



Legal Protection for Children Without Family Care: A Comparative Study of Oman, UAE, and Morocco

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Abstract: This study aims to examine how Omani law protects vulnerable children without family care through foster care arrangements. In addition to assessing the effectiveness of this protection, the study also compares Oman's approach with that of Morocco and the United Arab Emirates, as well as the principles of Islamic Sharia law. Using a descriptive and comparative methodology, this article analyzes the legal conditions for foster care duties and monitoring procedures in Oman. It highlights strengths in the existing legal framework, but also reveals shortcomings in implementation and oversight. Learning from stronger practices in Morocco and the UAE and aligning them more closely with Sharia objectives is one of the recommendations. The research found that while the legal framework in Oman has provided a sufficient basis for the care of vulnerable children without families, there are still significant weaknesses in aspects of implementation and oversight mechanisms. Compared to Morocco and the United Arab Emirates, Oman has not fully adopted best practices in terms of monitoring, ensuring children's rights, and community involvement. The findings also indicate a gap between national legal provisions and the shariah's key objectives in protecting children's rights. By evaluating this dimension of the welfare system through contrasting regional examples and religious principles, this research contributes to the development of a new approach to child welfare.

Keywords: child rights; foster care; legal Protection; best interest of the child.

Abstrak: Studi ini bertujuan mengkaji bagaimana hukum Oman melindungi anak-anak yang rentan tanpa pengasuhan keluarga melalui pengaturan pengasuhan. Selain menilai efektivitas perlindungan ini, studi ini juga membandingkan pendekatan Oman dengan pendekatan di Maroko dan Uni Emirat Arab, serta

prinsip-prinsip hukum Syariah Islam. Dengan menggunakan metodologi deskriptif dan komparatif, artikel ini menganalisis kondisi hukum untuk membina tugas-tugas pengasuhan dan prosedur pemantauan di Oman. Artikel ini menyoroti kekuatan dalam kerangka hukum yang ada, namun juga menyingkap kekurangan dalam implementasi dan pengawasan. Belajar dari praktik-praktik yang lebih kuat di Maroko dan UEA serta menyelaraskannya lebih dekat dengan tujuan Syariah merupakan salah satu rekomendasinya. Penelitian ini menemukan bahwa meskipun kerangka hukum di Oman telah menyediakan dasar yang cukup untuk pengasuhan anak-anak yang rentan tanpa keluarga, masih terdapat kelemahan signifikan dalam aspek implementasi dan mekanisme pengawasan. Dibandingkan dengan Maroko dan Uni Emirat Arab, Oman belum sepenuhnya mengadopsi praktik-praktik terbaik dalam hal pemantauan, penjaminan hak-hak anak, dan keterlibatan masyarakat. Temuan ini juga menunjukkan adanya kesenjangan antara ketentuan hukum nasional dan tujuan-tujuan utama syariah dalam melindungi hak-hak anak. Dengan mengevaluasi dimensi sistem kesejahteraan ini melalui contoh-contoh regional yang kontras dan prinsip-prinsip agama, penelitian ini berkontribusi untuk memacu reformasi hukum yang lebih responsif terhadap kebutuhan anak-anak tanpa pengasuhan keluarga dengan tetap mengedepankan nilai-nilai Syariah.

Kata Kunci: hak-hak anak; hak asuh; perlindungan hukum; kepentingan terbaik bagi anak



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Introduction

The Islamic shariah has recognized special protection for the child and was the first to enact the ideal principles and best educational foundations under which the child should grow up and be brought up to be a good human being in himself, useful to his family, and an active element in his community and nation.¹ International conventions have also taken the same approach and made it mandatory to provide the necessary conditions of care for children, and The Sultanate of Oman has ratified the International Convention on the Rights of the Child,² which was ratified by the Sultanate of Oman out of its awareness of the importance of safeguarding the interests of children and caring for them.

Article 12 of the Sultanate's Basic Law states:³ "... The law shall regulate the means of protecting the family, preserving its legitimate entity, strengthening its

¹ Mohammad Saiful Islam, "Fundamental Human Rights Towards Childhood: Islamic Guidelines Are Unique to Protect the Child," *Journal of Asia Pacific Studies* 4, no. 2 (2015): 177–202.

² United Nations, Convention on the Rights of the Child, 1989.

³ Basic Statute of the State, Royal Decree No. 6/2021

bonds and values, caring for its members and providing appropriate conditions for the development of their talents and abilities...". In the implementation of this constitutional recognition, the Sultanate of Oman has established legal frameworks, notably the Child Law, to ensure the protection and well-being of children within their families. Article 2 of this law guarantees key rights, including the right to life and development, protection from discrimination, prioritization of the child's best interests in all decisions, and the right to participation and expression within the limits of public order and national values.

Oman has enacted a range of laws to protect children's rights and welfare. The Child Law guarantees fundamental rights such as life, development, protection from discrimination, prioritization of the child's best interests, and the right to express opinions. The Penal Code strengthens penalties for violence and abuse against minors, while the Juvenile Accountability Law focuses on protecting and rehabilitating juvenile offenders or at-risk youth through re-education and reintegration into society. In this legal context, the issue of fostering children deprived of family care raises important concerns about whether existing laws and mechanisms adequately protect foster children and ensure their rights are upheld.

Previous literature has examined fostering systems from both Islamic and comparative legal perspectives. For example, Azizah Mohd discussed the sustainability of child protection in Islamic foster care through breastfeeding, highlighting the ethical and religious basis for foster child recognition but noting the lack of legal enforcement mechanisms.⁴ Similarly, Usang and Assim analyzed Islamic *kafalah* as a viable alternative care model in line with international child protection standards, but emphasized that the application of *kafalah* differs widely across jurisdictions and lacks uniform legal safeguards.⁵ A recent study by Al Balushi et al. on global foster care practices identified key challenges in integrating Islamic-based foster systems into modern child protection frameworks.⁶

Despite these valuable contributions, there remains a gap in the literature concerning the legal framework of foster care in Oman, particularly about monitoring practices, judicial oversight, and the harmonization of local law with

⁴ Azizah Mohd, "Protection of Children through Foster Care under Islamic Law: Sustaining Foster Children Protection through Breastfeeding," *Journal of Applied Sciences Research* 7, no. 13 (2011): 2230-2239

⁵ Usang M. Assim and Julia Sloth-Nielsen, "Islamic Kafalah as an Alternative Care Option for Children Deprived of a Family Environment," *African Human Rights Law Journal* 14, no. 2 (2014): 322-345.

⁶ Al Balushi SS, Morantz G, Dougherty G. The Emergence of Child Protection Capacities in Oman: Lessons learned. *Sultan Qaboos Univ Med J*. 2021 Nov;21(4):517-524. doi: 10.18295/squmj.5.2021.073. Epub 2021 Nov 25. PMID: 34888069; PMCID: PMC8631227.

Islamic shariah. This study addresses the legal gaps in Oman's fostering system by critically analyzing its legal framework and comparing it with Moroccan and Emirati models. Morocco offers a structured approach to *kafalah*, integrating Islamic principles with codified civil law, making it a valuable reference. The study adopts a descriptive and comparative legal method to assess how fostering laws in the three countries align with both international standards and Islamic principles. By using the "Best Interest of the Child" as a guiding standard, the analysis identifies areas for legal reform in Oman and proposes practical, ethically grounded solutions that balance modern legal approaches with Sharia-based values.

To address the topic, the study followed the analytical and descriptive approach by studying and discussing the legal texts regulating child fostering, and also relied on the comparative approach by comparing Omani law with the Moroccan Neglected Children's Foster Care Law and the Emirati Child Fostering Law.

Legal Provisions Fostering a Child in Omani Law

The research is divided into two sections, the first of which is devoted to the provisions of child fostering in Omani law, where this section will deal with the concept of fostering and family care, its conditions and procedures, and the obligations of the foster family. The second section deals with the legal mechanisms established to protect foster children and ensure their welfare, comfort, education, and safety, as well as the penalties prescribed for any violation of the rights of foster children.

Firstly, we define the basic concepts related to children, fostering, kafala, and adoption.

1. Child. The definition of a child varies across disciplines.⁷ Psychologists consider childhood to begin in the womb⁸ and extend to around 25 years of age,⁹ emphasizing the psychological and developmental stages. Sociologists, however, typically define childhood from birth to adulthood,¹⁰ which varies by society and

⁷ Flemming Mouritsen, "Child Culture—Play Culture," in *Childhood and Children's Culture*, ed. Flemming Mouritsen and Jens Qvortrup (Odense: University Press of Southern Denmark, 2002), 15.

⁸ Sadd Ahmed Abdullah Hadi and Mahmoud Saleh Jaber, "Provisions Related to the Basic Rights of the Child in the Alternative Family: A Jurisprudential and Legal Applied Study on the Alternative Family in the State of Kuwait," *IUG Journal of Sharia & Law Studies* 27, no. 4 (2019).

⁹ Arnold Gesell, "The Ontogenesis of Infant Behavior," in *Manual of Child Psychology*, ed. L. Carmichael (John Wiley & Sons, Inc., 1946), 295–331, <https://doi.org/10.1037/10756-006>.

¹⁰ Fatiha Laghlali, *Social Care: Sponsorship of Neglected Children in the Moroccan Street* (2016).

may end at puberty,¹¹ marriage, or ages ranging from 12 to 18. They focus on social and cultural factors and sometimes divide childhood into multiple stages.

Islamic Sharia scholars generally define childhood as lasting from fetal formation to puberty, usually estimated at 15 years.¹² Though views vary: Abu Hanifa sets puberty at 18 for males and 17 for females, while Ibn Rushd and Imam Shafi'i extend it to 18 or even 25 years.¹³ Legally, the UN Convention on the Rights of the Child defines a child as anyone under 18 unless majority is reached earlier. The Arab Charter on the Rights of the Child sets the limit at 15 years.¹⁴ Nationally, both Omani and Moroccan laws define a child as anyone under 18 years of age, aligning with international standards.¹⁵

2. Fostering or Kafalah (الكفالة). *Kafalah* in Islamic law is a system that combines legal, social, and religious principles to provide care for children deprived of family support.¹⁶ Unlike adoption, fostering does not create legal parentage or inheritance rights. It is a voluntary commitment to raise, support, and protect a child in a family environment without conferring biological lineage.¹⁷

Islamic jurisprudence considers *kafalah* a personal, charitable obligation that must be voluntarily undertaken by the sponsor, whether a man or woman, and it cannot be transferred to a spouse without consent.¹⁸ The child's best interest remains central.¹⁹

¹¹ Azuratunnasuha, Azuratunnasuha, "Transfer of Foster Parents' Assets to Foster Children from the Perspective of Islamic Law," *Jurnal Pendidikan Agama Islam Indonesia (JPAIL)* 4, no. 2 (2023): 39.

¹² M. H. Baharudin and R. M. Yusoff, "Protection Rights of Children in Terms of Family Relationship from Islamic Law and Malaysian Laws: A Comparative Analysis," *INSLA E-Proceedings* 3, no. 1 (2020): 78.

¹³ Amira al-Azhary Sonbol, "Adoption in Islamic Society: A Historical Survey," in *Children in the Muslim Middle East* (University of Texas Press, 1995), 50.

¹⁴ Charter on the Rights of the Child, 1983.

¹⁵ Rifdah Alifiyah and Isa Anshori, "Legal Protection for Children in Cases of Domestic Violence in the Indonesian Households," *El-Ussrah: Jurnal Hukum Keluarga* 6, no. 2 (December 30, 2023): 348–61, <https://doi.org/10.22373/ujhk.v6i2.19153>; Indah Sri Utari et al., "Legal Protection for Children as Victims of Economic Exploitation: Problems and Challenges in Three Major ASEAN Countries (Indonesia, Vietnam and Philippines)," *Lex Scientia Law Review* 7, no. 2 (November 6, 2023): 771–842, <https://doi.org/10.15294/lesrev.v7i2.68301>.

¹⁶ Abdurrohman Kasdi and Khoiril Anwar, "Inheritance Distribution of Adopted Children in the Perspective of Customary Law and Islamic Law Compilation," *Al-Ahkam* 29, no. 2 (2019): 141–158.

¹⁷ Usang M. Assim and Julia Sloth-Nielsen, "Islamic Kafalah as an Alternative Care Option for Children Deprived of a Family Environment," *African Human Rights Law Journal* 14, no. 2 (2014): 330.

¹⁸ Souad Ezzerouali, Mohamed Cheikh Banane, and Brahim Hamdaoui, "Sharia in Moroccan Law: A Perpetual Source and Guiding Reference," *Legality: Jurnal Ilmiah Hukum* 33, no. 1 (2025): 49.

¹⁹ Lia Noviana, Lukman Santoso, and Mega Puspita, "Interpreting Legal Rights: Disparities in Judicial Treatment of Children Born Out of Wedlock in East Java, Indonesia," *Lex Scientia Law Review* 8, no. 1 (September 22, 2024), <https://doi.org/10.15294/lslr.v8i1.4606>; Siti Rohmah, Fadil Sj, and Erfaniah Zuhriah, "Resilience of Muslimah Sex Workers: Fulfilment of Children's Rights Based on Fiqh Hadhanah and the

In Oman, fostering is not explicitly defined, but the Executive Regulations describe kafalah as an undertaking by individuals, families, or organizations to provide care or material support. A foster family is defined as one entrusted with the upbringing of children without family care.²⁰

Moroccan law defines kafalah as a system of care for abandoned children that does not create lineage or inheritance rights (Article 2). Similarly, the UAE law (Federal Decree-Law No. 24 of 2022) defines fostering as care, upbringing, and protection for children of unknown parentage, ensuring their psychological, social, and educational well-being.

The 1989 UN Convention on the Rights of the Child recognizes kafalah as a legitimate alternative to adoption for Muslim countries, aligning with Islamic principles and supporting children's rights regardless of parentage status.²¹

3. Adoption. Before Islam, adoption was widespread in pre-Islamic Arab society (*Jahiliyyah*), serving social and economic purposes such as lineage preservation and inheritance²². Islam, however, abolished adoption in its pre-Islamic form to protect lineage integrity and avoid social conflict. The Qur'an prohibits adoption,²³ emphasizing that adopted children should be called by their biological fathers. The Prophet Muhammad implemented this by ending the adoption of Zayd ibn Haritha.

Despite banning legal adoption, Islam promotes the care of orphans and foundlings. The Prophet (peace be upon him) emphasized the spiritual reward for orphan sponsorship, equating the sponsor's closeness in Paradise to that of two joined fingers. Hadiths further highlight the spiritual status of those who care for orphans.²⁴

Legal scholars define adoption as creating a parent-child bond by will rather than blood, which falsely attributes lineage and confers legal rights such as

Child Protection Law," *Justicia Islamica* 21, no. 1 (June 24, 2024): 23–42, <https://doi.org/10.21154/justicia.v21i1.9156>.

²⁰ Faisal Kutty, "Islamic Perspectives on Adoption," in *The Oxford Handbook of Religious Perspectives on Reproductive Ethics* (Oxford University Press, 2024), 239.

²¹ Suyatno, "Comparison of Child Adoption from the Perspective of Islamic Law, Western Law, and Customary Law," *JL Pol'y & Globalization* 84 (2019): 80.

²² Mohamed Sobhi Nagm, *Lectures in Family Law* (Algeria: University Press, 1992).

²³ Al-Ahzaab: 4

²⁴ Yusuf Al-Qaradawi, *Istihaq and Adoption in Islamic Law* (Cairo: Wahba for Edition and Publication, 2000).

inheritance.²⁵ Scholars like Muhammad Sobhi Najm²⁶ and Abdul Aziz Saad define adoption as a distortion of lineage, forbidden in Islam.²⁷

Instead, Islam advocates for sponsorship (*kafalah*), a system that ensures care and love while preserving the child's identity and lineage, in line with Islamic principles of social solidarity and protection of genealogy.²⁸

In Oman, where Islamic Sharia is the foundation of legislation (Articles 1 and 2 of the Basic Law), adoption is prohibited. Article 11 of the Omani Child Law affirms a child's right to know and be connected to their biological parents. Similarly, Article 149 of the Moroccan Family Code declares adoption void and without legal effect.

Omani Executive Regulations endorse fostering (*kafalah*) instead of adoption to promote social cohesion while protecting the child's identity. Article 34 of the Omani Child Law guarantees alternative care (e.g., for orphans and foundlings) under State supervision. As of the end of 2021, the Child Welfare Centre in Oman had registered 98 children (52 boys and 46 girls).

Scope of application of the family or foster mother system

Article 73 of the Executive Regulations in Oman defines the categories of children eligible for foster care as those under 18 who fall into one of the following: 1) children born in Oman to unknown parents; 2) those born to an Omani mother and an unknown father following a decision by the Public Prosecution or a final court judgment; 3) children born abroad to an Omani mother and an unknown father after the issuance of a final ruling; or orphans or children deprived of the care of parents or relatives up to the fourth degree.

In contrast, Moroccan Law No. 01-15 on the sponsorship of neglected children limits eligibility to "neglected" children under 18, such as children of unknown parentage, orphans, or those whose parents are unable or unfit to care for them. Notably, it does not apply to children who have families but whose care is voluntarily relinquished, commonly referred to as "non-neglected children" in judicial practice.

²⁵ Usang M. Assim, In the Best Interest of the Child Deprived of a Family Environment: A Focus on Islamic Kafalah as an Alternative Care Option (*Master's thesis*, University of Pretoria, South Africa, 2009).

²⁶ Nagm, Lectures in Family Law, 92.

²⁷ Jamila Bargach, *Orphans of Islam: Family, Abandonment, and Secret Adoption in Morocco* (Lanham: Rowman & Littlefield Publishers, 2002), EPUB file.

²⁸ Sidney, Mustafa. "The Role of Sponsorship in Attributing Nationality in Moroccan Law." *African Journal of Legal and Political Studies* 3, no. 2 (2019): 109-126.

The UAE law similarly restricts foster care to children of unknown parentage, defined as those found within the State with unknown parents or born to a UAE national mother and an unknown or legally unrecognized father. Oman adopts a broader approach, using the term “deprivation of parental care” to encompass both voluntary and involuntary causes such as poverty, imprisonment, illness, substance abuse, or violence.

This comprehensive definition reflects the legislator’s intent to protect all vulnerable children and grant them the right to grow in a nurturing family environment. Fostered children are granted rights equal to those of children in natural families, so long as they do not conflict with Islamic Sharia. Furthermore, the right to foster is not absolute; it is a discretionary administrative privilege, subject to evaluation by a competent committee, which may reject an application if it deems the applicant unsuitable despite meeting formal conditions.

Conditions of the family or the foster mother

One of the advantages of this law is that it did not leave the matter of fostering limited only to married persons, but allowed women without specifying their status, that is, whether they are divorced or never married, to sponsor a child to help them achieve the maternal instinct, as women may reach advanced stages without being able to marry, and the legislator took into account this instinct and gave them the right to sponsor a child, which is the same approach taken by the Moroccan legislator by allowing Muslim women to sponsor a neglected child.

The Omani legislator has specialized the family or the foster mother with conditions that must be met to approve their request, as the article of the executive regulation specifies a set of conditions as follows:

1. Islam and Omani nationality requirement: Islamic law emphasizes the child’s right to preserve their identity, religion, and upbringing within their cultural environment. Reflecting this, the Omani legislator requires that foster parents be both Muslim and Omani nationals, ensuring that the child is raised in a context that respects Omani customs and cultural values. However, the study recommends extending eligibility to Muslim residents, similar to the UAE, which permits fostering if at least one spouse in the foster family holds UAE nationality. In Morocco, the condition of Islam is required, but foster parents are not required to hold Moroccan nationality. Muslim residents are also eligible to foster neglected children. Both the Omani and Moroccan legal frameworks uphold the Islamic Sharia rule prohibiting the guardianship of a non-Muslim over a Muslim child, to

safeguard the child's religious identity,²⁹ in line with the Quranic principle: "The believers shall not take..."

2. Age: They must be between the ages of twenty-five and forty-nine years, and may be exempted from this condition by a decision of the guardian. This can be explained by the presence of the physical ability to bear the child's upbringing and care, because after fifty years, signs of aging, fatigue and the possibility of exposure to diseases begin, which is a logical but not general condition, as we can find people at the age of fifty and beyond in good health and high physical fitness. On the other hand, the Moroccan legislator only requires the attainment of the age of legal majority for both spouses or the woman seeking sponsorship, meaning that if the wife is a minor despite obtaining permission from the judge to marry, the sponsorship request will not be accepted in the best interest of the child, as well as the Emirati law requires that the spouses be at least 25 years old, and therefore did not specify a maximum age for that, and for the single mother not less than 30 years old and not more than 50 years old. The study suggests that the Omani legislator should follow the lead of his Moroccan counterpart to encourage fostering, especially since it is an Islamic institution with religious and worldly objectives and without pay.

3. Good character and behavior: The foster husband or wife must be of good moral character and reputation and must not have a criminal record, because the purpose of fostering children is to protect them from homelessness and neglect and to ensure a cohesive family capable of fostering them. The Moroccan and UAE legislators also follow suit by stipulating that the husband or wife should not be convicted of crimes against morality or crimes against children, as the UAE law adds that the convicted foster care should be rehabilitated, due to the importance of the obligation to foster and protect the child.

4. Physical and psychological ability to tolerate care: The mother or family care must be able to care for the child socially, educationally, psychologically, and economically, as evidenced by the social research conducted by the competent authority. Financial ability is a prerequisite because care requires expenses for eating, drinking, clothing, treatment, education, and all the necessities to maintain the child's physical and psychological health, develop his/her talents, and improve

²⁹ Habashy, F. "Protecting the Rights of Children Without Parental Care in Egypt: A Review from the Perspectives of Islamic Law and UN Instruments." *Manchester Journal of Transnational Islamic Law & Practice* 20, no. 3 (2024).

his/her education.³⁰ Therefore, a search is conducted to ascertain the sponsor's financial status through his/her salary or monthly income based on the Ministry of Social Development's inquiries.

5. Disease-free: Article 14 of the Child Law stipulates that children have the right to preventive and curative health care, and the state guarantees them the highest attainable level of free health care. Therefore, this condition came as an affirmation to protect the health of the child from an environment in which there may be diseases that may affect his physical or psychological health, and accordingly, the condition of health safety for the sponsor is a basic condition. After all, some infectious diseases and diseases prevent him from taking responsibility towards the child,³¹ as called by the Moroccan law for sponsoring children, which may be chronic, psychological or mental, because education requires effort, patience, tracking and supervision, and in the presence of these diseases, the forest of sponsorship will be disrupted, which is to live in a suitable environment and raise the sponsored child. The UAE legislator stipulates that it must be proven to be free from communicable and mental diseases and mental disorders that affect the health and safety of the ward, according to medical reports issued by a health facility, according to Article 9.

Fostering Procedures

According to Article 97 of the Omani Executive Regulations, the foster care process begins with an application submitted by the interested family or woman to the General Directorate of Family Development or its branches. This is followed by a personal interview, during which the applicant must present several documents, such as ID copies, marriage certificate, proof of income, health reports, and housing documents. Although educational qualifications are not officially listed as a requirement, their inclusion suggests the state's interest in ensuring a suitable environment for the child's education. The interview, which may include home visits, is essential for evaluating the applicant's psychological and social readiness.³²

³⁰ Amal Ahmed Al Zarouni, "Analysis and Evaluation of Child Fostering Policy in the United Arab Emirates" (Field Study) (2018)

³¹ Ghanima Albahri and Hussain Al-Othman, "Family Protection Policy in the UAE: A Descriptive Analytical Study," *Al-Adab Journal* 151 (2024): 97-150.

³² Nermeen Mouftah, "The Muslim Orphan Paradox: Muslim Americans Negotiating the Islamic Law of Adoption," *Contemporary Islam* 14, no. 3 (2020): 207-226.

The Ministry of Social Development has issued detailed interview guidelines in 2025.³³

After completing the interview and submitting all required documents, a social investigation is conducted and reviewed by the foster care committee within six months. The committee then issues a recommendation. If the application is rejected, a justified decision must be provided, and the applicant may appeal within 60 days. A lack of response within 30 days of the appeal is considered a rejection.

In Morocco, the process differs as it is judicial rather than administrative. The person or institution wishing to foster a neglected child must apply to the judge in charge of minors' affairs in the child's area of residence. The application must include supporting documents and the child's birth certificate. The judge assigns a multidisciplinary committee to investigate the applicant's eligibility, including representatives from the judiciary, local authorities, Islamic affairs, and social and health services. Once the investigation is complete, the judge reviews the findings and, if all conditions are met, issues an order assigning the child to the applicant. This order is enforceable immediately, but subject to appeal.

The child must be handed over within 15 days, and a detailed report of the handover is prepared in triplicate in the presence of judicial and local authorities and a social assistant. The order is also registered with the civil registry to update the child's records. These procedures reflect a strong emphasis on legal guarantees and official oversight in the Moroccan system.

Monitoring Foster Care

- **Obligations of the Family or Foster Woman**

In Oman, the foster family or woman must comply with several obligations to ensure proper care for the child. These include giving the child a full name with tribal affiliation coordinated by the competent authority, attending training courses, designating a relative or trusted person to care for the child in emergencies, allowing official visits to monitor the child's condition, maintaining the child's property after guardianship is granted, providing medical and academic reports, and notifying the authority of any change in residence or travel plans (Article 9 of the Child Law). Breastfeeding by the foster mother or a close relative is also required. Foster care continues until the child reaches legal adulthood or, under specific conditions such

³³ Ministry of Social Development, *Interview Techniques and Basics for Foster Families*, Foster Care Publication Series, Second Edition, January 2025.

as death or incapacity of the foster parents or court cancellation to protect the child's best interest (Articles 9 and 25).

Similarly, Moroccan and Emirati law impose almost identical obligations on the foster carers. Kafala is defined as the responsibility to care, raise, protect, and maintain the child as a parent would, without conferring inheritance or lineage rights (Article 2 of Moroccan Law 15.01).³⁴ The foster parent is responsible for the child's maintenance, custody, and upbringing in a healthy environment until majority, or marriage for females, or indefinitely if the child is disabled (Article 198 of the Family Code). Foster carers are also entitled to compensation and social assistance and bear civil liability for the foster child (Article 85 of the Moroccan Code of Obligations and Contracts, Article 22). Both foster carers and foster children are subject to criminal provisions concerning offenses between parents and children (Article 30). Foster care ends upon reaching majority, death, incapacity, or court cancellation if obligations are breached or if it serves the child's best interest (Article 25).

- **Foster Care Tracking**

In Oman, the monitoring and follow-up of foster care are entrusted to the administrative authority represented by the Family Development Department³⁴, which conducts periodic visits at least once a year or as needed. The competent officer prepares reports assessing the family's or foster woman's compliance with their obligations towards the child, while respecting the privacy of the home. Families or foster women cannot prevent these visits. For those residing abroad, follow-up is done through Omani embassies or consulates. Written warnings are issued for any deficiencies, and if these are not remedied or if serious breaches occur, the competent authority can cancel the foster care and return the child to the care center with all belongings (Article 113).

The law requires notifying the competent authority of any changes in the child's health, behavior, education, or death. Re-fostering a child after cancellation is prohibited. Complaints regarding violations of the child's rights, abuse, or exploitation are received and investigated. In case of imminent danger, the child protection representative can remove the child with police assistance. Verified cases of abuse are referred to the Public Prosecution, and appropriate protective and rehabilitative measures are taken (Articles 19 and 113).

³⁴ Firdaus, Muhammad Aulia, and Iwan Iwan, "Custody Determination for a Child Born As a Result of Rape: A Maqashid Al-Sharia Perspective," *Al-Ishlah: Jurnal Ilmiah Hukum* 27, no. 2 (2024): 406-26, <https://doi.org/10.56087/aijih.v27i2.512>.

Similarly, in the UAE, a specialized social researcher is responsible for monitoring by visiting the foster family, assessing the child's condition, and ensuring the family fulfills its obligations,³⁵ while maintaining confidentiality (Article 19).

In contrast, Moroccan law assigns a judicial character to monitoring foster care. The judge in charge of minors' affairs oversees the sponsor's compliance, with assistance from public prosecution, local authorities, and social committees³⁶. Reports are submitted to the judge, who may order cancellation of the sponsorship if needed. Judges may also authorize travel abroad for foster children, ensuring judicial guarantees and coordination with consular services for ongoing monitoring (Articles 16, 19, 22, and 24). Ministerial circulars further regulate procedures to

The study revealed that the child fostering systems in both Morocco and the Sultanate of Oman are rooted in Islamic Sharia principles. However, there is a clear disparity in the legal and institutional frameworks governing the implementation and monitoring of foster care. In Morocco, the system is characterized by greater legal organization and institutional coordination, particularly in cases where children are fostered by families residing abroad.³⁷ Judges are required to coordinate with consular authorities to monitor the child's situation and ensure that foster parents fulfill their obligations,³⁸ as stipulated in Article 24 of the *Kafalah* Law and Ministerial Circular No. 16S2/K.P.

In contrast, the legal system in Oman lacks equivalent monitoring mechanisms, making the protection of fostered children less institutionalized and largely reliant on general shariah principles and judicial discretion. From the perspective of Child Protection Systems Theory, this reflects a gap in the social and institutional environment for child protection in Oman and calls for a reassessment of the effectiveness of the legal framework in ensuring the child's best interests, particularly in cross-border fostering cases.³⁹

³⁵ Bushra Bara, "Conflict of Laws on the Sponsorship of Neglected Children," *Majallat al-Fiqh wa-al-Qānūn* 170, no. 2169 (2015): 7.

³⁶ Andrea Buchler and Eveline Schneider Kayasseh, "Fostering and Adoption in Islamic Law—Under Consideration of the Laws of Morocco, Egypt, and the United Arab Emirates," *Electronic Journal of Islamic & Middle Eastern Law* 6 (2018): 31.

³⁷ Stefan Arnold and Bettina Heiderhoff, *Children in Migration and International Family Law: The Child's Best Interests Principle at the Interface of Migration Law and Family Law* (Cham: Springer Nature, 2025)

³⁸ Khadija Loudghiri and Mohammed Houmine, "The Child Protection System in Morocco: Its Evolution and Application," in *The Development of Child Protection Systems and Practice in Low-to Middle-Income Countries*, ed. Policy Press (Bristol: Policy Press, 2025), 120–141.

³⁹ Jumana Al Abduwani, Asia Al Numani, Muna Al Saadoon, et al., "Child Protection System in Oman: A Public Health Approach and Benchmarking Against the INSPIRE Strategy."

At the level of Comparative Legal Analysis, the study confirms that the differences are not merely textual, but stem from distinct social, cultural, and structural contexts in which the laws have evolved. The findings point to a need for Oman to adopt a more integrated institutional approach to guarantee continuous legal protection for fostered children, without conflicting with Islamic principles. This could be achieved by strengthening coordination between judicial bodies and diplomatic missions in cases of international foster care.

Best Interest as the Basis for the Care of a Child Deprived of a Family

The concept of the best interest of the child is a pivotal principle in Islamic jurisprudence, although it is not formulated in this way,⁴⁰ its content is contained in general rules such as: "the lesser of two evils" and "preventing evils is before bringing interests", in addition to the rule of "caring for the little one is one of the duties of the group". Jurists have settled that caring for a child deprived of a family.⁴¹ Whether a foundling, of unknown parentage or without care, is an obligation of the state and society⁴² to fulfil his psychological, social, and educational interests. In this context, recent legislation in the three countries intersects with this trend, as they have adopted kafala (not adoption) laws as a shariah-compliant formula, and have endeavored to align them with the principle of the best interest of the child. In Moroccan law, given the judicial nature of kafala, the best interest is assessed by the judge who monitors the conditions and progress of kafala, while Oman and the UAE rely on administrative and social agencies that undertake field monitoring, reflecting a practical conceptualization of best interest in an integrated institutional context. The relationship of this concept to the care of the sponsored child is that it is the supreme reference for decision-making on the eligibility of the sponsor, the quality of care provided, and the continuity of follow-up, so that sponsorship is not just a formal legal procedure, but a system of care that responds to the spiritual, emotional, and material needs of the child, in a way that fulfils both the legal and religious purpose, and promotes a balance between the requirements of the religious text and the spirit of modern positive laws.

⁴⁰ Julia Sloth-Nielsen and Usang Maria Assim, "Islamic Kafalah as an Alternative Care Option for Children Deprived of a Family Environment," 2014.

⁴¹ Rohmawati, "Legal Protection of Children Outside of Marriage: Ensuring the Best Interests of the Child through Judges' Decisions," *Al-'Adalah* 18, no. 2 (2023): 89-105.

⁴² Dilafruz Ravshanovna Karimova, "The Protection of Children's Rights in Islam," *American Journal of Social Science* 3, no. 1 (2025): 10.

Table 1. Comparative Overview of Foster Care Laws

Criteria/ Country	Oman	Morocco	UAE
Responsible Authority	Family Development Department (Administrative)	Juvenile Judge (Judicial)	Ministry of Community Development (Administrative)
Eligible Child Age	Under 18	Under 18	Under 18
Foster Parent Requirements	Islam, Omani nationality, good conduct, and age limits	Islam, legal age, and financial ability	Islam, legal residence, and financial ability
Monitoring Mechanism	Administrative tracking by a social officer	Judicial tracking by a juvenile judge	Social researcher with reporting duties

Source: credit by authors, 2025

The table reveals a fundamental difference in the legal protection models for foster care children between Oman, Morocco, and the UAE. Oman and the UAE rely on administrative bodies to manage foster care with social and preventive oversight, reflecting an institutional approach that integrates social and administrative aspects in child protection. In contrast, Morocco depends on a judicial authority with strict supervisory powers, indicating a more formal legal-judicial approach to guardianship protection. All three countries share the requirement that foster parents be Muslim, reflecting the strong influence of religious and cultural values on legislation. However, the conditions regarding nationality and residency differ according to each country's social and demographic composition: Oman requires Omani nationality, emphasizing national exclusivity; the UAE permits foster parents who are legal residents, reflecting its diverse population; and Morocco requires legal age and financial capacity, highlighting socioeconomic factors to ensure child welfare. Oversight mechanisms vary between judicial supervision in Morocco and administrative/social oversight in Oman and the UAE, expressing different levels of state intervention in family affairs, which reflects variations in legal and institutional frameworks shaped by social and cultural contexts influencing the formulation and implementation of foster care laws.

Conclusion

This study examined the legal and social frameworks for protecting children deprived of family care in the Sultanate of Oman through a comparative approach with the legal systems of Morocco and the United Arab Emirates. The research showed that while all three countries prohibit adoption according to Islamic Sharia, they differ in the legal mechanisms regulating fostering or guardianship, with varying degrees of judicial and administrative involvement. The findings reveal that Oman adopts a centrally administered model, where the Family Development Department supervises and regulates fostering, while the UAE relies on an administrative mechanism that allows broader inclusion of Muslim residents. Morocco, on the other hand, follows a judicial model where the juvenile courts play a central role in appointing and monitoring foster carers, supported by multidisciplinary committees.

These differences reflect diverse institutional priorities that directly impact the quality, flexibility, and oversight of fostering systems, despite the shared religious foundations. This study highlights the importance of adapting Islamic law to contemporary child protection requirements within different legal environments. Based on these findings, the study recommends: First, enhancing judicial involvement in Oman by engaging family or juvenile courts in the appointment and monitoring of foster carers to strengthen legal safeguards for the child. Second, expanding eligibility for foster carers to include Muslim residents with ethical and financial qualifications, as in the UAE, to increase the number of potential caregivers and support social integration. Third, establishing a unified national digital registry to track fostering cases and updates, improving coordination between social and legal authorities. Fourth, standardizing monitoring and social assessment tools aligned with international standards, while considering the evolving needs of the child. Fifth, launching national awareness campaigns to promote fostering from the perspectives of Islamic Sharia and social solidarity.

These recommendations contribute to advancing Oman's fostering system toward compliance with international child protection standards, while leveraging the comparative experiences of Morocco and the UAE, opening avenues for future research on legislative and social policy development to enhance child protection in the Islamic world.

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