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An Introduction to Kafalah

Regional learning platform on care reform in Eastern and Southern Africa

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Introduction

Kafalah is an alternative family care option for children outside of parental care practised by Muslims around the world. The Guidelines for the Alternative Care of Children (welcomed by the UN in 2009) recognise Kafalah as an “appropriate and permanent solution’ for children who cannot be kept in, or returned to, their families of origin”.¹ It is also included in Article 20 of the United Nations Convention on the Rights of the Child (UNCRC) as a protection measure for a child temporarily or permanently deprived of his or her family environment, or for whose own best interests cannot be allowed to remain in that environment. Despite

increased interest in Kafalah as an alternative care option for children, there is scant information and guidance for governments or practitioners on this form of care.

This paper aims to contribute to a better understanding of the nature and characteristics of Kafalah and identify effective strategies to support Kafalah. It covers the characteristics of Kafalah, its legal implications, what distinguishes Kafalah from other forms of family-based alternative care, and ongoing efforts to promote Kafalah in Eastern and Southern Africa. It concludes with implications for policy and practice.

What is Kafalah?

In the context of children’s care, Kafalah is defined as the commitment by an individual or family (*kafil*) to voluntarily take responsibility for the daily care, education, safety, and protection of a child (*makful*) deprived of family care, in the same way a parent would do for their biological child.

Kafalah has origins in Islamic law (sharia, hereafter), as an alternative care option for orphans and abandoned children.² The term sharia³ refers to a set of rules which governs the life of a Muslim.⁴ Kafalah *etymologically* means, “taking care”, “sponsoring someone”, and “responding on behalf of someone”.⁵ The practice developed out of particular concern for the upbringing of “orphans and foundlings” in Islamic teachings.⁶ Through Kafalah, a family takes in an orphaned or abandoned child or a child who cannot remain with their birth parents or who is otherwise deprived of a family environment.⁷ Usually, a child is placed in a family that is as closely related to their parents as possible. The *kafil* cares for the child as an act of personal charity grounded in their Muslim faith, or sometimes for compensation, depending on the circumstances of the case.⁸

How Kafalah is conceived in practice varies greatly from one country to another – ranging from anonymous financial support for a child in a residential care facility to a quasi-adoptive relationship.⁹ For example, Muslim communities in Kenya use the term ‘Kafalah’ to refer to support to any form of non-parental care, including providing financial support to residential care facilities or temporary kinship care in the child’s extended family.¹⁰ Kafalah may also involve supporting the child whilst they live with their parents to enable them to remain in parental care, or a child being sent to live with a *kafil*. In this document, we focus on Kafalah arrangements whereby the child is separated from their parents and cared for by another family.

Despite country- or context-related specificities, Kafalah is commonly characterised by: non-severance of biological ties; non-granting of inheritance rights; and the possibility for revocation.¹¹ Unlike adoption, which is prohibited under sharia,¹² a child taken into a family under Kafalah continues to keep the birth parent’s name and ties, and their right to inheritance from the birth parents.¹³ A child in a Kafalah arrangement has no automatic right to inherit¹⁴

from the *kafil* unless it is granted through a *wasiya* (will) or *Hiba* (gift). Therefore, Kafala does not create a legal parent-child relationship between the *kafil* and the *makful*.

Adoption scholar Jamila Bargach describes Kafalah as “primarily a gift of care and not a substitute for lineal descent”.¹⁵ In other words, Kafalah involves the obligations of guardianship and rearing without the

creation of legal ties which would produce specific legal entitlements under the laws of the country. The practice tries to achieve a balance between raising the child as the biological parents might do and preserving the child’s biological family name and family ties. This ensures that the child’s identity is not absorbed into the identity of the *kafil* family.¹⁶ Kafalah placements can be short-term or long-term.¹⁷

Care and protection of children in need as a moral duty of Muslims

Kafalah is encouraged among Muslims not only as an act of merit but as a religious and moral duty.¹⁸ Various verses in the Quran address the issue of “orphans” (generally covering all children deprived of parental care) and the duties and proper conduct of the believer towards those children.¹⁹ In particular, the holy book of Islam encourages the charitable upbringing of “orphans” and describes God as their ultimate caregiver.²⁰ According to Islamic tradition, the Prophet Muhammad, who had lost his father, asked believers to provide for “orphans”, irrespective of whether the child is related to them.²¹ Therefore, being a guardian of a child or children, including fostering a child, is considered a virtuous act in Islam, as the Prophet himself was cared for in this manner.²²

The Quran is also very succinct on how orphans should be treated: “And they ask you about orphans.

Say: Making things right for them (*islah*) is better” (Quran 2:220). The word “*islah*” means to repair, heal, and make good. Although many classical scholars have interpreted this term in a financial sense, the word is semantically broad enough to encompass all aspects of a child’s life.

Further, in Islamic jurisprudence, an abandoned child is considered a fellow Muslim and as such a holder of the same rights and a bearer of the same duties as other children.²³ The classical fiqh books²⁴ discuss extensively the rights, duties and proper conduct of the finder of such a child.²⁵ In these texts, the finder of an abandoned child has the duty to care for a child who is at risk. Otherwise, taking care of an abandoned child is a communal responsibility and the non-fulfilment of this religious duty is a communal sin.²⁶

Kafalah in international law

Kafalah is recognised and enshrined in various international legal instruments on the rights of the child including the UNCRC, the Guidelines for the Alternative Care of Children and the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (hereafter the 1996 Hague Convention).

Specifically, Article 20 of the UNCRC stipulates that:

A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. States Parties shall in accordance with their national laws ensure

alternative care for such a child. Such care could include, inter alia, foster placement, *Kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children.

In the 2009 Guidelines on the Alternative Care of Children,²⁷ *Kafalah* is mentioned several times alongside adoption as a “stable” and “definitive” protection measure in cases where the child cannot be cared for by their family of origin (see paragraphs 2(a), 123, 152 and 161). *Kafalah* is recognised as a measure that leads to the protection of the child, including his or her estate, in the 1996 Hague Convention (see Article 3e).

Finally, *Kafalah* is included in principle 6 of the Declaration on the Rights and Care of the Child in Islam, which states that:

Islam views the family, based on legal wedlock, as the natural environment for the upbringing of the child, and stipulates that every child has the right to live in a family built on mutual amity and compassion, whether or not it is his or her own natural family or a foster family that provides him or her with *kafalah* in cases where his or her natural family is lost, or in cases of abandonment by his or her natural family.²⁸

Forms of Kafalah

There are several different forms of *Kafalah*.

- 1 **Formal versus informal Kafalah.** *Kafalah* can be formal, involving social workers or the courts, or informal, by non-legal decision. According to the 2009 Guidelines for the Alternative Care of Children (paragraph 29.b.1), an informal care placement is: “any private arrangement provided in a family environment, whereby the child is looked after on an ongoing or indefinite basis by relatives or friends (informal kinship care) or by others in their individual capacity, at the initiative of the child, his or her parents or other person without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body”. Whereas in the case of *Kafalah*, formal has two possibilities: judicial or notarial.
- 2 **Judicial versus notarial Kafalah** (sometimes known as “*kafalah adoulaire*”). Another distinction can be made between the process leading to the placement decision, and its status. A **notarial Kafalah** takes place when a private contract or

arrangement is established between the biological parent(s) and the *kafil* parent(s), and then validated through a notarial deed drawn up by a notary.²⁹ A **judicial Kafalah** is granted following a legal procedure, through a regular or Kadhi’s Court,³⁰ that establishes the relationship between the *kafil* and *makful*.³¹ This type of *Kafalah* is generally viewed as providing more safeguards in overseeing the placement and ensuring that it meets the child’s best interests.³²

- 3 **Intra-family versus extra-family Kafalah.** In situations involving intra-familial *Kafalah*, a child is cared for by a member of their nuclear or extended family, a member who is biologically related, whereas in extra-familial *Kafalah*, a child is placed with a person or people who are not biologically related.

In several Islamic communities in Eastern and Southern Africa, *Kafalah* is largely informal, and therefore not supported or monitored by the formal social service workforce.³³

Kafalah compared to other family-based care options

In practice, Kafalah combines features of foster care, guardianship, kinship care, and adoption. According to Ahmad (1999), Kafalah is most accurately translated to mean “legal fostering” or “foster parenting”.³⁴ Kafalah has both similarities and differences to foster care. Kafalah is similar to long-term foster care in the conferment of some, but not full, parental rights and responsibilities for a child’s upbringing.³⁵ Fostering is recognised and permitted under Islam (unlike adoption) as a family-based alternative care form which is distinct from Kafalah. Foster children are not permitted to marry anyone with whom they were fostered, but ‘*makfuls*’ may marry anyone from that family. Children raised in foster care and those raised in Kafalah have no inheritance rights except as *sadaqa* (charity) or *hiba* (gift).³⁶

Kinship care involves children being cared for by their extended family or close friends of the family who are already known to the child. Kafalah is often a form of kinship care as it commonly involves close relatives absorbing the child on an informal, largely spontaneous, and unregulated basis. Like other forms of kinship care, Kafalah promotes continuity in upbringing in relation to children’s kin connections and cultural and religious backgrounds.³⁷ Not all Kafalah involves care by a family member or friends of the family; children may be supported whilst in residential care or placed with a *kafil* who is unknown to the child. Kafalah is also different from other forms of kinship care in that it is endorsed and regulated by Islamic sharia law and not necessarily national law.

Finally, Kafalah is similar, but not equivalent, to adoption.³⁸ Many of the stipulations regarding family care of an orphan in traditional Islamic family law are very similar to what is known in the West as “open” adoption; that is, an arrangement in which full disclosure about identity is required and, in some cases, even allows for ongoing interaction between the adopted child and their family of origin. The Guidelines for the Alternative Care of Children (e.g.,

sections 2a, 123, 161) and the UNCRC follow this alignment of adoption with Kafalah. Unlike adoption, there is no severing of the ties between the biological parents and the child in a Kafalah arrangement, due to strong beliefs about maintaining filial relations.³⁹ Negation of biological identity is considered forbidden (*haram*).⁴⁰ Specifically, the following verse from the Quran forbids the pre-Islamic practice of claiming adopted children as biological children:

Nor has [God] made your adopted sons, your sons. That is but a saying of your mouths. And God says The Truth and He guides to the way. Call to them by the names of their fathers. That is more equitable to God. But if you know not their fathers, they are your brothers in the way of life and your defenders. And there is no blame on you in what mistake you make in it but what your hearts premeditate. And God has been Forgiving, Compassionate. (Quran 33:4–5).

In contrast, adoption is the formal, permanent transfer of parental rights to a family other than a child’s own and the formal assumption by that family of all parenting duties for the child.⁴¹ In other words, adoption involves the creation of a stable legal and social filiation bond between the adoptee and his or her adoptive parent(s) and (in full adoption) the cessation of the biological bond with the family of origin. It is therefore forbidden by the Quran.⁴² Because of the prohibition by sharia, the laws of most Muslim-majority states do not currently permit legal adoption. There are some exceptions, for example, in Tunisia, Indonesia, Malaysia and Turkey.

As with foster care, any romantic or marital relationship between adopted children and members of the adopting family would be considered incest. This is not technically so under the Kafalah system. Non-related children raised in one’s home are technically considered “marriageable” (non-*mahram*), though it is important to realise that this does not mean such a marriage should or will take place.

Benefits and challenges of Kafalah

Kafalah is considered beneficial for the following reasons.

- Under Kafalah, caregivers are expected to provide education, health, shelter, parental care and guidance within a family and community setting,⁴³ meaning that children in Kafalah should have access to these services (rights).
- Kafalah enables children to receive care and protection within a family or community setting without depriving them of connection with their parents or wider biological family as those ties are not permanently or irrevocably ceased.⁴⁴
- Kafalah means a child can grow up in an environment that supports continuity of upbringing, an environment that takes into consideration their ethnicity, religion, culture, and language to ensure their harmonious growth and development.⁴⁵
- Kafalah is a flexible measure, allowing for adjustment according to evolution in the child's individual situation. For example, it is possible for a child in a Kafalah arrangement to be reintegrated with their family and maintain ties with the *kafil's* family.⁴⁶
- The possibility remains for a *makful* to be assigned inheritance through testamentary succession.
- Unlike adoption, Kafalah is sanctioned by Islamic law. In some contexts, it will be more culturally acceptable than foster care.
- Unlike residential care, Kafalah allows children to grow up in a family environment, and to form a bond or attachment with their caregivers. This is important for the child's well-being and development.⁴⁷

However, evidence suggests that Kafalah can also pose specific risks for children. Evidence on kinship care suggests that children in Kafalah arrangements could be discriminated against in comparison to other children in the household, or abused and exploited by caregivers, especially, if they are living with a more distant relative or someone unknown to them.⁴⁸ The often-informal nature of Kafalah can mean that it is not monitored by social workers or other social service workforce, and there is an absence of adequate preparation ahead of placement, and regular follow-up

once children are in the care arrangement.⁴⁹ In addition to leaving abuse and exploitation unchecked, such a gap may lead to placements based primarily on the wishes of *kafil* candidates rather than the child's best interest.⁵⁰ Nonetheless, the formalisation of Kafalah also carries its own risks. Evidence on kinship care shows that the engagement of social workers can prevent family caregivers from taking children in, as they resent or fear the involvement of the state in a private family matter.⁵¹ If Kafalah were to be widely practised, social service engagement in all cases could also overwhelm the care and protection system.⁵² In some circumstances, it is appropriate for Kafalah cases to be registered, but only those deemed to be high-risk need to be regularly monitored and supported by the social service workforce. Registration is important as it clarifies who has legal responsibility for the child under the laws of the country and can be vital in ensuring access to services and making decisions about the child's life, such as in medical emergencies or around schooling.⁵³

Evidence on kinship care also highlights the importance of supporting the *kafil* based on their needs and regardless of the formality of care arrangements. Caregivers may be elderly and vulnerable and find it difficult to provide support for an extra child in the household. They may also struggle with parenting dilemmas specific to Kafalah arrangements. For example, managing any ongoing relationships with birth parents, or, for elderly caregivers, dealing with the inter-generational divide. If Kafalah is the result of the death of a parent, or violence and abuse in the home of origin, both children and caregivers may be traumatised and require mental health services. The *kafil* may not know about accessing services for children such as school or health care and need extra support here.⁵⁴ Discussions with stakeholders across the region suggest that Kafalah is not uniformly recognised or included in the social services systems. As a starting point, it is important to engage with Islamic religious leaders to better understand each country's context and how best to support the best interests of children in Kafalah settings.

How widely is Kafalah used in the region?

Kafalah is a prevalent practice in Muslim communities across Eastern and Southern Africa in, for example, Kenya, Somalia, and Tanzania/Zanzibar. However, there is still a dearth of information on the nature and extent of the practice even in countries with considerably large Muslim populations and it is not clear how widespread Kafalah is in the region. There are several

challenges associated with accurately measuring Kafalah. As noted above, Kafalah is largely informal and not always registered with social workers or the state. Counting the number of children in Kafalah is also complicated by the multiple forms of Kafalah, which may mean a child in Kafalah is in parental care, living with extended family, or in residential care.

Embedding Kafalah in the care system and care reform

Although Kafalah is widely used in Muslim contexts in the region, it is not widely understood or has been misunderstood. There is therefore a need for further research, awareness raising and sensitisation on Kafalah as an alternative care option. Kafalah should be embedded in the child care and protection system as a child protection measure in the continuum of alternative family-based care options. Embedding Kafalah in the care and protection system means, for example:

- Referencing Kafalah in the legal and policy frameworks on children's alternative care.
- Developing case management guidance on Kafalah and considering how to identify when social services and case management are needed. Where this support is required, procedures should ensure comprehensive *kafil* evaluation, preparation, matching, supervision, and follow-up of each placement. Box 1 below illustrates case management guidance in relation to Kafalah.
- Developing procedures for determining the suitability and necessity of a Kafalah placement. Ensuring decision-making is focused on children's best interests is particularly important. As noted above, Kafalah arrangements are often discussed and agreed upon by family or community members, and in some instances, there is the involvement of mosque leadership, such as in Kenya. Procedurally, it is necessary at first to make sure of the *makful's* condition and the *kafil's* suitability. Islamic law also requires some conditions to be satisfied to take care of a child. The *kafil* must: be of legal adult age, be Muslim, be able to guarantee the child's adequate care and development, and finally fulfil with dignity the parental role⁵⁵ and responsibilities deriving from Kafalah.
- Ensuring that Kafalah placements are undertaken in a way that respects the child's rights to be informed and to participate, as well as their rights to an identity (civil status and knowledge of their origins). It is necessary to listen to the *makful's* opinion and obtain his or her approval for Kafalah.
- Involving religious leaders in ongoing efforts to promote Kafalah, as part of the larger promotion of the country's child care and protection system.
- Offering appropriate services and support to build on the strengths and reduce the risks associated with Kafalah. Specific provisions on follow-up and support for the children and families in Kafalah should be included in the country's standards of practice. These services may include ongoing counselling, parenting skills training, household economic strengthening, and linking families to social protection programmes and other services.

BOX 1**Case management considerations for Kafalah placement**

As noted above, it is neither necessary or possible for all Kafalah arrangements to be formalised or monitored and supported by social workers, and in many cases placements are and will continue to be made without the engagement of the social service workforce. Where cases do require social worker involvement, it is important to use standardised procedures for case management. Evidence from other regions provides some considerations for case management that need to be adapted to each context based on local evidence.

1. **Determining the suitability and necessity of a Kafalah placement for the child, taking an individualised approach.** Decisions on placement into Kafalah determine that separation from parents and placement are necessary for the child. Decisions should involve a consideration of the viable alternatives open to the child and family to ensure that Kafalah is the most suitable form of care for the child. Determining the suitability of Kafalah for any individual child should include an assessment of the child's social, health, education, and development status and capacities. Where social workers and the courts are involved in placing children into Kafalah, placements should be made through thorough systematic judicial and administrative procedures, with assessments of the child and family undertaken by qualified professionals.
2. **Planning for permanency and parental contact.** Case management guidance should outline clear goals related to the stability of placements, with the goal of finding a permanent home for the child. Guidance should also highlight the importance of maintaining a connection with the child's parents, where it is in the child's best interests.
3. **Consent and involvement of all parties.** Consent must be freely provided and be the result of a genuine and conscious choice by the child (considering the child's age and capacities), the child's parents or legal guardian, and the *kafil*.
4. **Evaluation of *kafil* candidates' suitability to care for the child.** The evaluation of the candidates' suitability must be guided by the best interests of the child. It should use well-defined criteria covering multiple factors, including willingness and capacity to care for the child, economic situation, and mental and physical health.
5. **Final placement decision and continuous preparation of the placement.** The finalisation of a formal placement can take several forms and can be decided by different religious, administrative or judicial entities.
6. **Preparing and supporting the child and *kafil*.** The preparation of the child and the *kafil* before the placement is an essential step in a successful placement that is beneficial to the child's harmonious development. Such preparation should be undertaken by trained and specialised professionals. In some cases, the *kafil* may need to be trained for their new caregiver role to ensure that the child's integration into the placement is as smooth as possible.
7. **Supervision/follow-up and post-Kafalah support.** The supervision or monitoring of the placement, as well as support and follow-up, must be ensured for formal Kafalah placements involving social services or the courts. Monitoring or supervision can be done by professional social workers, community protection workers, trained members of the religious community or other social service workforce and includes offering specialised services. In addition, regular follow-up must be ensured, and there must also be interventions aimed at complex situations such as Kafalah breakdowns, or during reunification with the child's family of origin.

Adapted from: Dambach and Wöllenstein-Tripathi 2020 (see endnote 5).

Efforts to promote Kafalah in Eastern and Southern Africa

Kafalah is recognised in policies in several countries in the region:

- In the semi-autonomous region of Zanzibar in Tanzania, [the Children’s Act, 2011](#) makes provisions for Kafalah as an alternative care option.⁵⁶
- The draft [Somaliland Policy on Alternative Care](#) includes Kafalah as a care option. It is deemed suitable for children who are not able, likely or for who it is not in their best interests to return to the care of their parents. This includes children who are abandoned and where tracing has been unsuccessful in locating parents and relatives. Kafalah placements are approved based on home studies verifying that the family can meet the needs of the child and that the parents fully understand their responsibility and the child’s rights. Kafalah placements are restricted to Somalis who are of the Islamic faith.
- In Kenya, Kafalah is recognised and outlined as one of the care options in the Guidelines for the Alternative Family Care of Children (2014), and the National Care Reform Strategy for Children in Kenya 2022–2032. The Children Act of 2022 includes provisions on Kafalah. In addition, a national Kafalah implementation framework and Kafalah regulations are currently under development to support the implementation of the Children Act of 2022. Collectively, this is aimed at:
 - Ensuring there is adequate legal, regulatory and policy provision to allow for the formalisation and appropriate use of Kafalah as a form of alternative family-based care.
 - Ensuring state monitoring and support to Kafalah carers, where appropriate.
 - Ensuring that the proposed recommendations for roll out of Kafalah are in line with the Islamic teachings.
 - Promoting greater oversight by the social service workforce, including gatekeeping and monitoring of the Kafalah placement.
 - Ensuring that the Muslim religious leaders or Kafalah committees in some countries are recognised structures that will oversee the implementation of Kafalah.

Further, Kafalah is being strengthened through new national guidance in Kenya. With support from Changing the Way We Care (CTWWC),⁵⁷ the process of developing guidance on Kafalah in Kenya has involved a high degree of engagement of religious leaders and the *Kadhi* Court. Muslim leaders and *Kadhi* Court were involved in the development of validation of standard operating procedures (SOPs) on Kafalah and were trained and oriented on how to apply them in practice. In collaboration with the Department of Children Services (DCS), CTWWC held community-based visual engagement sessions with Muslim leaders, Kafalah steering committee members, and the non-governmental organisation, Muslim Care, to understand the social behaviour changes that would enhance the uptake of Kafalah in the community. The sessions helped craft messages and a slogan that will be used to promote Kafalah for different audiences identified by the participants. Finally, indicators on Kafalah have been developed and included in the national administrative data system to monitor progress in the implementation of the practice.

In both Kenya and Somalia, some efforts are underway to document practice, including relevant case studies on a community-level initiative to promote Kafalah as an alternative to institutional care (see Box 2).

BOX 2**Muslim communities caring for orphans in Malindi, Kenya**

In the towns of Malindi and Watamu in south-eastern Kenya, the Muslim community founded the Malindi Islamic Centre for Orphans (MICO), which currently cares for 200 orphans who have lost at least one parent. The children live with extended family members under a Kafalah arrangement, but each day go to the MICO facility to receive their schooling, as well as tea, lunch and bread to take home to the family.

Twenty mosques in Malindi and Watamu are members of MICO and contribute financially to keep its work going. During Ramadan, each mosque conducts a fundraising campaign with its members. The mosque which contributes the most funds to MICO receives an award. Some individual members of the mosques who have enough means occasionally donate houses for MICO to rent out and the money generated helps with expenses.

“These children belong to Allah,” says MICO Chairman Imam Abdulrahman, “and we must find a way to help them.”

Children who have lost a parent are reported to the local mosque, and then formally registered through the mosque committee. This involves reviewing the child’s birth certificate, as well as the parents’ death, marriage, and/or divorce

certificates, and then filling out forms which officially establish the child as an orphan under the Kafalah system. If the death, marriage or divorce certificates are not available, the Kadhi, or the judge who presides over an Islamic court, must substantiate the marriage or death. Chairman Abdulrahman, says: “At that point, the mosque committee members become parents to the child and must continue watching out for the child through his or her life.”

MICO funds the children’s education until they finish primary school, or Standard 8, and then seeks individual Muslim sponsors to continue funding the children’s secondary and even tertiary education. Imam Abdulrahman says: “We have managed to produce even doctors from among the orphans that we support.”

MICO is in the process of trying to set up an endowment to support more orphans, as the funds it can raise locally are not enough to support the number of children in need. The CTWWC initiative has provided trainings on safeguarding to MICO staff and has conducted a SWOT analysis of MICO’s strengths, weaknesses, opportunities and threats, to determine how best to help the organisation to remain strong and to grow.

Gaps in understanding of Kafalah

There is very limited information available on Kafalah in countries around the Eastern and Southern Africa region, and several key questions around the use of Kafalah require further investigation. For example:

- What are the factors that lead to placements?
- How widely is Kafalah being used formally and informally? What are the barriers to the wider use of Kafalah?
- How can Kafalah placement be better accounted for in alternative care data?
- Is Kafalah practised similarly across all the majority Muslim countries in the region; if not, what are the nuances? What do these mean for children’s care systems?
- What are the priority support needs of children and *kafil* in Kafalah arrangements? How can we

more effectively build on existing supports to Kafalah offered by religious leaders, groups and organisations?

- Which Kafalah placements need to be registered and/or monitored by the state? What are the benefits and risks associated with such formalisation?
- Which Kafalah placements need to be case managed? How does case management need to be the same as or different from other types of case management for alternative care?
- Does including Kafalah as an option in the continuum of care outlined in legislation improve its practice?
- How are the needs of children in Kafalah arrangements different to or the same as the needs of those in kinship care? How do wider family support programmes need to be adjusted to meet the needs of those involved in Kafalah arrangements?
- What does the social service workforce need to know? What training and tools will help their work with Kafalah placements?

Conclusion

This paper provides an overview of Kafalah within Islamic law and as a family-based care option for children outlined in international frameworks. Kafalah is derived from the Arabic word *kafi*, which means to “take care of”, and presupposes an “unlimited entrustment” of a child to a protective and nurturing *kafil*. It is the highest form of protection and alternative care for orphans and abandoned children in Muslim communities. Kafalah is seen not only as a meritorious deed but also as a religious duty.

The practice takes on many different forms. For example, Kafalah can be formal, involving social workers or the courts, or informal, involving a simple agreement between two families. In addition, a child may be cared for by a member of their extended family or placed with an unrelated person or people. Kafalah can be temporary or longer-term. It can involve ongoing contact and relationship with the child’s parents, or no contact. Kafalah has similarities to and differences from other forms of family-based alternative care. This means it requires a unique response and cannot simply be subsumed in programmes addressing other forms of care.

The use of Kafalah carries many benefits. It can enable a child deprived of parental care to receive care and protection within a family or community setting without depriving him/her of their rights

towards their biological family, as natural family ties are not permanently or irrevocably ceased. However, Kafalah also comes with some risks. The informal nature of Kafalah in most countries means that it is not usually monitored by the social service workforce, and there can be an absence of adequate preparation ahead of placements, and regular follow-up once children are placed. As well as leaving abuse and exploitation unchecked, such a gap may lead to placements not being based on the child’s best interests.

More needs to be done to maximise the potential for Kafalah as a care option and diminish these risks. To do this, Kafalah must be embedded in care systems in the countries in the region where it is practised, for example through including Kafalah in policies, legislation and guidance, improving decision-making around Kafalah, and developing services and support for the practice. In all of these efforts, it is vital to consult children and families and engage the community and religious leaders. There are some examples of promising practice in the region that can be built on, particularly in relation to the inclusion of Kafalah in policies, legislation and guidance, but also huge gaps in understanding, suggesting further investment in research is required.

Endnotes

- 1 UN General Assembly (2010) *Guidelines for the Alternative Care of Children*: resolution/adopted by the General Assembly, 24 February 2010, A/RES/64/142. See Section 2(a).
- 2 Assim, U.M. and Sloth-Nielsen, J.L. (2014) Islamic kafalah as an alternative care option for children deprived of a family environment. *African Human Rights Law Journal* 14 (2), 322–345.
- 3 Sharia is based on different sources, including the Koran, the Sunna (teachings from the Prophet’s life), the Ijma and the Qiyas (collection of case law), as well as other sources such as customary law, the opinion of savants, the Old Testament, etc.
- 4 International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC) (2007) Specific case: Kafalah, Fact sheet No. 51. Geneva: ISS.
- 5 Dambach, M. and Wöllenstein-Tripathi, J. (2020) Kafalah: Preliminary analysis of national and cross-border practices. Geneva: International Social Service, International Centre of Reference for the Rights of Children Deprived of their Family, p.14.
- 6 Ahmad, I. (1999) ‘The Islamic view of adoption and caring for homeless children’ in *Adoption Fact Book III*. Washington: National Council for Adoption.
- 7 Assim and Sloth-Nielsen 2014.
- 8 Olowu, D. (2008) Children’s rights, international human rights, and the promise of Islamic legal theory. *Law, Democracy & Development* 12.2, pp.62–85.
- 9 Cantwell, N., Davidson, J., Elsley, S., Milligan, I. and Quinn, N. (2012) *Moving forward: Implementing the ‘Guidelines for the Alternative Care of Children’*. UK: Centre for Excellence for Looked After Children in Scotland.
- 10 UNICEF (2021) *Caring systems: Maximising synergies between care reform and child protection system strengthening in Eastern and Southern Africa*. UNICEF ESARO, p.18.
- 11 Dambach and Wöllenstein-Tripathi 2020.
- 12 Islam views adoption, in its legal form, as a falsification of the natural order of society and reality. There is a strong belief in the importance of blood bonds in Islam, and a belief that the child’s tie to their parents cannot be recreated by a new legal arrangement. Legal or conventional adoption involves claiming a child as your own, changing their lineage (and thus their right to inherit).
- 13 Assim and Sloth-Nielsen 2014; Winter, T.J. and Williams, J.A. (2002) *Understanding Islam and the Muslims: The Muslim family, Islam and world peace*. Louisville: Fons Vitae, p.59.
- 14 The Quran is very specific on the matter of property and wealth distribution through inheritance and states that this can only be done based on blood relationship. There are specific allotments for each member of the family and an individual can only control the inheritance of about one-third of his or her property or estate by allocating it to others outside of these allotments (Assim and Sloth-Nielsen 2014). Nonetheless, children taken into families under Kafalah are not left out of the property distribution process as the Quran enjoins Muslims to assign portions of their wealth to others who, though unrelated to them by blood, are equally dependent on them. Consequently, such persons are provided for from the required one-third portion of an individual’s personal estate, which is subject to the owner’s prerogative, and which can be exercised through a will or given as a gift (sadaqa) (Assim and Sloth-Nielsen 2014).
- 15 Bargach, J. (2002) *Orphans of Islam: Family, abandonment, and secret adoption in Morocco*. Lanham, MD: Rowman & Littlefield.
- 16 Muslim Women’s Shura Council (2011) *Adoption and the care of orphan children: Islam and the best interests of the child*. American Society for Muslim Advancement.
- 17 Kafalah may vary in terms of timeframe. It may constitute a “permanent” placement, but it may also sometimes constitute a temporary or emergency solution for any child in need of short-term care, including migrant or refugee children.
- 18 Assim and Sloth-Nielsen 2014; Winter and Williams 2002; Kutty, F. (2015) Islamic law, adoptions and kafalah. *OpEd News.com*.
- 19 Sayed, M. (2014) ‘The Kafalah of Islamic law – How to approach it in the West’ in Maunsbach, U., Lindskoug, P., Samuelsson, P., Vogel, H-H. and Millqvist, G. (eds.) *Essays in Honour of Michael Bogdan*. Juristförlaget i Lund, pp.507– 520, at 512.
- 20 See Quran (93:6).
- 21 Sayed 2014.
- 22 Winter and Williams 2002; Kutty 2015.
- 23 This position is based on the notion that it is piety that characterises a Muslim and not her or his lineage (*nasab*) or wealth (*hasab*). See Bargach 2002.
- 24 Jurisprudential interpretations.
- 25 Bargach 2002.
- 26 Pollack, D. Bleich, M., Reid, C.J. and Fadel, M.H. (2004) Classical religious perspectives of adoption law. *Notre Dame Law Review* 79.2, pp.101–158.
- 27 While non-binding, this instrument gives guidance to policymakers and professionals in the areas of prevention of family separation, and the provision of alternative care adapted to the needs of children.

28 The Declaration on the Rights and Care of the Child in Islam, adopted by the Seventh Islamic Summit Conference under resolution No. 16/7-C (1994). Cited in Flagothier, C. (2016) *Alternative child care and deinstitutionalisation in Asia. Findings of a desk review*. SOS Children's Villages and European Commission.

29 A notary is a publicly commissioned official who serves as an impartial witness to the signing of a legal document.

30 Kadhi courts or Kadhi's courts are a court system in some countries in Eastern and Southern Africa (such as Uganda, Kenya and Tanzania/Zanzibar), in which Islamic law or sharia is applied for the determination of questions or in the adjudication process on matters such as marriage, divorce, inheritance, and other related matters. For example, the Constitution of Kenya, approved by referendum on 4 August 2010, establishes the Kadhi court system as a subordinate court under the superior courts of Kenya (Supreme Court, Court of Appeal, and High Court). Similarly, the Constitution of Uganda 1995 (as amended in 2018) provides for the establishment of Kadhi courts, for the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the said courts.

31 For example, in Kenya, regular courts handle matters pertaining to children. However, recommendations have been made so that the Kadhi court takes up the responsibility. There is hope that the current regulations being prepared will pave way for the Kadhi to handle children's matters. In Zanzibar, sec. 75 of the Children's Act provides for Kafalah as one of the alternative care options for children and families professing the Islamic faith, and applications for Kafalah are made to the Kadhi's Court.

32 Dambach and Wöllenstein-Tripathi 2020, p.17.

33 Based on discussions during the 'Group learning exchanges on Kafalah' organised as part of the regional learning platform on care reform, established by UNICEF ESARO and Changing the Way We Care (CTWWC). Participants include practitioners in government, UNICEF country offices and NGOs, exchanging learning on care reform across the Eastern and Southern Africa region.

34 Ahmad 1999.

35 O'Halloran, K. (2009) *The politics of adoption: International perspectives on law, policy, and practice*. Springer.

36 Sonbol, A.A. (1995) 'Adoption in Islamic society: A historical survey' in Fernea, E.W. (ed.) *Childhood in the Muslim Middle East*. Austin: University of Texas Press, p.52.

37 UNCRC Article 20.3; African Charter on the Rights and Welfare of the Child, Article 25.3. Brown and Bjawi-Levine point out that children being cared for by immediate or extended family is consistent with societies that have a strong emphasis on blood lines in the Middle East where the child "...is an important link in the family's intergenerational continuity, and therefore occupies a crucial space in which the present is conjoined with the past and the future". Brown and

Bjawi-Levine (2002) Cultural relativism and universal human rights: Contributions from social science of the Middle East. *The Anthropologist* 14.7, pp.163-174.

38 In some Islamic countries such as Egypt, the term Kafala of Islamic law is used to describe a situation similar to adoption, but not necessarily with the transference of inheritance rights, or the change of the child's full name.

39 Islam places a great premium on raising the child within a family environment and the maintenance of one's identity; being traceable to one's natural parents occupies a more central position, as reflected by the declaration that adoption is haram (forbidden) and therefore unacceptable.

40 Muslim Women's Shura Council 2011, p.7.

41 BCN and UNICEF (2015) *Making decisions for the better care of children. The role of gatekeeping in strengthening family-based care and reforming alternative care systems*. Better Care Network and UNICEF.

42 Winter and Williams 2002, p.59.

43 Assim and Sloth-Nielsen 2014.

44 Dambach and Wöllenstein-Tripathi 2020.

45 Republic of Kenya (2021) *Alternative Family-Based Care Options in Kenya*. [Overview Booklet](#).

46 Dambach and Wöllenstein-Tripathi 2020.

47 Assim and Sloth-Nielsen 2014; Cantwell et al. 2012.

48 ISS, undated. Safeguarding children's rights in national and international Kafala. ISS. [kafala draft concept note final \(hcch.net\)](#)

49 For example, informal Kafalah is not subject to any form of regulation, which puts children at risk of abuse and rights violations. In addition, the private nature of informal Kafalah placements, without professional intervention, increases the risk of breakdowns.

50 ISS, undated.

51 Delap, E. and Mann, G. (2019) The paradox of kinship care. UK: Family for Every Child; Mann, G. and Delap, E. (2020) *Kinship care in sub-Saharan Africa. An asset worth supporting* UK: Family for Every Child.

52 Ibid.

53 Ibid.

54 Ibid. – all evidence in this paragraph.

55 Regarding parental roles, women must take care of children's growth (*hadana*); on the contrary, men have the duty of feeding (*nafaqa*), and also the custody, care, and parental authority.

56 Sec. 75 Part 8, Zanzibar Children's Act 2011.

57 Changing the Way We Care is a global initiative implemented by Catholic Relief Services, Maestral International, and other global, national, and local partners working together to change the way we care for children around the world.

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