

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.

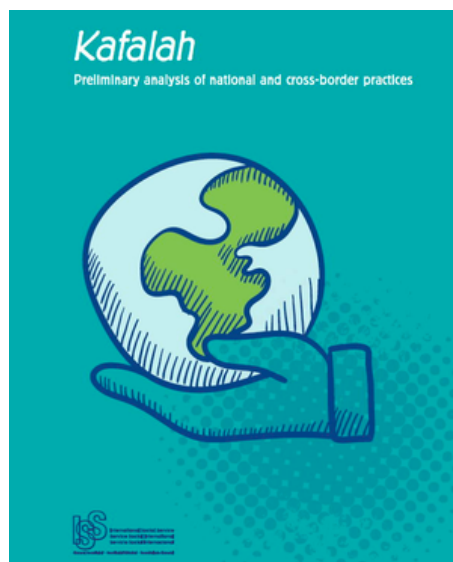
Through the analysis of over twenty State contexts, the study aims at providing answers to the following questions:

- 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.

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 co-operation** 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.



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](#)

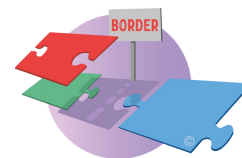
How to ensure that *kafalah* is in the child's best interests?

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.).



ISS Casework services may include:

- Counselling;
- Providing necessary referrals to competent authorities;
- Preparation of background checks for the child, family of origin and prospective *kafil* parents;
- Post *kafalah* tracing and contact services;
- Mediation.



Technical assistance and advocacy efforts may include:

- Dissemination of information to professionals;
- Training of professionals on ethical alternative care and *kafalah* administrative and judicial procedures (e.g. Algeria);
- Evaluation missions at the request of States about alternative care and *kafalah* (e.g. Morocco, Gambia, Senegal);
- Support in national law and policy reform;
- Active participation in expert consultation groups;
- Work with UN and regional treaty bodies.