



INTERNATIONAL SOCIAL SERVICE

KAFALA or analogous institution

Casework, technical assistance and advocacy

What is *kafala*?

Kafala is a child protection measure, prevalent in Islamic legal countries, which can be of a formal (involving a competent body) or informal nature. It occurs when a person (*kafil*) voluntarily cares for the specific needs of a child deprived of his/her family (*makfoul*). Despite country-related specificities, it is commonly characterised by, *inter alia*, its: non-severance of biological filiation ties; non-granting of inheritance rights; and the possibility for revocation. *Kafala* placements may be of an international nature, when implementation occurs in a different country different to where it was decided. These situations raise complex issues, particularly in countries where *kafala* is unknown such as applicable law, jurisdiction, recognition, monitoring, conversion into adoption, etc.

What principles ensure that *kafala* is in the child's best interests?

Domestically:

- *Kafala* should be **embedded in an integrated and coordinated child protection system**, which focuses primarily on support to birth families, and the prevention of family separation
- Should separation be unavoidable, an **effective gatekeeping mechanism** is key in evaluating best possible solutions for the child, giving priority to family-type forms of care, including *kafala* for countries where it is legally recognised.
- Formal procedures should ensure comprehensive *kafil* evaluation, preparation, matching, supervision, and follow-up of each placement.
- Effective monitoring should include **fixed and transparent costs and a complaints mechanism**, to combat illicit practices.
- A *kafala* placement must be undertaken in a way that respects the **child's rights to be informed and to participate**, as well as to **his or her identity** (civil status and knowledge of his or her origins).

Internationally:

- Prior to considering an intercountry *kafala* placement, efforts should be undertaken which give due consideration to domestic solutions (**principle of subsidiarity**).
- All countries need to **adopt official positions** (laws/policies) on how to deal with cross-border *kafala* placements (e.g. acceptance, recognition, requirements concerning pre- and post-placement, monitoring, etc.).
- With regard to the **transposition of legal effects** and the follow-up of a *kafala* placement, the cooperation mechanisms of the 1996 HC should be effectively applied and promoted (art. 33, 23(2)). This includes agreement between authorities prior to any decision being made. Any placement occurring outside agreed procedures should not take place.
- The recognition of an intercountry *kafala* should address the **practical implementation** of the child's rights (e.g. access to territory; residency; basic services, support).
- Practices inconsistent with the country of origin's legislation need to be prohibited (e.g. active promotion of intercountry adoption when adoption is not recognised nationally).
- For any **potential conversion into adoption**, international standards applicable to ICAs need to be guaranteed (e.g. consents of birth parents, lack of improper financial gain, cooperation of authorities, etc.).

Guiding international standards and ISS internal documents:

- [Convention on the Rights of the Child](#)
- [The 1996 Hague Convention](#)
- [UN Guidelines for the Alternative Care of Children](#)
- ISS/IRC comparative study (ongoing)
- ISS/IRC Morocco mission report
- [ISS thematic factsheets on alternative care/adoption](#)

Casework services may include:

- counselling to persons interested in taking a child under *kafala*
- providing necessary referrals to competent authorities
- preparation of background reports for the child, family of origin and prospective *kafil* parents
- post *kafala* tracing and contact services
- mediation

Technical assistance and advocacy may include:

- dissemination of information to professionals
- training of professionals on ethical alternative care and *kafala* administrative and judicial procedures (e.g. Algeria)
- evaluation missions at the request of countries about alternative care and *kafala* (e.g. Morocco)
- support in national law and policy reform
- active participation in expert consultation groups
- work with UN and regional treaty bodies