What is kafalah?

**Kafalah** is a child protection measure with unique characteristics, recognised by international law, and practiced in legislations that are based on or influenced by Sharia law. It can take diverse forms (family-based, sponsorship, judicial/administrative, informal, etc.) and may have different legal effects. Despite State-related specificities, it is generally defined as the commitment of a person (*kafil*) who voluntarily takes care of the specific needs of a child deprived of their family (*makfoul*). Furthermore, commonly, this protection measure does not sever the ties with the biological family, does not grant inheritance rights and may be revoked. A kafalah placement may also occur at a cross-border level, mostly when its implementation shall occur in a State different from where the protection measure was granted.

**ISS Publication (2020): Kafalah - Preliminary analysis of national and cross-border practices (available in French and English)**

In its publication (2020), ISS calls for a greater respect of the rights of makfoul children.

Through the analysis of over twenty State contexts, the study aims at providing answers to the following questions:

- Where does kafalah originate from?
- What are its characteristics in different States?
- In case of a cross-border kafalah placement, how is it recognised and/or enforced in another State?

More importantly, the study addresses current challenges such as the limited application of the HCCH 1996 Child Protection Convention and proposes possible avenues to ensure that kafalah is indeed a child protection measure respectful of children’s rights, both domestically and across borders.

**Guiding international standards and ISS documents:**

- *Convention on the Rights of the Child* (CRC)
- *HCCH 1996 Child Protection Convention*
- *UN Guidelines for the Alternative Care of Children*
- ISS (2020) Kafalah – Preliminary analysis of national and cross-border practices (available in [French and English](#))
- ISS/IRC Morocco mission report (upon request)
- ISS thematic factsheets on alternative care/adoption

**ISS in essence:**

- Is a professional and specialised global network founded in 1924 with 132 members in 125 States;
- Has been serving the needs of children and families for 100 years;
- Contributes to law and policy development and advocacy efforts;
- Maintains a long-standing and close cooperation with the Hague Conference on Private International Law (HCCH) and its Central Authorities (CAs);
- Hosts the International Reference Centre for the Rights of Children deprived of their family (ISS/IRC), a program of the ISS General Secretariat based in Geneva, with a mission for more than 30 years to equip child protection, alternative care, and adoption professionals across the world with up-to-date research, publications, training, and technical assistance projects;
- Is always at the forefront of implementing international standards and raising awareness about children’s rights through its direct cross-border case management and advocacy efforts.
How to ensure that *kafalah* is in the child's best interests?

**At the domestic level, *kafalah* should:**

- Be embedded in an integrated and coordinated child protection system, which focuses primarily on support to birth families, and the prevention of unnecessary family separations;
- Include (should separation be unavoidable) an effective gatekeeping mechanism to evaluate best possible solutions for the child, giving priority to family-based care forms, including *kafalah*;
- Benefit from adequate technical and financial resources to be allocated to establish and train key professionals operating in the child protection system;
- Be undertaken in a way that respects the child's rights to be informed and to participate in decision-making processes, as well as their identity rights;
- Involve formal procedures to ensure comprehensive assessments, preparation, matching, supervision, and follow-up of each placement;
- Include effective monitoring as well as fixed and transparent costs and complaint mechanisms, to combat possible illicit practices;
- Be tracked in statistical data collected, analysed, and preserved also to ensure access to origins.

**At the cross-border level, *kafalah* should:**

- Give priority to the extended family before considering a placement outside of the family. If the extended family is not available, prior to considering a cross-border *kafalah* placement, a domestic *kafalah* placement should in principle be considered first (principle of subsidiarity);
- Be contemplated in official positions and standards (laws/policies) consisting of: clarifying, and if necessary, adapting applicable standards related to recognising a national or cross-border *kafalah* placement; monitoring any cross-border placement, including private arrangements; promoting co-operation between HCCH 1996 Child Protection Convention Contracting States; identifying the stakeholders involved and specifying their respective roles and responsibilities;
- Be considered by States of origin and receiving States, which need to be aware and informed of the laws, policies and practices surrounding placement in each respective State and consult each other prior to any placement (Art. 33 of the HCCH 1996 Child Protection Convention);
- Be contemplated in bilateral agreements established by Contracting States to supplement the HCCH 1996 Child Protection Convention. This could provide for additional key safeguards;
- Be analysed, from a child rights perspective, through a joint approach between the principles of public international law and the rules of private international law. The objectives of such an approach should be clear: ensure the continuity of the familial situation (in cases where a decision has already been made), respect the rights conferred by the measure without distorting it, ensure the legal security of the child, and respect the child's fundamental human rights (access to origins, etc.).

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