- (11.2) *Putting parents' interests first*⁴¹
- (11.3) *Safeguarding the child's welfare*⁴²
- (11.4) *Seeing and addressing the child's best interests through the parents' interests*⁴³

Theme 12: Legal actors' biases and BIC

- (12.1) *Gender*⁴⁴

34 – anchored on data from 4% (n = 3) of interviews. Of these, 67% (BR = 2) were judges and 33% (BR = 1) lawyers

35 – anchored on data from 23% (BR = 17) of interviews. Of these, 47% (n = 8) were psychologists, 29% (n = 5) social workers, 18% (n = 3) judges and 6% (n = 1) prosecutors

36 – anchored on data from 15% (EN = 11) of interviews. Of these, 45% (n = 5) were lawyers, 27% (n = 3) judges, 18% (n = 2) psychologists and 9% (n = 1) social workers

37 – anchored on data from 59% (n = 43) of interviews. Of these, 35% (BR = 10; EN = 5) were psychologists, 23% (BR = 5; EN = 5) social workers, 16% (BR = 5; EN = 2) lawyers, 14% (BR = 5; EN = 1) judges and 12% (n = 5) prosecutors

38 – anchored on data from 31% (n = 23) of interviews. Of these, 35% (BR = 6; EN = 2) were social workers, 22% (BR = 4; EN = 1) psychologists, 22% (n = 5) prosecutors, 17% (BR = 3; EN = 1) judges and 4% (BR = 1) lawyers

39 – anchored on data from 37% (n = 27) of interviews. Of these, 52% (BR = 8; EN = 6) were psychologists, 33% (BR = 6; EN = 3) social workers, judges and prosecutors were 7% (BR = 2) each

40 – anchored on data from 18% (n = 13) of interviews. Of these, 38% (BR = 5) were judges, 38% (BR = 2; EN = 3) lawyers, 15% (n = 2) prosecutors and 8% (EN = 1) social workers

41 – anchored on data from 10% (n = 7) of interviews. Of these, 43% (BR = 1; EN = 2) were lawyers, 28.6% (BR = 2) judges, 14% (EN = 1) psychologists and 14% (BR = 1) social workers

42 – anchored on data from 11% (n = 8) of interviews. Of these, 87% (BR = 4; EN = 3) were lawyers and 12% (BR = 1) judges

43 – anchored on data from 8% (n = 6) of interviews. Of these, 100% (BR = 2; EN = 4) were lawyers

44 – anchored on data from 15% (n = 11) of interviews. Of these, 36% (BR = 4) were

(12.1.1) Misogyny
(12.2) *Personal beliefs*⁴⁵

lawyers, judges and prosecutors were 27% (BR = 3) each and 9% (EN = 1) were psychologists

45 – anchored on data from 14% (n = 10) of interviews. Of these, 30% (BR = 1; EN = 2) were judges, 30% (BR = 3) psychologists, 20% (BR = 2) lawyers, 10% (EN = 1) social workers and 10% (n = 1) prosecutors

Theme 13: Strategies to Avoid ‘BIC-Harming Parental Litigation’

(13.1) *Self-arrangement: empowering the family*⁴⁶
(13.2) *Educating parents*⁴⁷
(13.3) *Mediation & Conciliation*⁴⁸

46 – anchored on data from 34% (n = 25) of interviews. Of these, 28% (BR = 3; EN = 4) were judges, 28% (BR = 4; EN = 3) lawyers, 20% (BR = 3; EN = 2) social workers, 16% (n = 4) prosecutors and 8% (BR = 2) psychologists

47 – anchored on data from 29% (n = 21) of interviews. Of these, judges and social workers were 23.8% (BR = 4; EN = 1) each, 19% (BR = 1; EN = 3) were psychologists, 19% (n = 4) prosecutors and 14% (BR = 1; EN = 2) lawyers

48 – anchored on data from 27% (n = 20) of interviews. Of these, 30% (BR = 1; EN = 5) were lawyers, 25% (BR = 3; EN = 2) judges, 20% (BR = 2; EN = 2) psychologists, 15% (n = 3) prosecutors and 10% (EN = 2) social workers

Theme 14: Child Custody Arrangements

(14.1) *Joint Custody: between parental dynamics and conditions*⁴⁹

(14.1.1) “It is what the Law determines”

(14.1.2) The perfect arrangement

(14.1.3) “It is settable regardless of the parental dynamic”

(14.1.4) Conditional joint custody: “It is not to every family

(14.2) “*The best arrangement is the one that fits the family best*”⁵⁰

(14.3) *Shared Caring: not good enough to be applied but not too bad if the child has already adapted*⁵¹

49 – anchored on data from 42% (n = 31) of interviews. Of these, lawyers and prosecutors were 26% (BR = 8) each, 23% (BR = 7) were judges, 19% (BR = 5; EN = 1) psychologists and 6% (BR = 2) social workers. 97% (n = 30) of the participants that anchored this feature were Brazilian

50 – anchored on data from 46.6% (n = 34) of interviews. Of these, 44% (BR = 9; EN = 6) were psychologists, judges, lawyers and social workers were 18% (BR = 2; EN = 4) each and 3% (n = 1) were prosecutors

51 – anchored on data from 25% (n = 18) of interviews. Of these, 28% (BR = 4; EN = 1) were judges, 28% (n = 5) prosecutors, 22% (BR = 3; EN = 1) psychologists, 17% (BR = 2; EN = 1) social workers and 6% (BR = 1) lawyers

Theme 15: Making a Child’s Arrangement Decision Involving Adolescents

(15.1) “*It’s quite impossible to go against their will*”⁵²

(15.2) “*They can play the game too*”: getting into the litigating parents’ dynamic⁵³

52 – anchored on data from 22% (n = 16) of interviews. Of these, 50% (BR = 4; EN = 4) were judges, 19% (BR = 2; EN = 1) psychologists, 12% (EN = 2) social workers, 12% (n = 2) prosecutors and 6% (EN = 1) lawyers

53 – anchored on data from 11% (n = 8) of interviews. Of these, 62% (n = 5) were prosecutors, judges and psychologists were 12% (BR = 1) each, 12% (EN = 1) were social workers

Appendix O

Reflexivity – Thematic Analysis

I did my bachelor's degree at the Catholic University of Brasília (Brazil). In the middle of the course, I took the module 'Conjugal and Family Psychology' in which I was introduced to the Systemic approach and the Family Therapy. I got very interested in the 'Systemic Thinking' and the way it saw and understood the family. After that, I started to get involved in action-research projects that worked with vulnerable families under the Systemic approach.

During my last year, I had a placement at the court of law in Brasília. I was an intern at the psychosocial service responsible for evaluating families and children involved in child custody cases after parental separation. This service also had a Systemic approach and I spent one year there. This experience was decisive for my career, as it became very clear to me that using the Systemic approach to work with families going through divorce and child custody disputes was what I wanted to do. I was so inspired that my final year dissertation was "*Systemic reflections on conceptions and practices of legal actors concerning the 'best interests of the child' principle in child custody disputes*".

I graduated in 2011 and started my master's at the University of Brasília in the same year. My master's dissertation was entitled "*Systemic reflections on the views of legal actors working in cases of child custody dispute involving parental alienation*". In 2013, when I defended my master's dissertation⁷⁵, 'parental alienation' was a hot topic in Brazil and my work was one of the few, at that moment, that proposed a critical approach to it, considering scientific, technical, clinical and ethical issues through a systemic perspective.

In 2014, I started teaching in a higher education institution in which I was convening modules such as 'Forensic Psychology', 'Crisis Intervention', 'Interventions in Situations of Risk'. I also supervised final year students counselling couples and families under 'Systemic Couple and Family therapy'. In addition to teaching, I also worked as a couples and family therapist under the Systemic approach. I had these two occupations until I moved to the UK to start my PhD in 2017.

⁷⁵ In Brazil, a master's degree takes, at least, two years.

My research interests followed my professional path. At the moment, I have 14 publications (articles and book chapters) of which 72% are related to families going through parental separation, child custody litigation and legal actors' practice in such cases. In these publications, I have addressed the following topics: a) the best interests of the child in child custody disputes; b) destructive divorce; c) parental alienation; d) the systemic view and legal actors; e) coping and rationalisation in lawyers working in child custody cases; and f) a systemic bioecological view of child custody cases.

My professional career, scientific interests and publications have shaped the way I see and understand the family and its interactions. I see it as a living, dynamic entity that can be observed as a system. I believe that the relational transactions within a family are interdependent, multifaceted and diverse to the point that they can produce pretty much any outcome, either enhancing the well-being of the family or contributing to its dysfunctionality (i.e. causing disadaptation, disorganisation and thus psychological suffering). This complexity is what makes every family, especially in moments of struggle, capable of improving itself and evolving. Therefore, I believe every family has potentialities that might be unknown to the family members themselves and also to the professionals working with them. I believe that parental separation is a moment of struggle for the family, a crisis moment that can highlight its strengths as well as its dysfunctions. Hence, I believe that the role of psychosocial professionals and the judiciary in such situations is to understand the family's struggles and help them to go through it without pathologising, criminalising or medicating the 'post-divorce phenomena'.

Regarding the child or adolescent in child custody cases, I see them as active members systemically bound to the family dynamic, and as contributors to it. I believe the child or adolescent should be seen as a protagonist in child custody cases, rather than as a mere spectator. A protagonist who does not make decisions, of course, but who is able to offer their point of view and their thoughts, and who deserves thereby to have them truly taken into account.

All these conceptions of family, divorce, legal actors and the judiciary's roles are embedded in the whole research process for this study, with a particular emphasis on the 'dialogue with the data' and the construction of themes and features; these are especially expressed in Theme 1 (Parental Separation: Crisis and Family Life Cycle), Theme 2 (Hindering BIC) and Theme 3 (The Judiciary's Constraints & Practices).

Another issue that is important to state is the fact that before my PhD studies, based on my previous research and professional experience, I already knew that family development issues related to divorce and crisis impacted the decision-making process in child custody cases. However, I did not know how or why. Through this study I have been able to understand that those issues are contextual and can enhance the level of uncertainty that can make the decision-making process even harder. In my masters I also found that lawyers would apply some strategies to justify their actions (such as rationalisation as a coping mechanism which helped justify the litigation between parents). In this study, I have developed an analytical apparatus capable of elucidating – on their own terms and in relation to one another – the seven cognitive strategies identified within the themes.

Appendix P

Information Sheet – Verbal Protocol Analysis



PARTICIPANT INFORMATION SHEET

Study title

“Child custody decision-making processes: The role of the Best Interests of the Child Principle”

You are being invited to take part in a research study. Before you decide whether or not to take part, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully.

What is the purpose of the study?

Our study aims to better understand questions such as: who the child is going to stay with after parental separation? How to make better child arrangements ensuring the best interests of the child?

This study is part of a Ph.D. research project that aims to investigate how the decision-making process regarding child arrangements is carried by legal actors after a parental separation and how the child’s best interests are addressed in that process.

Why have I been invited to participate?

As this project main aim is to explore how legal actors undertake the decision-making process regarding child arrangements cases, the participants of this study will be judges, prosecutors⁷⁶, psychologists, social workers and lawyers which have experience in such cases.

⁷⁶ Only in Brazil.

Do I have to take part?

It is up to you to decide whether or not to take part. If you do decide to take part, you will be given this information sheet to keep and be asked to sign a consent form. If you decide to take part you are still free to withdraw until we start to process and analyse the data by 1st March 2021 without giving a reason

What will happen if I take part?

By agreeing to take part in this study, you will be asked to perform a decision-making task in which you will have to make a recommendation regarding who a child is to live with and/or the time they are to spend with each of their parents. During the task, you shall think-aloud (specific instructions will be given) your thoughts. Your vocalisations will be audio-recorded. The estimated duration is between 50 and 70 minutes.

What are the possible benefits of taking part?

There is no financial benefit or compensation by taking part in this study nor any other direct benefit. However, by taking part of this study you will contribute to widen the understanding and promotion of the best interests of the child during divorce and child arrangements cases.

Will my information in this study be kept confidential?

All information collected will be kept strictly confidential (subject to legal limitations). Thus, all personal information collected will be kept strictly confidential (subject to legal limitations) and handled in accordance with the General Data Protection Regulation (GDPR, 2016).

The data collected will be stored in a de-identified way (e.g. using ID numbers not names), and kept separate from other details about you (e.g. from the consent form). Electronic data will be stored on a password-protected computer, and hard-copies will be stored behind a locked door.

What should I do if I want to take part?

Read this Information Sheet and then sign the Consent Form agreeing your participation.

What will happen to the results of the research study?

The results of this study will be part of a Ph.D. thesis and academic publications in journals and conferences. If you have an interest in receiving a copy of the results, please write your email address on the Consent Form.

Who is organising and funding the research?

This study is being conducted by Josimar Mendes, a Ph.D. student at University of Sussex on the School of Psychology, under the supervision of Professor Thomas Ormerod. This study is funded by the Ministry of Education of Brazil (MEC/CAPES).

Who has approved this study?

This study has been approved by the Sciences & Technology Cross-Schools Research Ethics Committee (crecscitec@sussex.ac.uk). The project reference number is ER/JA454/5. If you have any ethical concerns, please contact the ethics chair (crecscitec@sussex.ac.uk). The University of Sussex has insurance in place to cover its legal liabilities concerning this study.

Contact for Further Information

Please contact:

Josimar Mendes

Psychologist

MSc. Clinical Psychology and Culture

Doctoral Researcher

J.Alcantara-Mendes@sussex.ac.uk

Thank you

We thank you for your commitment and precious time by taking part in this study.

Date

2021

Appendix Q

Consent Form – Verbal Protocol Analysis



CONSENT FORM FOR PROJECT PARTICIPANTS

PROJECT TITLE: Child custody decision-making processes: The role of the
Best Interests of the Child Principle

C-REC REF NO: ER/JA454/5

I agree to take part in the above University of Sussex research project. I have had the project explained to me and I have read and understood the Information Sheet, which I may keep for records. I understand that by agreeing to take part in this study:

Please tick box

- | | YES | NO |
|---|--------------------------|--------------------------|
| • <i>I consent to be part of a decision-making task instructed by the researcher</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| • <i>I agree to allowing my thinking-aloud to be audio-recorded during the task</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| • <i>I understand that the recording will be transcribed, and that information may be presented (on an anonymous basis) in research reports and/or journals and academic events.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| • <i>I understand that no information that I disclose will lead to the identification of any individual in the reports on the project, either by the researcher or by any other party</i> | <input type="checkbox"/> | <input type="checkbox"/> |

- *I consent to the processing of my personal information and data for the purposes of this research study. I understand that such information will be treated as strictly confidential and handled in accordance with the General Data Protection Regulation (GDPR) 2016.* ☐ ☐
- *I understand that my participation is voluntary, that I can choose not to participate in part or all of the study, and that once the data analysis is initiated (after 1st March 2021), it won't be able to remove my anonymized data.* ☐ ☐

Name: _____

Signature: _____

Date: _____

Your email address, if you wish to receive the results report: _____

Appendix R

Participants Demographics – Verbal Protocol Analysis

Table 51

Participants' Basic Sociodemographic Information Per Country – Verbal Protocol

Analysis

Country	Category	Participants and Reference ID ^a	Gender	Years of Experience
<i>Brazil</i>	Judges	P3 (BR_BsB.Jd.03)	F	7
		P29 (BR_SP.Jd.03)	M	20
		NP20 (BR_GO.Jd.01)	F	20
		NP22 (BR_GO.Jd.02)	F	4
		NP23 (BR_GO.Jd.03)	F	7
		NP18 (BR_GO.Jd.04)	F	8
	Prosecutors	P42 (BR_Pr.01)	F	16
		P46 (BR_Pr.05)	M	4
		P48 (BR_Pr.07)	M	27
		NP12 (BR_Pr.08)	F	3
		NP24 (BR_Pr.09)	M	22
		NP25 (BR_Pr.10)	F	5
	Lawyers	P19 (BR_POA.Lw.03)	F	27
		P34 (BR_SP.Lw.04)	M	10
		NP5 (BR_SP.Lw.05)	F	24
		NP7 (BR_SP.Lw.06)	F	6
		NP8 (BR_SP.Lw.07)	F	26
	Psychologists	P10 (BR_BsB.Psy.03)	F	21
		P12 (BR_BsB.Psy.05)	F	11
		P21 (BR_POA.Psy.02)	F	12
		P23 (BR_POA.Psy.04)	F	22
		P38 (BR_SP.Psy.04)	M	5
	Social Workers	P13 (BR_BsB.SW.01)	F	15
		P14 (BR_BsB.SW.02)	F	20

<i>England</i>		P39 (BR_SP.SW.01)	F	31
		P41 (BR_SP.SW.03)	F	5
		NP10 (BR_BsB.SW.03)	F	11
	Judges	NP1 (EN_Jd.05)	M	25
		NP2 (EN_Jd.06)	M	8
		NP3 (EN_Jd.07)	M	12
		NP4 (EN_Jd.08)	M	10
	Lawyers	P59 (EN_Lw.07)	F	9
		NP9 (EN_Lw.08)	M	20
		NP11 (EN_Lw.09)	M	31
		NP11 (EN_Lw.10)	F	33
		NP11 (EN_Lw.11)	F	12
		NP11 (EN_Lw.12)	M	30
	Psychologists	P64 (EN_Psy.05)	M	31
		P68 (EN_Psy.09)	F	25
		NP6 (EN_Psy.10)	F	12
		NP15 (EN_Psy.11)	M	5
	Social Workers	P71 (EN_SW.03)	M	27
		NP16 (EN_SW.06)	F	7
		NP17 (EN_SW.07)	F	3
		NP21 (EN_SW.08)	M	4

^a NP = New Participant.

Appendix S

Conditions’ Content and Experiment Instructions – Verbal Protocol Analysis

Disclaimer: this study will refer to ‘custody’ instead of ‘child arrangements’, even though the English legal system does not refer to ‘custody’. This decision was made to assure consistency throughout the experiment, as this is a cross-cultural study.

General Instructions

‘Think-aloud’ analysis involves performing a task and vocalising your thoughts as they occur to you during the task. In this study, we will ask you to think aloud as you go through child custody cases with a view towards making a recommendation regarding who a child should live with and/or the time they should spend with each parent.

Your Task

Two child custody cases will be presented to you, one at a time. For each case, you will be presented with phases of information presentation to inform the steps of your recommendation. The phases comprise a case description, an opportunity to gain additional information, access to psychosocial information concerning the case, and an opportunity to make a recommendation regarding the child custody and access. In each phase, you should analyse the information available and then make some intermediate decisions and/or take actions to help you to understand the case. In the last phase, you will be able to assemble all the information provided in order to make a final analysis and reach a recommendation regarding who the child is to live with and/or the time they are to spend with each parent.

During this process, we ask you to verbalise out loud your thoughts as they occur to you: you should report everything that passes through your mind – no matter how irrelevant those thoughts may seem, reporting all the thoughts passing through your mind during the task is crucial to the success of this experiment..

Keep Talking – To Yourself⁷⁷

What you say as you undertake the task may seem incoherent or even confused to you. This is normal and is in no way a sign of any lack of expertise. Analytical thinking often involves apparent leaps in logic, repetitive questioning, periods of doubt and even confusion. These are attributes of expert analysis and precisely what we are seeking to observe.

In this exercise, an uncensored 'stream of consciousness' mindset is required. Because it can feel unnatural to think aloud while analysing a case, you may sometimes stop talking. If this happens for more than 10 seconds, you will be prompted to 'keep talking' so that your thoughts continue to be vocalized and recorded. Apart from this prompting, you should proceed as if you are alone and talking to yourself.

Warming Up

To help you better understand what 'thinking aloud' is, we are going to have a little exercise before the main task, as follows:

- 1) *Please pay attention to the short video and see how one can think aloud while performing a task:*

<<embedded video: https://www.youtube.com/watch?v=BwpPliBK0cA&ab_channel=techslingtv >>

Do you have any queries about how to think aloud while performing a certain task?

<<YES – clarify the subject doubts>>

<<NO – move to step #2>>

- 2) *Let's have a little rehearsal:*

<<present a short task for participants to practise thinking aloud ➔ 2 minutes>>

Do you have any queries?

<<YES – clarify the subject doubts>>

⁷⁷ Adapted from MacMillan (2015).

<<NO – start the experiment>>

Cases (Conditions)

Please turn off your camera but leave your microphone on. From now on, only your voice will be recorded.

Case A – Conflicting Needs⁷⁸

1° Phase – Vignette

In this phase, there is general information regarding the case. Your task is to read the case description and to 'think aloud' about it. Please, keep thinking aloud while you read the information. After you finish, please press 'next' to access more instructions.

Case A Description – Conflicting Needs	
Brief ex-couple history	1 The parents were married for seven years and had two children. After their separation, they became involved in
	2 court proceedings to solve child custody issues. In previous proceedings, it was decided that a joint custody arrangement
	3 should be set, but that the children should live with a 'residential parent'. The non-residential parent would have contacts
Reason to seek family court	4 with their children during weekends (Saturday to Sunday). However, less than a year after that arrangement, the parents
	5 are facing co-parenting problems and mutual allegations that impair the shared care arrangement. They have sought a
	6 family court judgement upon the case.
Parents' statements about the case	7 During the new proceedings, both parents have accused each other of domestic abuse and psychological harm to
	8 the children. The non-residential parent has argued that the residential one is trying to tear apart the relationship between
	9 the non-residential parent and the children by making frivolous allegations of physical and psychological abuse. The
	10 non-residential parent has also stated that the residential one is using those allegations to prevent the children from
	11 visiting the non-residential parent. The non-residential parent also alleges that this has not only impaired the child-parent
	12 relationship but also the children's need to be in touch with friends, peers and relatives (from the non-residential parent's
	13 family), and therefore it has affected their right to keep meaningful bonds with the non-residential parent's side.

Psychosocio-emotional need: protect the child-parent relationship

Psychosocio-emotional need: sense of stability

⁷⁸ Adapted from 'F v G [2020] EWHC 2396 (Fam)', retrieved from <https://www.bailii.org/ew/cases/EWHC/Fam/2020/2396.html>.

<i>Parents' statements about the case</i>	14	The residential parent completely denies all allegations and argues that the non-residential parent has shown	<i>Material-physiological need: physical well-being</i>
	15	coercively controlling behaviours since their separation, and that physical aggression against the children has happened.	
	16	The residential parent also says that whenever the children spend time with the non-residential parent, their performance	<i>Material-physiological need: education</i>
	17	at school is impaired because the non-residential parent does not look after the children's educational needs (e.g., does	
	18	not assist the children with their homework and/or is not fully involved with their school matters). The residential parent	
	19	has not dismissed the fact that the children have a meaningful social network at the non-residential parent's house.	
	20	However, the residential parent strongly states that the non-residential parent's alleged violent ways towards the	<i>Psychosocio-emotional need: protect the child-parent relationship</i>
	21	children's upbringing, as well as neglect of their educational needs, have put the children's physical and psychological	
	22	integrity at risk. This concern has outweighed the need to see the non-residential parent more frequently and to keep in	
	23	touch with the social network at the non-residential house, in the residential parent's view.	
<i>Parents' requests</i>	24	The non-residential parent completely denies all allegations and states that the residential parent is just trying to	<i>Psychosocio-emotional need: protect the child-parent relationship</i>
	25	alienate the children from having contact with the non-residential parent and the meaningful bonds they have at non-	
	26	residential parent's house. The non-residential parent has also argued that it is the residential parent's behaviours that	
	27	are harming the children's physical and psychosocio-emotional well-being, as the residential parent has been physically	
	28	and emotionally aggressive towards the children in an attempt to avoid them keeping in touch with the non-residential	<i>Psychosocio-emotional need: protect the child-parent relationship</i>
	29	parent. The non-residential parent has asked for a court order indicating that the children should live only with the non-	
	30	residential parent. In addition, the court should order the residential parent to seek professional support in order to	
	31	understand the negative effects that residential parent's behaviours towards the children and non-residential parent have	
	32	had upon the children, according to the non-residential parent. In the meantime, the non-residential parent believes the	<i>Psychosocio-emotional need: protect the child-parent relationship</i>
	33	children should have only indirect and sporadic supervised contact with the current residential parent.	
	34	The residential parent's petition is for a court order that indicates the children should live only with the residential	
	35	parent and have indirect and sporadic supervised contact with the non-custodial parent. In addition, the residential parent	
	36	also asks that the court order the non-custodial parent to be excluded from making decisions concerning the children's	<i>Psychosocio-emotional need: protect the child-parent relationship</i>
	37	education and health.	

Case A’s Design Summary

<i>Conflicting needs</i>	
<i>Psychosocio-emotional needs</i>	<i>Material-physiological needs</i>
<ul style="list-style-type: none"> - the children’s need to maintain their relationship with both parents (lines 8-10; 25-26) - the children’s need to have a routine and a sense of stability (lines 11-13) 	<ul style="list-style-type: none"> - the children’s need to have their physical well-being safeguarded (lines 14-15) - the children’s educational needs (lines 16-18)

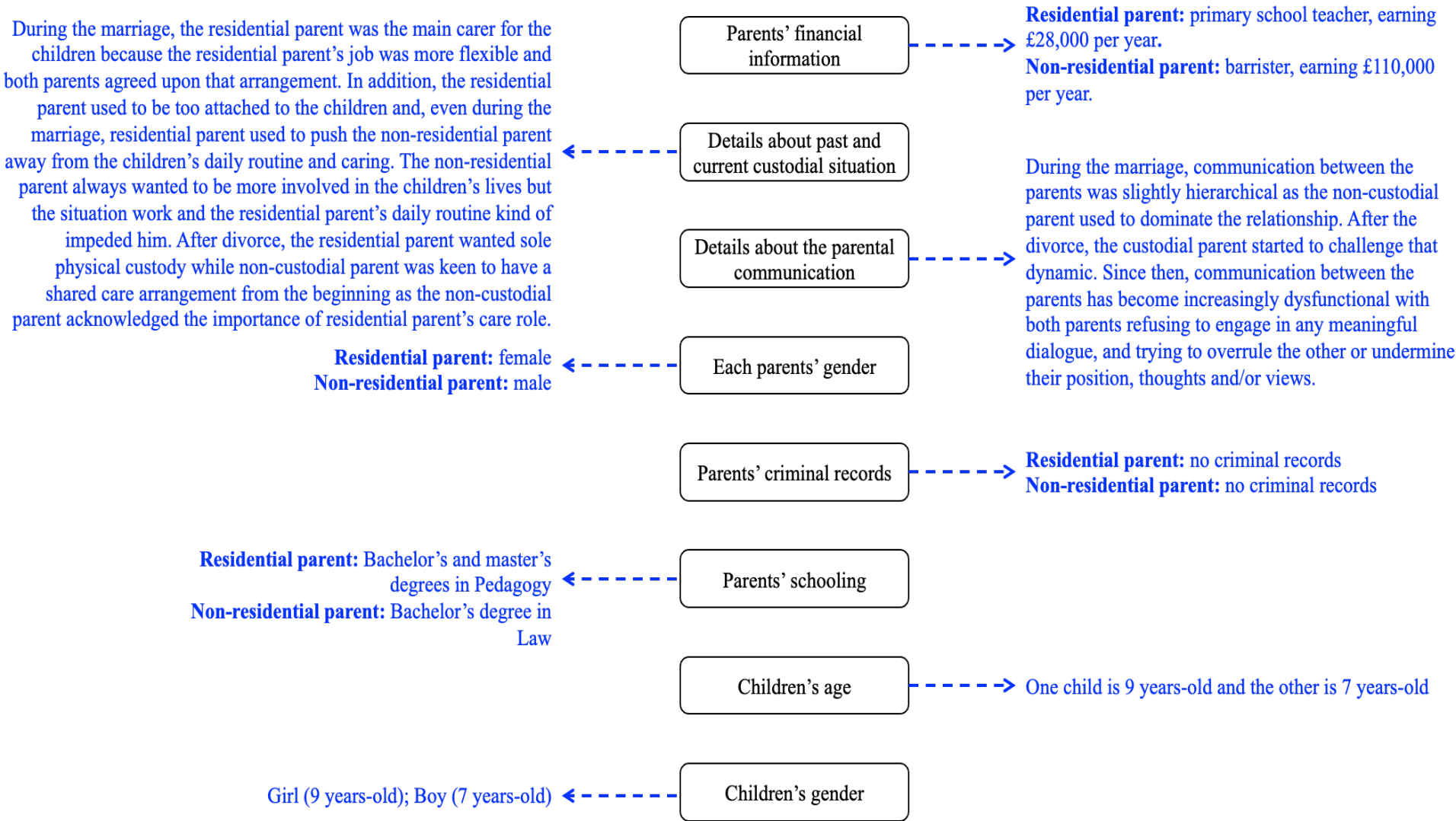
The conflict: if one decides to ensure ‘psychosocio-emotional needs’ it will impair ‘material-physiological needs’ and vice-versa. Therefore, if the children keep living with residential parent, they might lose their bond with non-residential parent as well as the bonds within the social network they have established at non-residential parent’s house – this would impair their sense of continuity and stability. On the other hand, if they go to live with the non-residential parent, they might be at risk of having their physical well-being impaired as well as their educational needs.

<i>Uncertainty</i>	
<i>Contradictory information</i>	<i>Incomplete information</i>
<ul style="list-style-type: none"> - mutual accusations (lines 7-13; 24-29) 	<ul style="list-style-type: none"> - residential parent’s alleged attempt to keep children away from non-residential parent (lines 9-11; 24-26)

<<NEXT>>

2° Phase – Sources of Supplementary Information

*Based on the case description and the thoughts you had about it, **choose three sources of supplementary information** from the list below that you think will help you to better understand the case. The information regarding the chosen sources will be presented to you on the next page..*



<<review the content of the three sources of supplementary information>>

Please, read and analyse one chosen supplementary information per time by thinking aloud about them.
After that, please press 'next' to access more instructions..

<<NEXT>>

Based on the case information that you have assessed so far, as well as the thoughts you have had about it, what would you do now? (Please, remember to think-aloud while analysing the options below)

a) I would like to assess more psychosocial information about the case.

Note: In real life, the provision of psychosocial information, would delay the decision-making process by some weeks or months. So choose this option only if you deem it essential

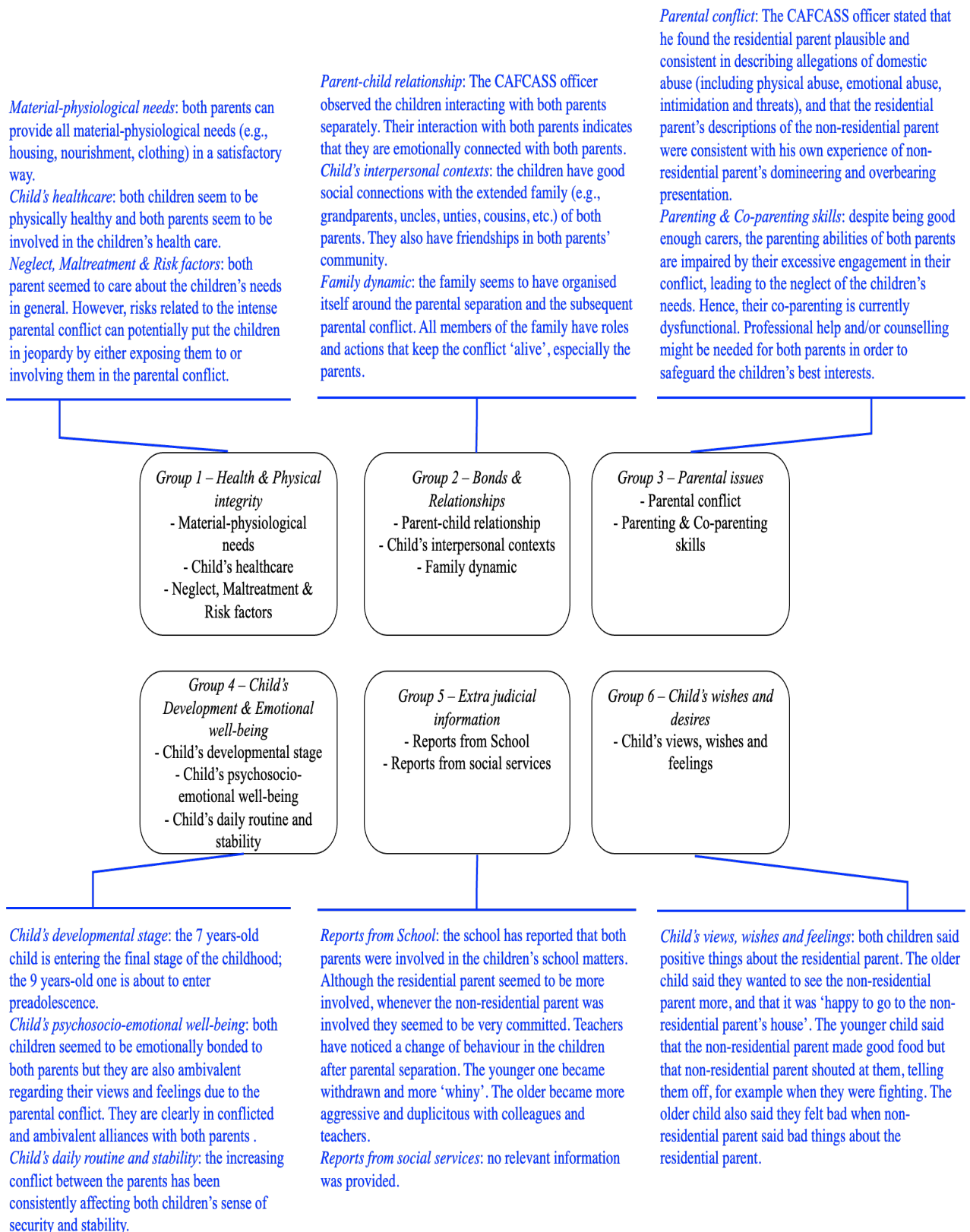
<<go to the 3^o block of information>>

b) Based on the information I have so far, I would like to recommend a custodial arrangement regarding who the children are to live with and/or the time they are to spend with each parent.

<<go to the last block>>

3^o Phase – Information Psychosocial

*Based on the information you have so far, as well as the thoughts you have had about it, please check the groups of psychosocial information available and **choose three groups** that you think will help you better understand the case, and then make recommendations. The information regarding the chosen sources will be presented to you on the next page.*



<<review the content of the three sources of psychosocial information>>

Please, read and analyse each chosen group of psychosocial information by thinking aloud about them. After that, please press 'next' to access more instructions.

4° Phase – Making a Decision

Please review all the information you have collected about the case, make a final analysis and then make a recommendation regarding who the children are to live with and/or the time they are to spend with each parent. Please, remember to think aloud while you analyse the information and make your recommendation.

<<review the content of psychosocial information>>

Which custodial arrangement would you recommend? (please, take into account the amount of time children should spend with each parent)

Case B – Independent Needs⁷⁹

1° Phase – Case Description

In this phase, you will have general information regarding the case. Your task is to read the case description and think aloud about it. After reading and thinking aloud, please press ‘next’ to access more instructions

Case B Description – Independent Needs	
Brief ex-couple history	1 The ex-couple met when they were travelling abroad. They returned to the non-custodial parent’s home country
	2 and lived together, were married and had two children. The marriage was short-lived and after three years they got
	3 divorced. After the divorce, the parents lived in different countries. Since the divorce, there have been numerous
	4 applications in respect of the children; some included very serious allegations from both parents regarding the
	5 children’s physical and psychosocio-emotional well-being.
Reason to seek Family Court	6 The parents sought a family court judgement because they could not agree upon the children’s residence and
	7 contact arrangements. The non-custodial parent claimed that the custodial parent had been deliberately influencing the
	8 children to bring the contact between the non-custodial parent and the children to an end. The non-custodial parent
Parents’ statements about the case	9 claimed that the custodial parent had been deliberately influencing the children to bring the contact between the non-
	10 custodial parent and the children to an end. The custodial parent claimed that the children were having problems with
	11 their grandmother in the non-custodial parent’s home country, and that was the reason why they did not want to come
	12 back. It was reported that both children had complained about the behaviour of the non-custodial parent’s family, and,
	13 at the time of the previous hearing, they were adamant that they did not want to go back to the non-residential parent’s
	14 country. They appeared to be wholly rejecting the non-custodial parent and that half of their heritage. However, until
	15 last summer when they allegedly started to have problems with their grandmother, both children used to enjoy non-
	16 custodial parent’s company and appeared to be happy to visit non-custodial parent’s home country.

Psychosocio-emotional need: protect the child-parent relationship

⁷⁹ Adapted from ‘P v C & Ors [2018] EWHC 693 (Fam)’, retrieved from <https://familylawhub.co.uk/default.aspx?i=ce6331>.

Parents' statements about the case	17	The non-custodial parent argued that if the children did not go to live with the non-custodial parent, they would	Material-physiological need: physical well-being
	18	be at risk of physical harm (as well as emotional harm) due to the way custodial parent was dealing with the situation,	
	19	making vexatious allegations to local authorities and social services as well as 'indoctrinating' the children to exclude	
	20	the non-custodial parent.	Psychosocio-emotional need: sense of stability
	21	The custodial parent rejected the physical abuse allegations and claimed that both children were very settled	
	22	where they were, with meaningful friendships and bonds with the custodial parent's social network and relatives.	
	23	Therefore, moving the children to another country, where they did not have such meaningful bonds and social network,	
	24	would jeopardise their well-being. In addition, one of the children had special educational needs that could be impaired	Material-physiological need: education
	25	by putting the child in a different school in another country. The non-custodial parent counter-argued that the children	
	26	had visited the non-custodial parent several times and that they also had meaningful bonds there, including relatives.	
Parents' requests	27	Besides, the children could also expand their social network by moving to a new country. Regarding the special	
	28	educational needs, the non-custodial parent argued that the child would be placed in a school that would look after the	
	29	child's needs and that the child would have all their educational needs supported.	
	30	The non-custodial parent sought a child arrangement order that allowed the children to live in the country where	
	31	the non-custodial parent resides. The custodial parent wanted to keep the current child arrangement regarding residence	
	32	and to limit contact between the child and the non-custodial parent (as well as non-custodial parent's family).	

Scenario B's Design Summary

<i>Non-conflicting needs</i>	
<i>Psychosocio-emotional needs</i>	<i>Material-physiological needs</i>
<ul style="list-style-type: none"> - the children's need to maintain their relationship with both parents (lines 7-8) - the children's need to have a routine and a sense of stability (lines 23-24) 	<ul style="list-style-type: none"> - the children's need to have their physical well-being safeguarded (lines 17-18) - the children's educational needs (lines 24-25)

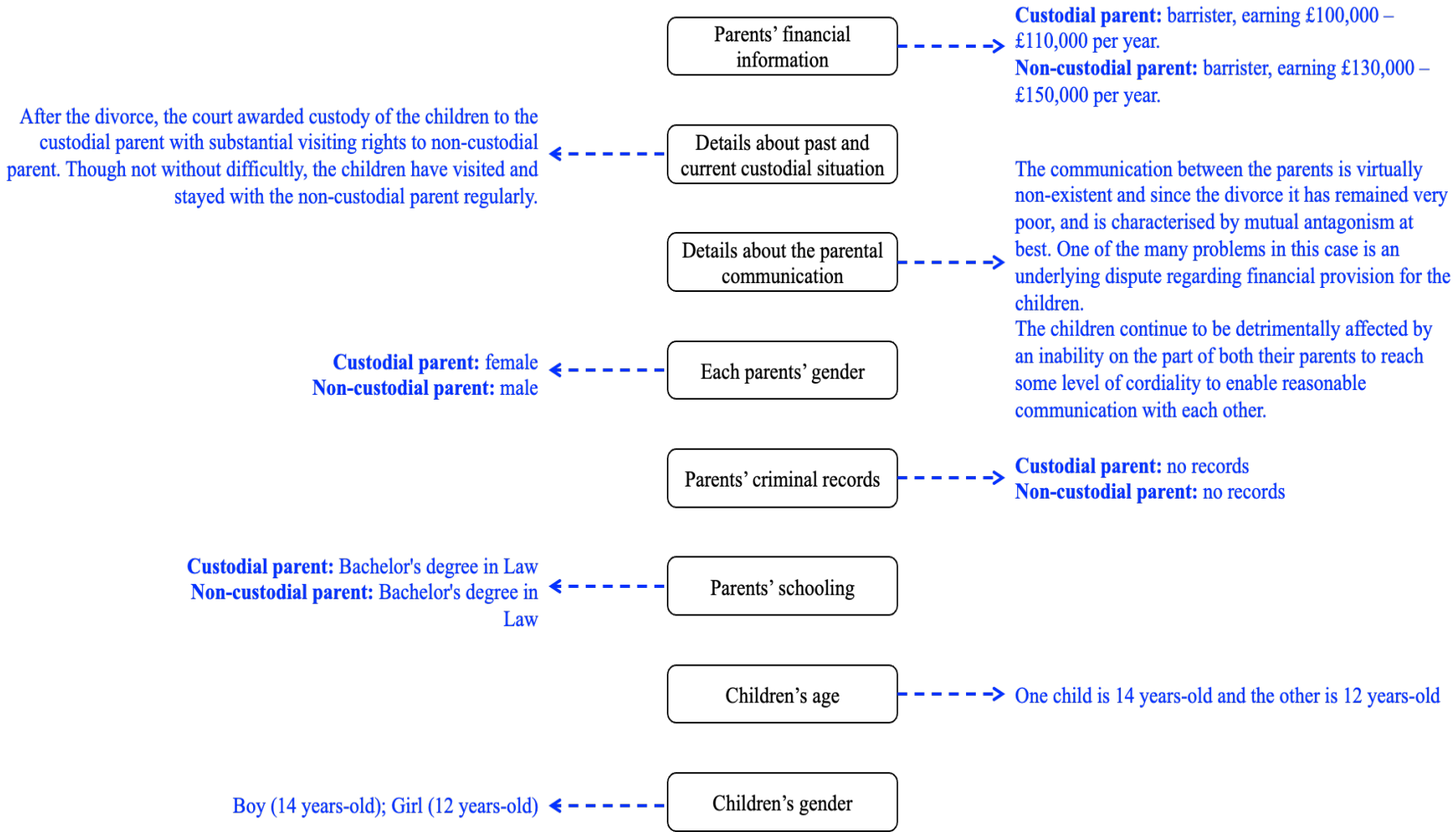
Neither sets of needs are in conflict with one another. For example, if one decides to ensure '*psychosocio-emotional needs*' it will not impair '*material-physiological needs*' and vice-versa. Hence, in this case, preserving the children's relationship with non-custodial parent as well as their sense of continuity and stability is not in conflict with the safeguarding of their physical well-being or educational needs.

<i>Uncertainty</i>	
<i>Contradictory information</i>	<i>Incomplete information</i>
<ul style="list-style-type: none"> - children used to have contact with non-custodial parent and enjoy it (lines 14-16) - mutual allegations (lines 7-12; 21-29) 	<ul style="list-style-type: none"> - they are unable to agree upon an arrangement (lines 6-7) - complaints about non-custodial grandmother (lines 10-12) - allegations made to social services (19-20)

<<NEXT>>

2° Phase – Sources of Supplementary Information

*Based on the case description and the thoughts you had about it, **choose three sources of supplementary information** from the list below that you think will help you to better understand the case. The information regarding the chosen sources will be presented to you on the next page.*



<<review the content of the three sources of supplementary information>>

Please, read and analyse one chosen supplementary information per time by thinking aloud about them. After that, please press 'next' to access more instructions.

<<NEXT>>

Based on the case information that you have assessed so far, as well as the thoughts you have had about it, what would you do now? (Please, remember to think-aloud while analysing the options below)

c) I would like to assess more psychosocial information about the case.

Note: In real life, the provision of psychosocial information, would delay the decision-making process by some weeks or months. So choose this option only if you deem it essential

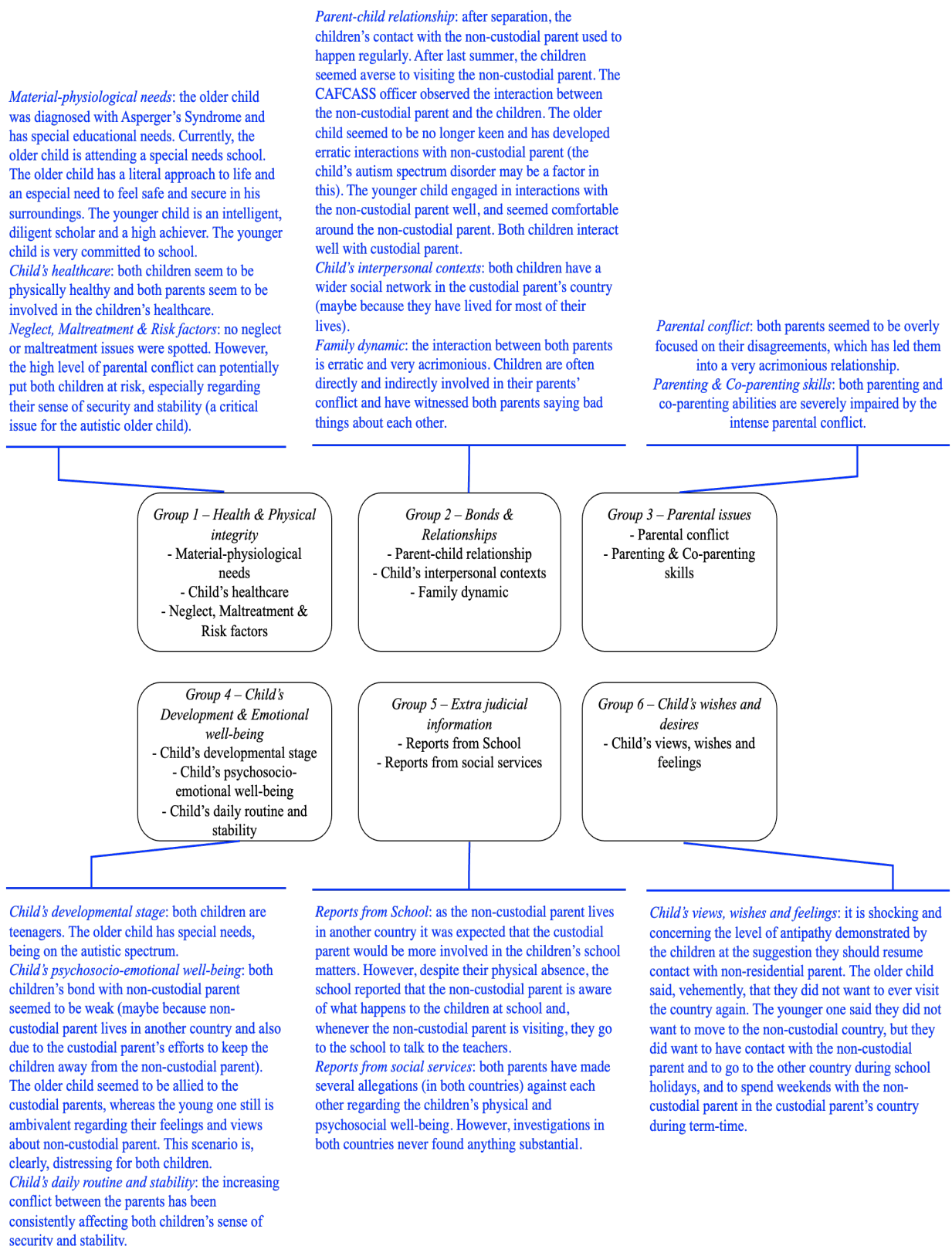
<<go to the 3^o block of information>>

d) Based on the information I have so far, I would like to recommend a custodial arrangement regarding who the children are to live with and/or the time they are to spend with each parent.

<<go to the last block>>

3^o Phase – Information Psychosocial

*Based on the information you have so far, as well as the thoughts you have had about it, please check the groups of psychosocial information available and **choose three groups** that you think will help you better understand the case, and then make recommendations. The information regarding the chosen sources will be presented to you on the next page.*



<<review the content of the three sources of psychosocial information>>

Please, read and analyse each chosen group of psychosocial information by thinking aloud about them. After that, please press 'next' to access more instructions.

4° Phase – Making a Decision

Please review all the information you have collected about the case, make a final analysis and then make a recommendation regarding who the children are to live with and/or the time they are to spend with each parent. Please, remember to think aloud while you analyse the information and make your recommendation.

<<review the content of psychosocial information>>

Which custodial arrangement would you recommend? (please, take into account the amount of time children should spend with each parent)

A

Appendix T

Detailed Code Scheme – Verbal Protocol Analysis

Table 52

‘Screening the Context’ and ‘Uncertainty’ Domains’ Codes

Domain	Code	Description
Screening the Context	<i>Familiarity</i>	Recognising context elements that are familiar to the decision makers and/or that they reckon as typical or common in child custody cases
	<i>Evoking Experience</i>	Evoking their professional experience to identify, make an analysis, a point and or a judgement regarding a context element
	<i>High Stakes</i>	Identifying and/or expressing that certain element within the context is important and or concerning for them. For example, not being secure to make a decision/action based on the information available or stating that the situation observed is severe
Uncertainty	<i>Inadequate understanding</i>	Expressing a drought of awareness about the situation under analyse. The decision maker does not know what to do with the information gathered as they might feel not very sure about what is really going on. This can happen either due to equivocal, novel or non-stable information available in the context of the decision-making
	<i>Lack of information</i>	Expressing a sense of incomplete, ambiguous, confusing and/or conflicting information. For instance, the decision maker might ask themselves: is this true? Did that really happen? Do those allegations have a ground? Is the child in jeopardy?
	<i>Conflicted alternatives</i>	Expressing a sense that the alternatives/options available do not differentiate much from each other. These alternatives/options can be evenly attractive or unattractive

Table 53*Cognitive Strategies' Domain's Codes*

Specification	Type	Code	Description
<i>Cognitive Strategies – Heuristics</i>	<i>Selection</i>	Child's basic needs/rights (BNR)	Considering/searching of information that would clarify what are the child's basic needs/rights (e.g., housing, nourishment, clothing, physical integrity, health care) in that case and/or if they are being jeopardised
		Child's psychosocio-emotional needs (PEN)	Considering/searching of information that would clarify what are the child's psychosocio-emotional needs in that case (e.g., sense of stability, protection from parental conflict, mental health, preserving the child-parent relationship, safeguarding the relationship with siblings and meaningful relatives) and/or if they are being jeopardised
	<i>Evaluation</i>	Child's family reality (CFR)	Considering/searching of information that would clarify how is the family interactional dynamic (e.g., parental conflict, family's alliances, collusions, roles, patterns of communication) and if it is affecting the child's welfare
		Listening to the child (LIC)	'Rule of thumb' that hights the importance, for the evaluation process, of the child's wishes and feelings regarding the case
		No need to listen to the child (NLC)	'Rule of thumb' that dismisses, for the evaluation process, the child's wishes and feelings regarding the case, especially when they might be contaminated by the parents

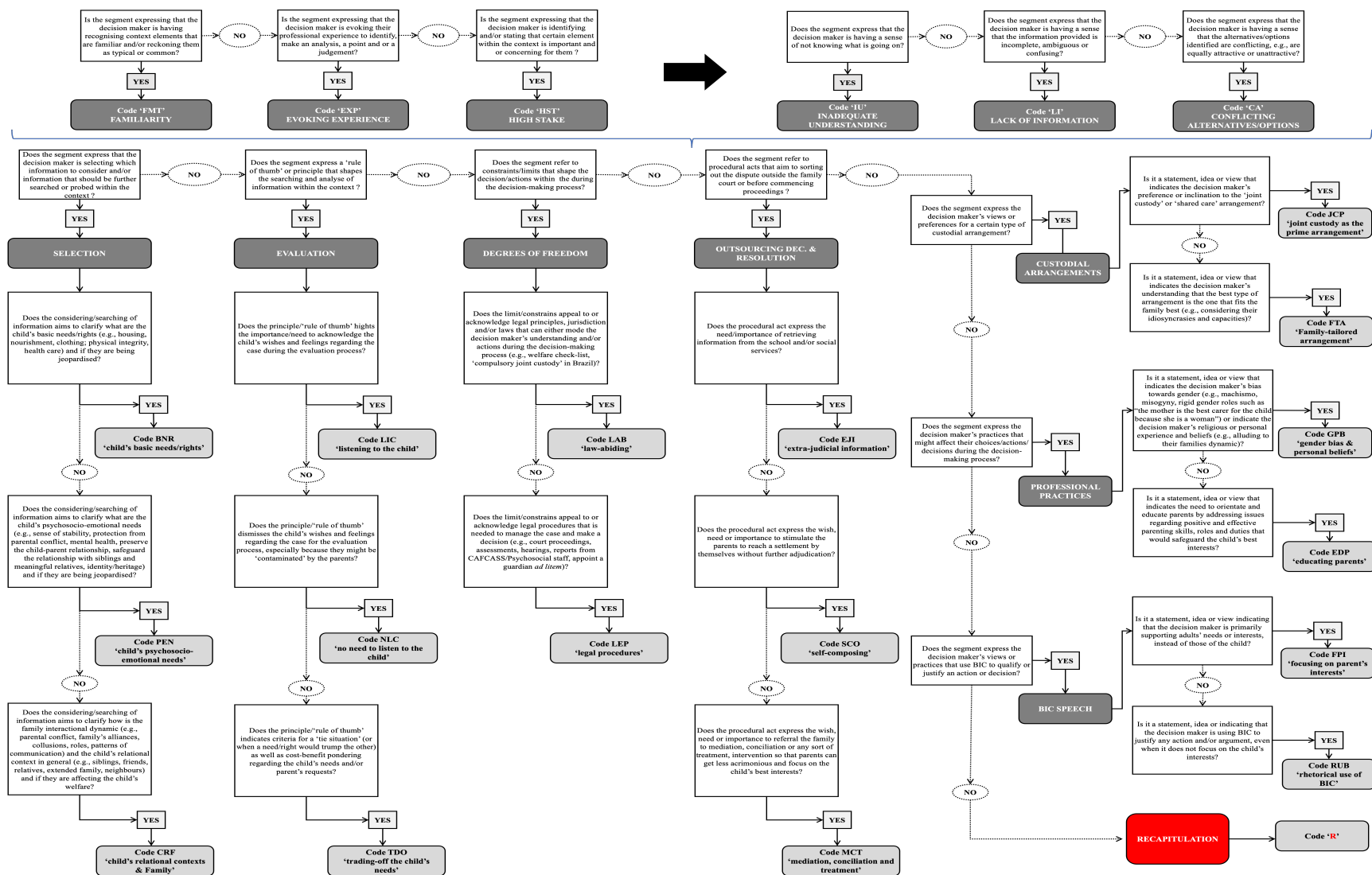
<i>Cognitive Strategies – Heuristics</i>	information within the context	Trading-off (TDO)	‘Rule of thumb’ that indicate criteria for a ‘tie situation’ (or when a child’s need/right would trump the other) as well as cost-benefit pondering regarding the child’s needs and/or parent’s requests
	<i>Degrees of Freedom</i> Referring to constraints/limits that shape the decision/actions within the context	Law-abiding (LAB)	Appealing or acknowledging of legal principles, jurisdiction and/or laws that can either mode the decision maker’s understanding and/or actions during the decision-making process. For instance, the welfare check-list in England and the ‘joint custody legislation’ in Brazil
		Legal procedures (LEP)	Acknowledging of legal procedures that is needed to manage the case and make a decision. For instance, court proceedings, having more hearings, assessments, appointing a guardian <i>ad litem</i> ⁸⁰

⁸⁰ Also known as ‘children’s guardian’, this role can be taken, by court nomination, by an experienced family court professional. Their role is represent the child’s rights and interests during court proceedings. For more information, see Mendes and Ormerod (2021b)

<i>Cognitive Strategies – Heuristics</i>	<i>Outsourcing decisions & Resolution</i>	Extra-judicial information (EJI)	Expressing the need/importance of retrieving information from the school and/or social services
	Procedural acts that aim to sorting out the dispute outside the family court or before commencing court proceedings	Self-composing (SCO)	Expressing the wish, need or importance to stimulate the parents to reach a settlement by themselves without further adjudication
		Mediation, conciliation and treatment (MCT)	Expressing the wish, need or importance to referral the family to mediation, conciliation, any sort of treatment or intervention so that parents can get less acrimonious and focus on the child's best interests
<i>Cognitive Strategies – Metacognition</i>	<i>Custodial Arrangements</i>	Joint custody as the prime arrangement (JCP)	Statements, ideas or views that indicate the decision maker's preference or inclination to the 'joint custody' or 'shared care' arrangement
	Decision maker's views or preferences for a certain type of custodial arrangement	Family-tailored arrangement (FTA)	Statements, ideas or views that indicate the decision maker's understanding that the best type of arrangement is the one that fits the family best (considering their idiosyncrasies and capabilities)

<i>Cognitive Strategies – Metacognition</i>	<i>Professional Practices</i>	Gender bias & Personal beliefs (GPB)	Statements, ideas or views that indicate the decision maker's bias towards gender (e.g., machismo, misogyny, rigid gender roles such as “the mother is the best carer for the child because she is a woman”) or indicate the decision maker's religious or personal experience (e.g., alluding to their families dynamic) beliefs
	Decision maker's practices that affect their choices/actions/decisions during the decision-making process	Educating parents (EDP)	Statements, ideas or views that indicate the need to orientate and educate parents by addressing issues regarding positive and effective parenting skills, roles and duties that would safeguard the child's best interests
	<i>BIC Speech</i>	Focusing on parents' interests (FPI)	Statements, ideas or views that indicate the decision maker's primarily support of adults' needs or interests, instead of the child's
	Decision maker's views or practices that use BIC to qualify or justify an action or decision	Rhetorical use of BIC (RUB)	Statements, ideas or views indicating that the decision maker is using BIC to justify any action and/or argument, even when it does not focus on the child's interests

Coding Flowchart – Verbal Protocol Analysis



Coding Protocol – Verbal Protocol Analysis

1											Screening the Context			Type of Uncertainty			Cognitive Strategies - Heuristics								
2		Participant															SELECTION			EVALUATION			DEGREES OF FREEDOM		
3	SEGMENT #	(P71) EN_SW.03 CASE A		INTERVAL	WORD COUNT							FMT	EXP	HST	IU	LI	CA	BNR	PEN	CRF	LIC	NLC	TDO	LAB	LEP
4	1	This sounds like a familiar issue, that the parents are obviously in conflict with each other, both believe	06:00	18								1								1					
5			06:10																						
6	2	the other parent is being abusive towards them and also the children in, in one shape or form. The residential	06:11	21																					
7			06:21																						
8	3	parent is saying that the violence going on towards the children, or certainly, physical abuse,	06:22	15																					
9			06:32																						
10	4	and also allegations. So, you know, the residential parent is saying that they're not supporting them in their educational	06:33	19											1			1	1						
11			06:43																						
12	5	needs and helping them with their homework. Non-residential parent is saying that the contact that they are having with the children	06:45	21																					
13			06:55																1						
14	6	is probably not enough and the children are building a bond with the non-resident parent's	06:56	15																					
15			07:06																						
16	7	network, friend and family in their locality. So the residential	07:08	10																					
17			07:18																						
18	8	co-parent both deny all allegations and, and really they've come to court to try and get some sort of order.	07:19	20																					
19			07:29																						
20	9	Both seem to be saying that the other parent shouldn't have time with their children. And clearly that would have implications for the children.	07:30	24																					
21			07:40																						
22	10	Their primary need is to maintain a good secure attachment to both parents despite the separation. However	07:41	17															1						
23			07:51																						
24	11	if there is any validity to the allegations that either parent are raising, then that needs to be	07:52	18																					
25			08:02																						
26	12	assessed and, and, and that may mean talking to the children and other professionals around. My concern immediately is these	08:03	20											1	1						1			1
27			08:13																						
28	13	are the sort of cases we see familiar, all too familiar where allegations are used by parents in order to gain,	08:14	21								1			1					1					
29			08:24																						
30	14	almost favor from a court to say that the children are at risk by their partners or ex-partners behavior. And of	08:25																						
31			08:35	21																					
32	15	course the judge, or magistrate in this case, whichever it would be, is going to have to rely on information, and in order to	08:36	24																					
33			08:46																						
34	16	do that, there will have to be some sort of assessment, whether that will be physically by, by court orders, CAFCASS, or by an independent	08:47												1										1
35			08:57	25																					
36	17	social worker will have to be decided. As I say, my concern immediately is the children are caught in this conflict and they should be having a	08:58	27																					
37			09:08											1											
38	18	meaningful relationship between, with both parents. And in some ways they've already been asked to take sides and they can become	09:10																1	1					
39			09:20	21																					
40	19	secretive and, and slowly they could be worried that they're going to be disloyal to one parent if they say something about the other parent. So it is	09:21	28																					
41			09:31																			1			
42	20	a balancing act about making sure the children are safe, but at the same time, ensuring that they have a meaningful relationship	09:32	22															1	1					
43			09:42																						
44	21	with both parents. What the non-residential parent is saying is that children should come and live with them and not have contact with	09:43	23																					
45			09:53												1				1						
46	22	the current residential parent, and in vice-versa the resident parent is saying the children shouldn't	09:55	15																					
47			10:05																						
48	23	have contact with the non-residential parent. So it really is a balancing act about what,	10:06	15																					
49			10:16											1					1	1			1		
50	24	what happens next? My immediate thought is we should not be suspending contact with either parent, but trying to make it safe and secure.	10:17	24																					
51			10:27																						
52	25	Considerations should be immediately sought about what other professionals are saying and whether, if we think it's safe, not safe for one parent	10:30	23																					
53			10:40																						
54	26	to have contact with the children in an unsupervised setting, would we consider having contact in a supervised setting.	10:41	19												1			1	1					1
55			10:51																						
56	27	My concern about that, again, is the children seem to be having frequent contact with both parents. The non-residential is seeing them on	10:53	23																					
57			11:03																						
58	28	the weekends. If I was honest, I'm not so concerned about the social network of the non-residential house.	11:04	18										1						1					
59			11:14																						

Appendix W

Supplemental Material – Chapter VI (Verbal Protocol Analysis)

Findings from Chapter II indicate that the literature frequently associates the child's best interests with the provision and maintenance of their material-physiological and psychosocio-emotional needs. Chapter V corroborates this, as 56% of the participants referred to the child's material-physiological/basic needs and 53% of them referred to psychosocio-emotional well-being needs⁸¹. Chapter IV showed that the interaction between material-physiological/basic and psychosocio-emotional well-being needs makes the decision-making more complex and uncertain. Taking this into account, we selected sets of needs according to Chapter V's features. Table 54 shows which needs were retrieved and the most representative ones:

Table 54

Child's Needs Identified Based on Chapter V's Features 5.1 and 5.2

Feature	Need	Rank	n [§]
(5.1) <i>Preserving basic (material-physiological) needs and rights</i>	Education	1°	138
	Physical well-being ('physical welfare'; 'physical integrity'; 'physical abuse' 'neglect'; 'maltreatment') [‡]	2°	48
	Nourishment ('food'; 'feeding') [‡]	3°	46
	Clothing	4°	19
	Health care	5°	10
	Housing	6°	9

⁸¹ See Appendix N – features 5.1 and 5.2

(5.2) *Enhancing the child's psychosocio-emotional well-being*

Preserve child-parent relationship ('bond') [‡]	1º	67
Maintaining the sense of stability	2º	52
Mental health	3º	34
Emotional development	4º	14
Emotional well-being ('emotional welfare') [‡]	5º	11

[§]The search was conducted using NVivo's 'Query>Text search' tool to find out their frequency throughout the whole dataset.

[‡]Synonyms and/or similar words also searched.

=====X=====

Figure 40

Average Time Spent to Complete Cases A and B per Category and Country – VPA

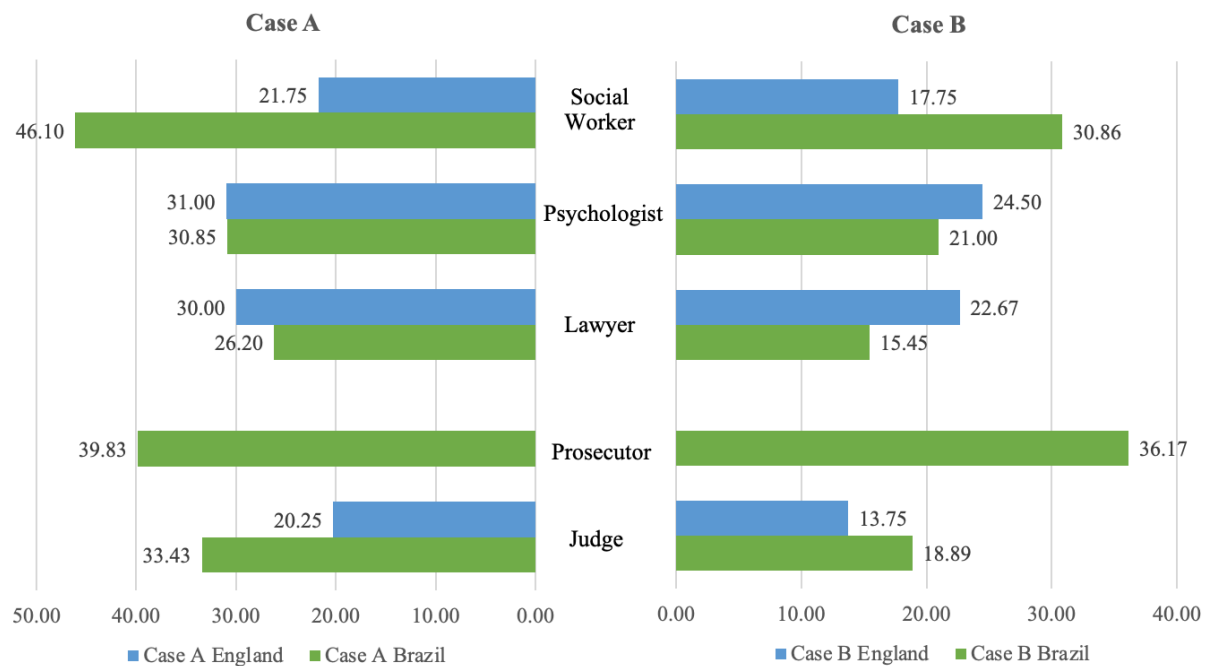


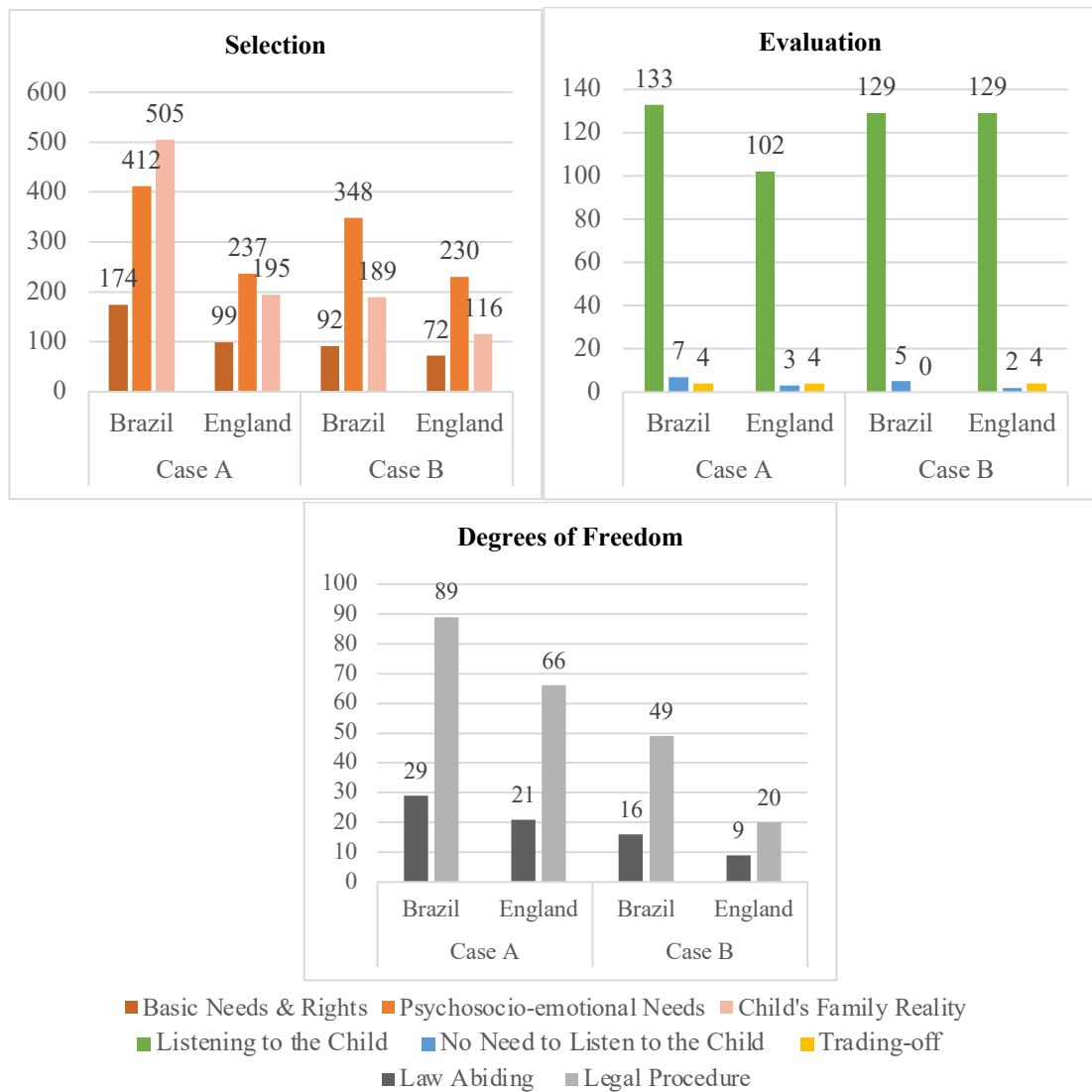
Figure 41*Frequency of Heuristics Codes per Case and Country*

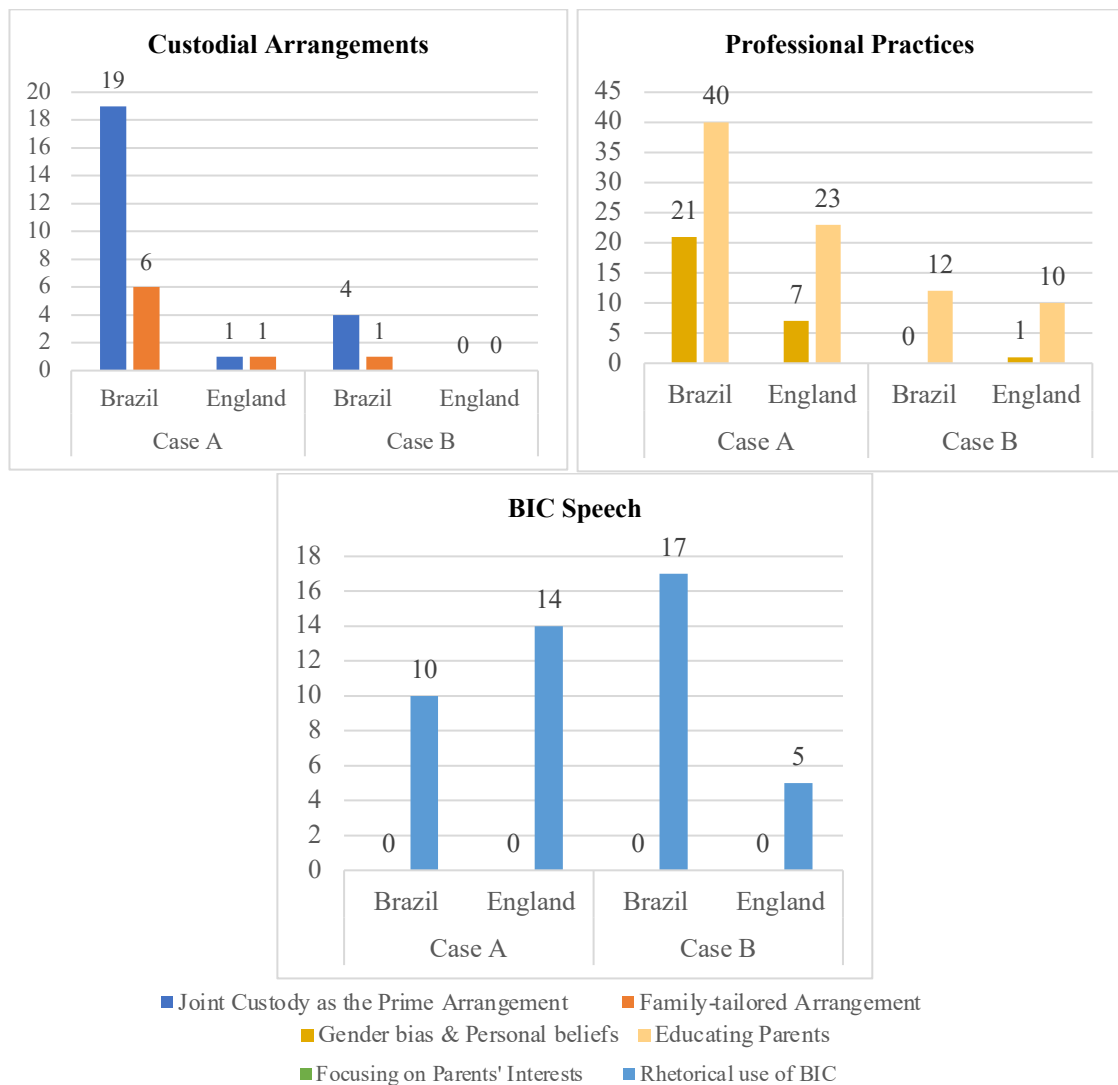
Figure 42*Frequency of Metacognition Elements per Case and Country*

Figure 43

Frequency of ‘Screening’ Elements Throughout the Task by Country – Cases A and B

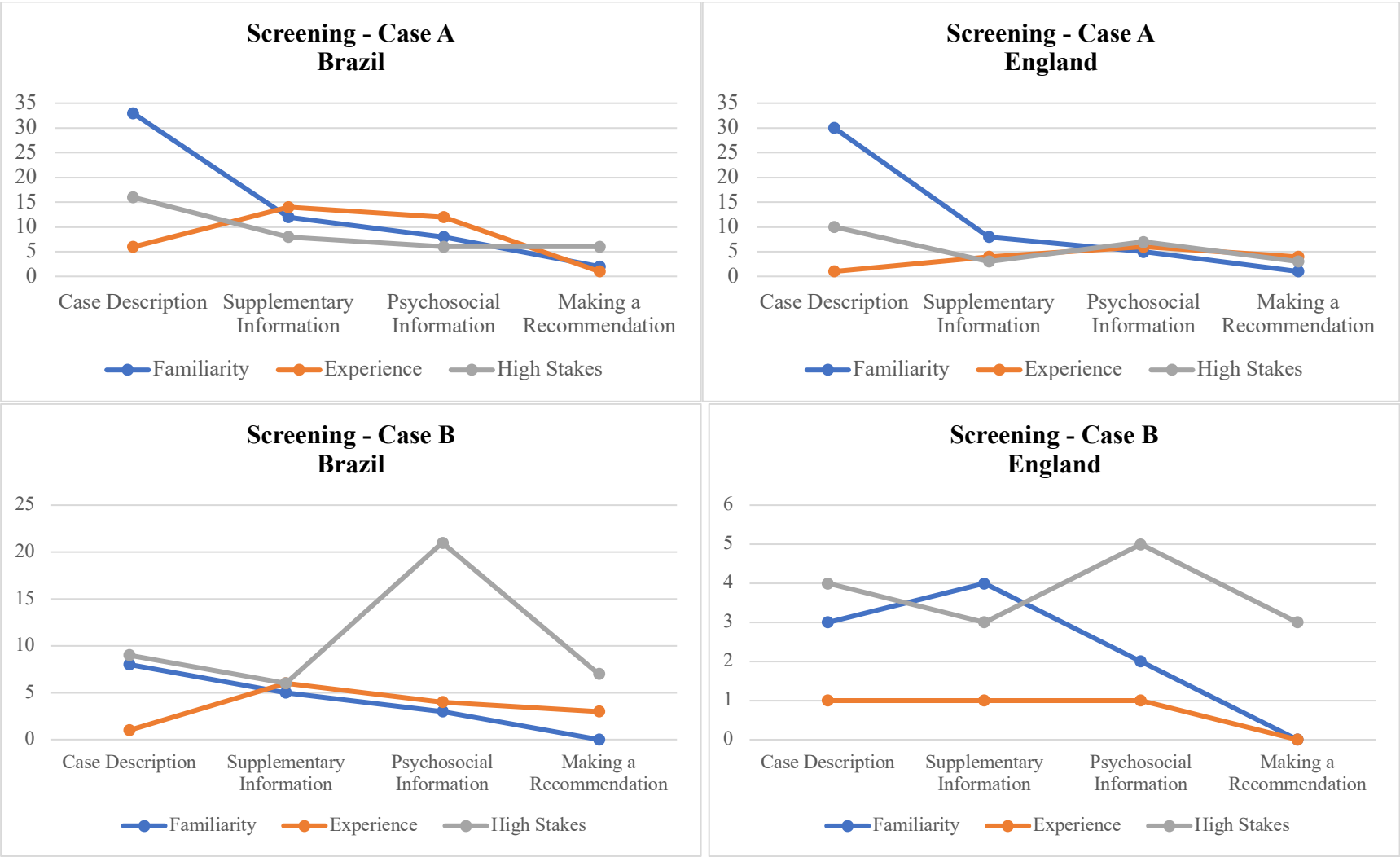


Figure 44

Frequency of ‘Types of Uncertainty’ Acknowledged Throughout the Task by Country – Cases A and B

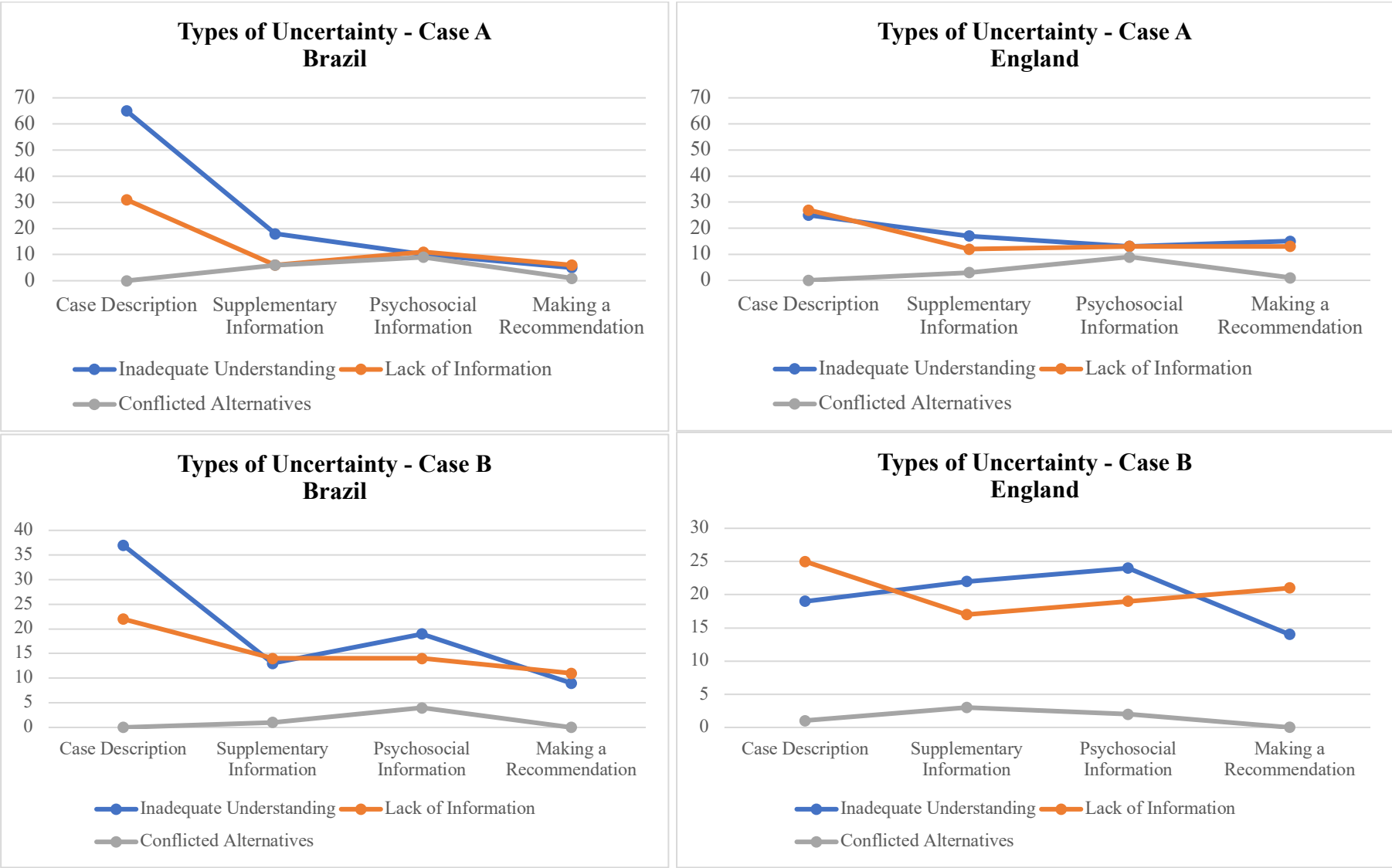


Figure 45
Frequency of ‘Selection’ Heuristics Throughout the Task by Country – Cases A and B

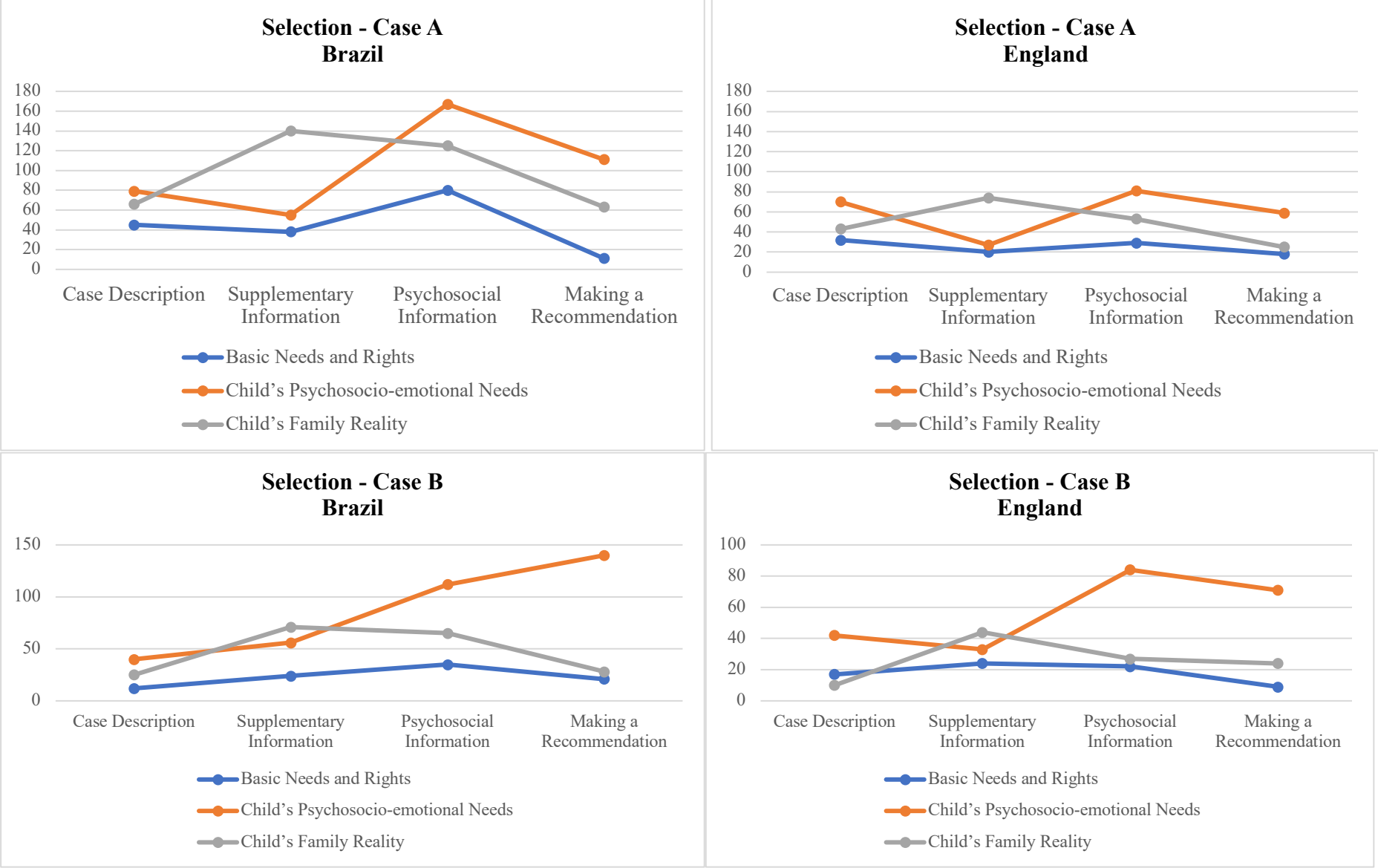


Figure 46
Frequency of ‘Degrees of Freedom’ Heuristics Throughout the Task by Country – Cases A and B

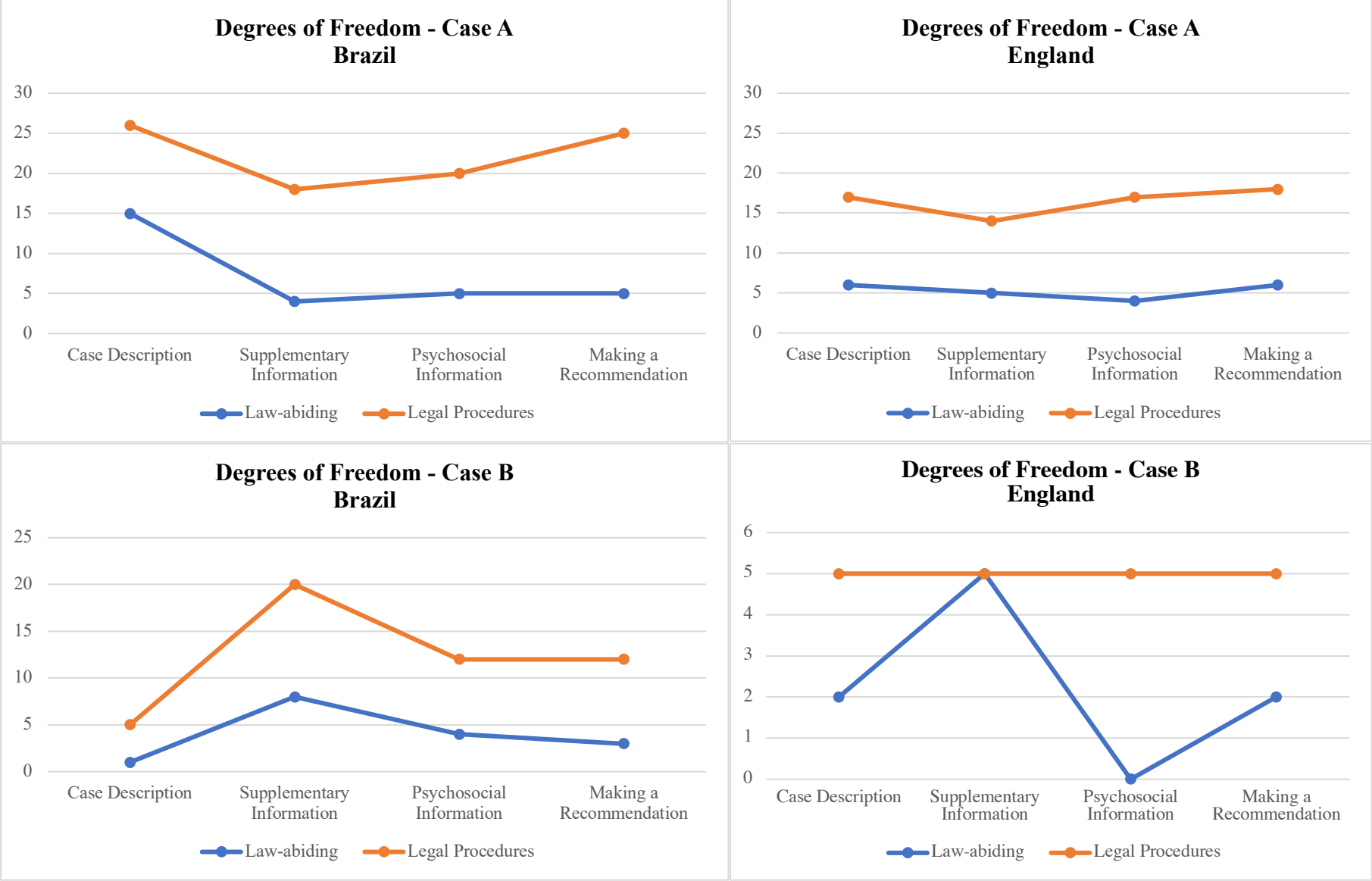


Figure 47
Frequency of ‘Outsourcing’ Heuristics Throughout the Task by Country – Cases A and B

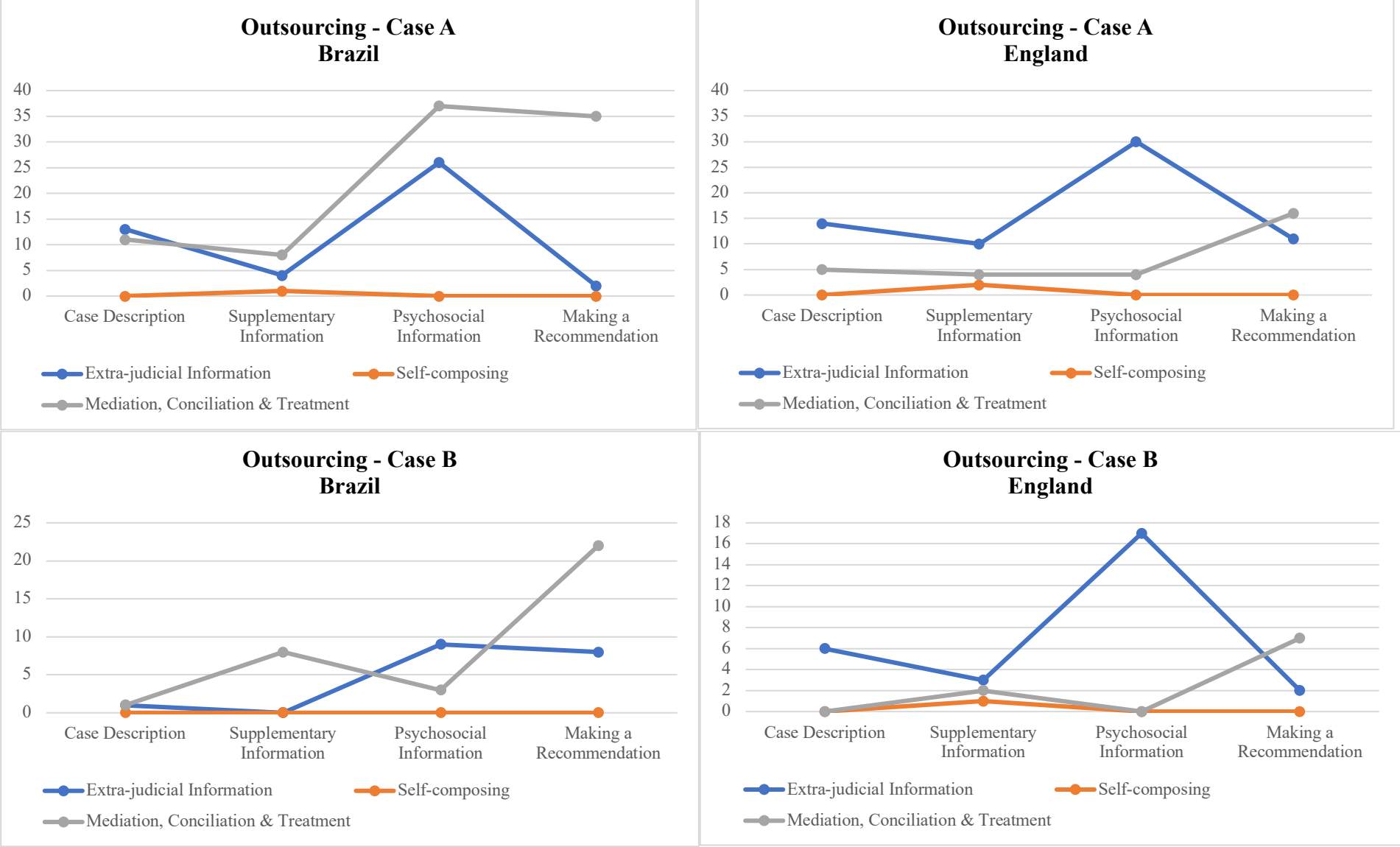


Figure 48

Frequency of ‘Custodial Arrangements’ Metacognitive Elements Throughout the Task by Country – Cases A and B

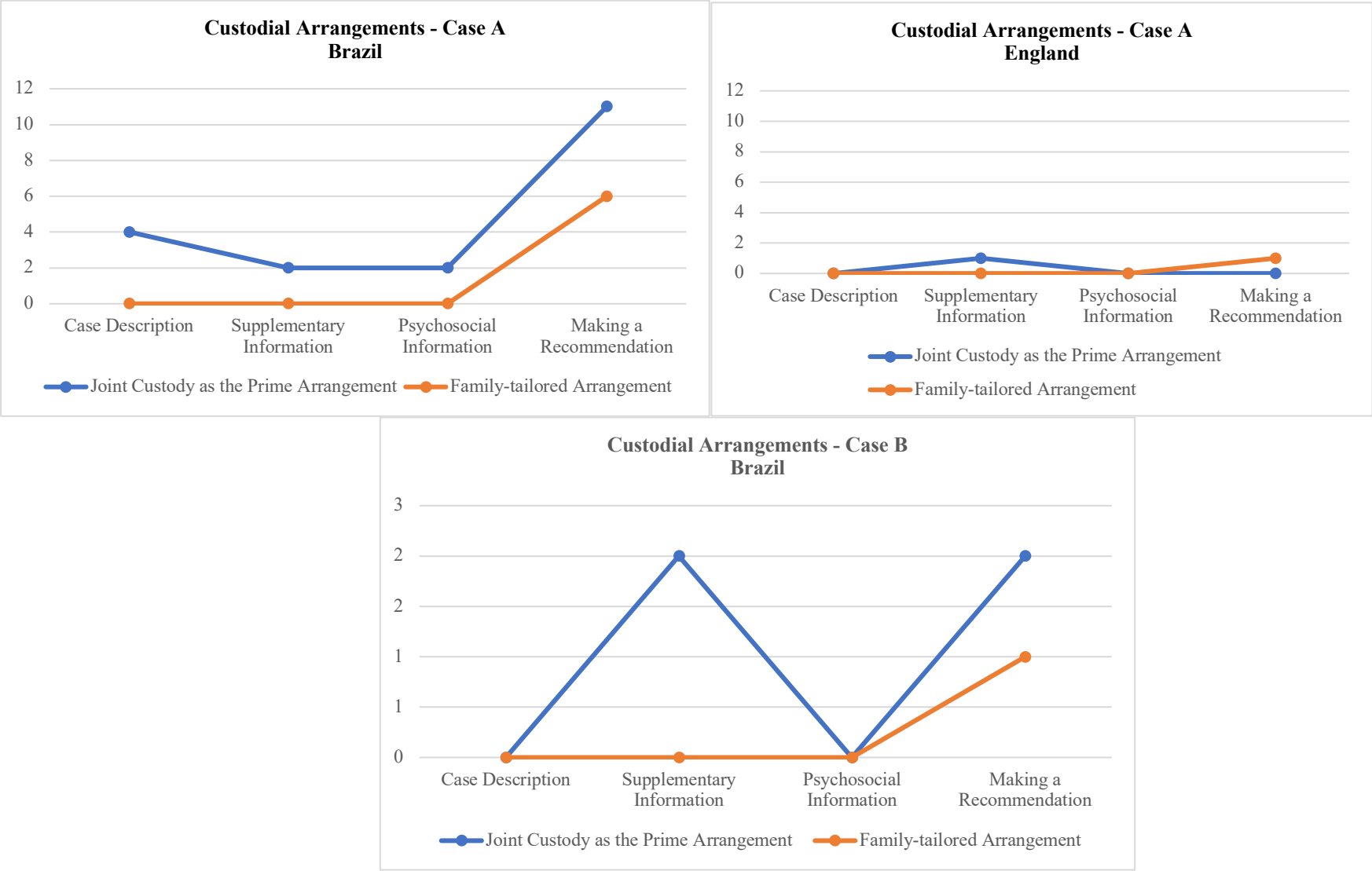


Figure 49
Frequency of ‘Professional Practices’ Metacognitive Elements Throughout the Task by Country – Cases A and B

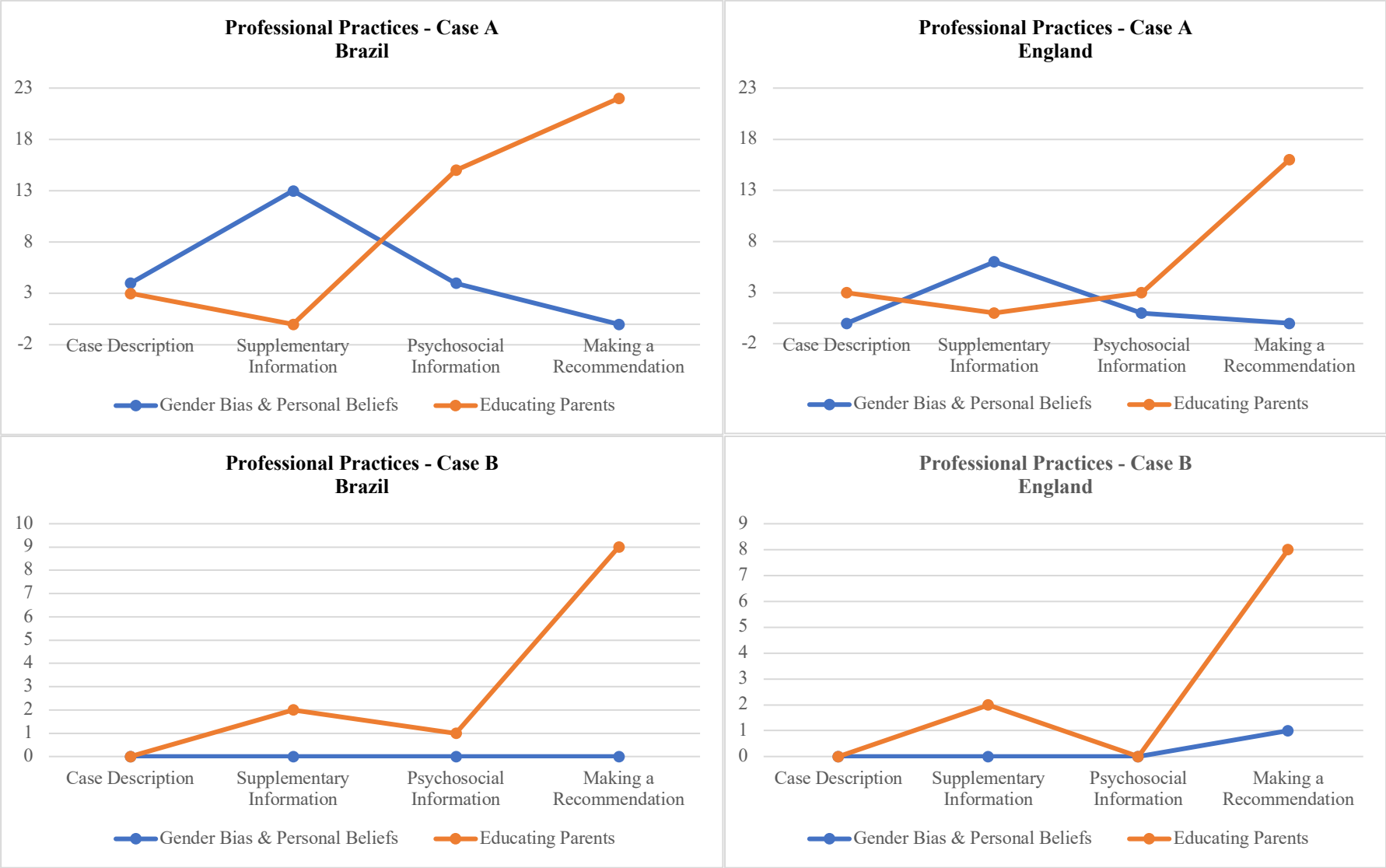


Figure 50
Frequency of ‘BIC Speech’ Metacognitive Elements Throughout the Task by Country – Cases A and B

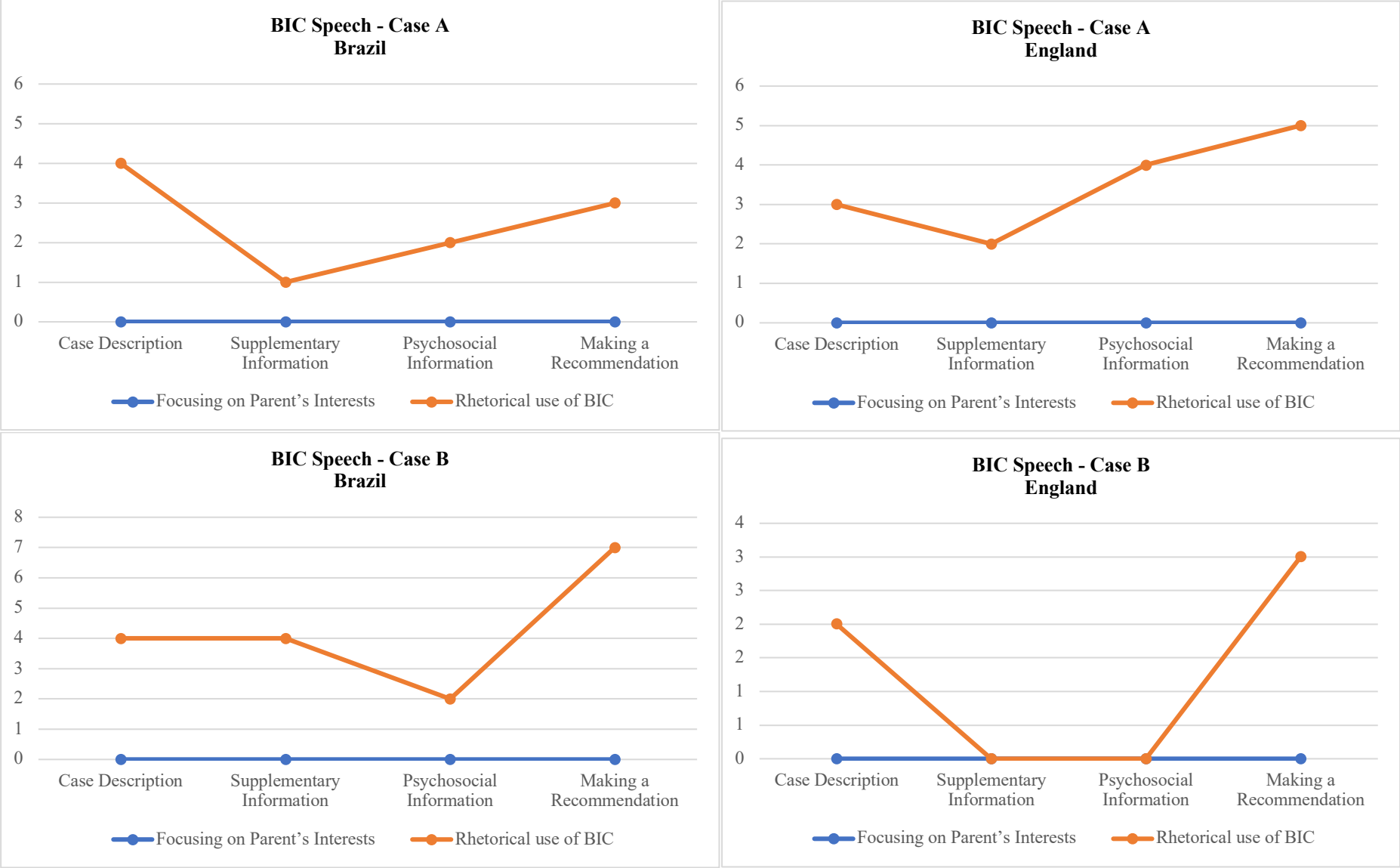


Table 55*Number of Participants per Sources of Supplementary Information Chosen by Category, Country and Case*

Source of Information	Judge				Prosecutor		Lawyer				Psychologist				Social Worker			
	BR		EN		BR		BR		EN		BR		EN		BR		EN	
	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B
Children’s Age	5	5	4	4	6	5	4	5	6	6	5	5	3	4	5	5	3	4
Children’s Gender	0	0	0	0	0	0	1	1	0	0	1	1	0	0	0	0	0	0
Details about coparental communication	2	2	2	3	5	5	3	3	5	4	4	3	3	4	5	4	4	4
Each parent’s gender	2	1	0	1	0	0	1	1	0	0	2	0	0	1	0	0	0	0
Both parents’ financial information	0	2	0	0	0	1	1	2	0	1	0	1	0	0	4	3	0	0
Details about past and current custodial arrangements	6	5	3	3	4	6	2	2	4	5	3	5	3	2	2	3	3	2
Parents’ formal education	0	0	0	0	0	0	1	1	1	0	0	0	0	0	0	0	0	1
Parents’ criminal records	3	3	3	1	3	1	2	0	2	2	0	0	3	1	0	0	2	1

Note: N = 45 in Case A and in Case B.

Table 56*Number of Participants per Intermediary Decision Made and Recommendation by Category, Country and Case*

Intermediary Decision	Judge				Prosecutor		Lawyer				Psychologist				Social Worker			
	BR		EN		BR		BR		EN		BR		EN		BR		EN	
	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B
<i>I would like to assess psychosocial information about the case</i>	5	4	4	4	4	6	3	4	4	6	3	3	4	4	4	5	3	3
<i>I would like to make a recommendation regarding the custodial arrangement</i>	1	2	0	0	2	0	2	1	2	0	2	2	0	0	1	0	1	1
Recommendation																		
<i>Maintain the current custodial arrangement and foster contacts</i>	4	5	4	4	5	5	4	5	5	6	4	3	1	2	4	3	2	4
<i>Maintain the current custodial arrangement until further assessment</i>	1	0	0	0	1	0	0	0	1	0	0	1	3	1	0	0	2	0
<i>Sole physical custody to the parent who lives in the child's 'reference home'</i>	1	1	0	0	0	1	1	0	0	0	0	1	0	1	1	1	0	0
<i>Swap the custody</i>	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	0	0

Table 57*Number of Participants per Set of Psychosocial Information Chosen by Category, Country and Case*

Group of Information	Judge				Prosecutor		Lawyer				Psychologist				Social Worker			
	BR		EN		BR		BR		EN		BR		EN		BR		EN	
	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B
<i>Set 1</i> Health & Physical Integrity	5	2	3	1	1	2	1	0	2	1	0	1	1	1	1	2	1	0
<i>Set 2</i> Bonds & Relationships	3	3	1	4	1	5	2	3	2	4	3	3	1	2	3	3	1	3
<i>Set 3</i> Parental issues	0	1	2	1	4	4	1	4	1	0	0	0	3	3	1	0	0	0
<i>Set 4</i> Child's Development & Emotional well-being	4	2	1	1	1	1	3	1	1	4	3	3	3	3	3	3	3	1
<i>Set 5</i> Extra judicial information	1	0	1	1	1	1	1	0	3	3	1	0	3	2	2	2	1	3
<i>Set 6</i> Child's wishes and feelings	2	4	4	4	4	5	1	4	3	6	2	2	1	1	2	5	3	2

Note: N = 45 in Case A and in Case B