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EDITORIAL

Kafalah: What replies to multiple issues?

Kafalah, which has been recognised by the UNCRC, raises complex and sensitive issues as to its forms and the safeguards that are linked to its implementation – in particular when it is of an international character.

What is kafalah?

Kafalah is generally known as the commitment of a person (*kafil*) to voluntarily care for the needs, maintenance, education and the protection of a child deprived of their family (*makful*). It does not sever biological parentage. It has an international character when its implementation occurs in another country.

Kafalah is a child protection measure specific to Muslim countries, and varies considerably in its effects from one country to another. Furthermore, when it has an international character, the disparities between the legal and cultural systems of Muslim Law countries – most of them prohibit adoption explicitly – and those of Civil and Common Law countries,

raise difficulties: applicable legal framework, assessment of the child's best interests, respect for his or her rights, and legal implications. A recent mission of the ISS/IRC in Morocco has, however, recalled the importance of placing (again) at the centre of the reflection process the fundamental need of children without a family, or at risk of so being, of growing up in a family environment whilst respecting the laws and cultures of all.

The best interests of the child beyond the disparity between legal systems

In order to ensure the respect for the rights of the child deprived of a family, it is fundamental that the countries involved, first and foremost, respect the principle of subsidiarity. Thus, first, all efforts must be undertaken to prevent family separation, and, secondly, the widest available variety of family-type measures must be offered to the children, giving priority to domestic solutions. It is worth supporting, as a priority, any country in ensuring the implementation of these duties, and in helping it to establish strong competent authorities, with qualified professionals, in charge of the implementation of these procedures and their control, for example in terms of costs, required consents, etc. It is for the latter that ISS Switzerland has supported Algeria in strengthening, on the one hand, prevention measures in situations of abandonment linked, in particular, to the stigmatisation of single mothers and of children born out of wedlock, and, on the other hand, in strengthening domestic *kafalah*, as a family-type solution, before considering an

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intercountry placement. Thus, tools have been developed for professionals, aimed at focusing the decision-making process on the child, and at strengthening the assessment, preparation, matching and monitoring of *kafil* families (see p. 9).

The option chosen by the Tunisian model, on the other hand, wishes to offer a reply to the alarming issue of abandoned children, and to a social reality, through the coexistence of *kafalah* and adoption. This example demonstrates that these two measures can be included in the same child protection system, a solution that could inspire other countries (see p. 7). It is worth noting that the wider the variety of protection measures, including solutions such as a long-term mentoring (see p. 4), the better the opportunities for the needs of the child to be met.

A legal framework able to overcome the challenges?

Domestically, several Muslim Law countries, such as Algeria, Morocco, Syria and Lebanon, currently demonstrate a willingness to strengthen their *kafalah* system through several means, such as potential legal amendments. With a view to a better protection of the rights of the child *makfoul* (see pp. 7 and 9), the latter should strengthen its legal status, for example by reviewing the conditions for the revocability of the placement, and by fighting against the various forms of discrimination, which they may be faced with, in particular when establishing the child's civil status.

Internationally, in addition to the UNCRC and the Guidelines for the Alternative Care of Children, *kafalah* is also addressed by the 1996 Hague Convention¹, which provides for a system of cooperation and prior communication between Competent Authorities². This key international framework, in addition to the advantages that it offers, has important limitations when the implementation of a *kafalah* is put into practice in another country. On the one hand, its applicability is limited given the low rate of ratification of the 1996 Hague Convention by Muslim Law countries, as Morocco is the only Contracting country of Muslim Law to date. On the other hand, despite the rules of cooperation set by this instrument, confusion remains as to the conditions and the obligation of recognition of a measure that is unknown in the receiving country. The same applies to the legal effects relating to the child's rights: access to the territory, granting of nationality, social rights, etc.

Solutions as to the legal effects of an intercountry *kafalah*?

Thus, how to recognise the legal effects of the *kafalah* that exist in Muslim Law systems in a country where the latter is not known? Should one reject its recognition or search for mechanisms of transposition in accordance with international and domestic laws? These issues remain at the heart of the debate relating to intercountry *kafalah*, and generate reflection as to the interaction between the 1993 and 1996 Hague Conventions – as already raised in Special Commissions³.

Indeed, these uncertainties raise several challenges, such as the disparity in the policies and practices relating to intercountry *kafalah*. Whilst some countries, such as Australia, do not recognise *kafalah* placements – which are not known in its protection system, other countries, such as France (see Monthly Review No. 196 of November 2015) and Belgium try to find solutions, given their particular context. Indeed, given the high number of inhabitants from Muslim Law countries, the latter have approved legal and practical mechanisms of recognition of this measure.

Furthermore, in such a context, some practices jeopardise the rights of the child. In Muslim Law countries: the declaration of *kafalahs* in relation to applicants residing abroad, whose intention clearly is to adopt the *makfoul* child back in their country. In receiving countries: the conversion into an adoption of a *kafalah* declared in a country that prohibits it. Here, the ISS/IRC would like to draw attention to the approach of some countries, which openly encourage their citizens to undertake adoptions of children from Muslim Law countries, which violate the domestic legislation of these countries as well as International Law.



Faced with these concerns, concrete replies, which the ISS/IRC and other experts are currently discussing, are necessary in order to ensure the respect for the fundamental rights of the child and in order to reach a legal and political consensus amongst the countries involved. A forthcoming issue of the Monthly Review will inform of the progress made in this shifting field.

The ISS/IRC team,
July 2017

References:

¹ Article 20 of the UNCRC; Article 3 of the 1996 Convention; Paras. 2a) and 161 of the Guidelines.

² See Articles 33, 22 I of the 1996 Convention.

³ See Para. 30 of the Conclusions and Recommendations adopted by the 2015 Special Commission on the practical operation of the 1993 Hague Convention.

BRIEF NEWS

Approval of a new law on adoption in Madagascar

A new law relating to adoption in Madagascar has been approved by the Senate on 30 June 2017 and will, following its enactment, replace Law No. 2005-014 of 7 September 2004. The ISS/IRC welcomes this new legal instrument, which enshrines in Malagasy legislation various essential principles for an ethical adoption procedure: strengthening of the subsidiarity principle, establishment of a maximum age limit for potential adopters, increase in the child's age of adoptability from 12 to 15 years, granting of exclusive competence to the Central Authority in relation to full adoptions, and setting-up of a support process by a social worker during the probationary period in Madagascar. Furthermore, the law establishes a framework for relative adoptions, which are widespread in the country. Finally, the ISS/IRC welcomes the establishment of control and authorisation procedures for accredited adoption bodies undertaking adoptions in Madagascar.

Global commercial surrogacy and intercountry adoption: Parallels and differences, by R Scherman, G Misca, K Rotabi and P Selman

This academic article draws together points of similarity and difference between: (1) the adoptive and commissioning parents; (2) the birth mother and the surrogate; and (3) the adopted children and the children born of global surrogacy. Several similarities are highlighted, such as the socio-economic status of the parties, the potential long-lasting effects of the relinquishment on the birth mother/surrogate, as well as the lack of counselling. At the opposite, the two worlds diverge, among others, on the possibility for the surrogates to give pre-birth consent; the absence of selection processes of commissioning parents; the compensation of the surrogate; the possibility for the commissioning parents of being genetically linked to the child; the aim of global commercial surrogacy, which is to create a child; the higher risk for these children to be statelessness; and the motivations of the commissioning parents versus those of the adoptive parents. It appears from this article that the worlds of intercountry adoption and global commercial surrogacy are not so far apart from each other, and that the latter should learn from the first in order to ensure that the child and his or her rights are at the centre of the decision-making process, even when not yet conceived. As a conclusion, the ISS/IRC would like to share this quotation, which it fully supports: *'the field of surrogacy has the unique opportunity to do now what the field of adoption was painfully late in realizing: plan for the adults that the children will eventually become'*. As has been mentioned in last month's issue of the Monthly Review (No. 212 of June 2017), ISS is currently leading an Experts' Group working on Principles to better protect children in surrogacy arrangements, aimed at addressing many of the issues mentioned above.

For further information, see: Scherman, R, Misca, G, Rotabi, K and Selman, P (2016). "Global Commercial surrogacy and international adoption: parallels and differences". *Adoption & Fostering*, Vol. 40(1) 20-35; available at: <http://journals.sagepub.com/doi/full/10.1177/0308575915626376>.

PRACTICE

Long-term mentoring: An under-employed life project

For some years, the practice of mentoring has diversified considerably in France, and is part of a general approach to supporting parenting, as described below by Philippe Liebert, Director of the Adoption Service for the Department of Pas-de-Calais.

In 2003, a National Mentoring Committee (*Comité National du Parrainage*, CNP), was created under the joint responsibility of the Ministry of Justice and the Ministry of Family, and has led to the development of a National Charter and a Mentoring Guide¹ becoming the reference framework for involved professionals. As the Guide reminds us: 'In all societies, the child needs to rely on adults or families other than his or her parents in order to develop'. This definition of mentoring is part of a broader approach to parenthood, which contributes 'to re-establishing solidarity between generations and to promoting the development of children through contact with adults'.

What is the concrete meaning of the mentoring approach? Which children is it intended for?

'Sponsoring is the building of a privileged emotional relationship established between a child and an adult or family [...]. It is a relationship of trust, based on reciprocity, that can be implemented by citizens grouped into associations and also by the services in charge of childhood issues'. The aim is not to give money but rather time, through a personal, voluntary and lasting relationship, undertaken in a framework that has been defined beforehand. It is directed at a broad range of children (children living in their family or without a regular bond with the family, children deprived of their family, etc.), and allows them to be better prepared to develop their own autonomy.

Mentoring children with a breakdown of family ties

Mentoring is an extremely flexible mechanism that addresses different family situations. Since the creation of the CNP, local mentoring has mainly developed together with the parents. In the Department of Pas-de-Calais, by contrast, we are using mentoring for situations relating to children with a breakdown of family ties, and we

hope, in this case, for the reflections of Robert Neuberger, a Swiss Psychiatrist, Psychoanalyst and Family Therapist², according to whom: *'I would initially encourage mentoring, which enables adults to support a child in distress, without investing as much of oneself and one's integrity. There are some things that one can support in a mentoring relationship but not in a parenting relationship [...]'.*

Pre-adoptive mentoring or long-term matching

In our service, we talk of 'long-term matching' to indicate that the initial project is adoption. This type of matching concerns older children (eight years or more), who have suffered various traumas. They are psychologically adoptable, but require a period of mutual adjustment before the 'placement for adoption'.

Martin is eight years old and was placed with his foster family at the age of one year, after having been found in a car. This event is, for him, a seminal moment in his life story. He stayed in the foster family, and

'Mentoring is an extraordinary means to help children with difficulties, and which is currently under-employed. And why not, subsequently, adopt?'

Robert Neuberger

then, at eight years old, he was placed with the Child Protection Service. He has a good intellectual and emotional development, but this is combined with substantial anxiety about separations. It is, for example, impossible for him to sleep at friends' homes. The adoption project is seen, by Martin and his foster family, as the threat of an unbearable breakdown. Welcoming other stakeholders is uncomfortable for Martin and the foster family, and Martin is provocative. In such a context, the stakeholders suggest considering a mentoring project with a couple, who would like to spend some time with the child. The emphasis is put on Martin's unshakable place within his foster family. Martin accepts with enthusiasm, curiosity and hope. He initially visits on Wednesday afternoons, then on Saturdays. During the first visit, he appears petrified, it takes six months of mentoring before he stays – completely reassured –

overnight for the first time. Three months later, he is placed with a view to his adoption.

Support mentoring or long-term mentoring

The purpose of support mentoring is to create a strong emotional and educational relationship that will, on the one hand, help the child in his or her daily life, and, on the other hand, allow him or her to develop a sense of family belonging. It is aimed at children, who are over eight years old, even adolescents, who experience a breakdown of family ties. These young people, given their chaotic itineraries and the numerous and lengthy traumas they have experienced, are not part of an adoption project.

Jonathan is the second child of a sibling group and the only child in care; he has had no relationship with his parents for several years. He experienced early repetitive separations before being admitted to a paediatric psychiatric hospital at the age of five years. He then succeeded in stabilising thanks to a placement with a foster family. Psychologically, he is shaped by the central issue of his parents' absence and the intolerable feeling of having been ousted, without reason, from his birth

family. In situations of conflict, he can react violently and unexpectedly. Following the legal declaration of abandonment, a mentoring project was set up following psychological support. Given his ambivalence regarding the maternal figure, a single man was chosen. Jonathan and his mentor have a common passion for football, which has helped their relationship to become stronger over a period of two years. Furthermore, Jonathan is fully accepted by his mentor's extended family.

Sponsoring has brought Jonathan a certain degree of belonging to a family, and has helped to heal his fear of abandonment. At the time of the mentoring, it emerged that there would not be an adoption project. Jonathan is still impulsive and lacks maturity, which limits his autonomy. As regards the mentor, he is not fully able to assume a father role through adoption. Jonathan, however, requests a strong and lasting emotional and educational relationship. His mentor has become 'a relative' and vice versa.

B. Cyrulnik speaks of a mentor of resilience and places mentoring within multi-attachment.

Mentoring is complementary to foster care, and pursues similar aims: to develop self-esteem, socialisation and academic learning within the context of creating an emotional and educational bond. When adoption is not feasible, it makes it possible to 'live together' with a sense of family belonging in the long term. As regards the psychological profiles characterised by profound trauma, it is necessary to not limit oneself to 'adoption or nothing', whilst considering long-term life projects of this kind based on the resources and limitations of the child and the family.

References:

¹ Available in French at: <https://www.service-public.fr/particuliers/vosdroits/F937>.

² Dollé, C and Neuburger, R (2005). *Après l'adoption, comment font les parents?*. Ed. Desclée De Brouwer. For further information: Liebert, P (2015). *Quand la relation parentale est rompue*. Dunod.



INTERDISCIPLINARY RESOURCES

ISS's practical guide for children on the move: From protection towards a quality sustainable solution

By publishing this manual¹ in June 2017, ISS is calling for greater collaboration between countries, governments and their respective child protection agencies and organisations, and for the establishment of effective transnational referral processes for the protection of children on the move.

Today, an ever-increasing number of children and young people are on the move to escape poverty, conflict, abuse and environmental hardship. However, for the estimated 40 million international migrants under the age of 20, the life they find can often be more traumatic than the one they left behind. In theory, it is the responsibility of individual countries to protect children wherever they are, regardless of origin – as set out by the UNCRC. However, few countries have specific provisions to protect migrant children – far less a collaborative and coordinated model to identify, support and reintegrate vulnerable children across borders. ISS's recent handbook is both, a practical roadmap for policy-makers, and a daily guide for professionals working with children on the move – from humanitarian workers and border staff to social workers responsible for creating individualised

History and purpose of this manual

The handbook has its roots in West Africa, where ISS Switzerland developed an eight-step model with local partners, which has been nationally and regionally recognised as an intercountry referral system². The West African Network for the Protection of Children

'The richness of this manual is that it is based on the daily casework of ISS members and specific projects targeting this group of children in all regions of the world (...). It is a hands-on tool that will help workers ensure that the child's best interests are at the heart of decision-making. We recommend the manual's wide dissemination and encourage all to continue to work collaboratively to ensure that quality sustainable solutions are found for every child.'

Foreword by Pablo Ceriani (UN Committee on Migrant Workers) and Benyam Dawit Mezmur (UN Committee on the Rights of the Child)

Case example

In 2015, Children and Families Across Borders (CFAB, ISS United Kingdom) received a call from a UK local authority about an 11-year-old Syrian girl called Rana. Her family had fled the civil war to Turkey, from where Rana had travelled unaccompanied to the UK to stay with her extended family. However, UK authorities grew concerned that Rana was not happy in her new surroundings. Although she had been in the UK for eight months, she was not attending school and had started saying that she wanted to return to Turkey to be with her immediate family. There were even fears that she was being exploited as a domestic slave. The local authority suspected that it may be in Rana's best interests for her to return to Turkey. However, this required making sure her family were able to provide a safe living environment – something the local authority lacked the overseas contacts, expertise and capacity to find out. It was for this reason they contacted CFAB, who were able to contact partners in Turkey and arrange for them to locate and visit the family to conduct a comprehensive assessment. They discovered that Rana's father had found regular work and had moved his family into safe housing. As a result of the assessment, the local authority concluded that there were no grounds for overriding Rana's clear wish to return home. Rana was soon returned to her family, where her welfare continues to be regularly monitored by Turkish local authorities. Thanks to CFAB's work with its ISS network, Rana is now attending school once more.

Sources: CFAB, ISS Turkey; ISS Manual pp. 91 and following.

supports more than 1,500 children a year. A similar handbook has been adapted to address disparities in the treatment of vulnerable children in different regions of Switzerland³. This international handbook is the next step – enriched by the experiences and practices of ISS members worldwide in the light of the important challenges to children's basic rights related to the continuity of care and its quality across borders. To safeguard children on the move, cross-border issues of child migration must be addressed with a transnational approach. States need to place every child at the

centre of decision-making, and tackle the challenges with the following commitments:

- provide children on the move with individualised, child-centred, sustainable and quality solutions;
- develop and follow harmonised care standards to ensure quality and continuity of transnational care;
- establish adequate case monitoring and follow-up mechanisms across borders.

Eight essential steps to ensure cross-border case management

For the development of a well-connected, transnational network of child protection professionals, the guide proposes an eight-step

procedure:

1. **Arrival, detection and identification:** Detecting and identifying children on the move and vulnerabilities to be addressed (identity, immediate protection and care needs);
2. **Immediate support and care** to meet the child's immediate physical and psychological needs (e.g. stabilise his or her situation and secure basic human rights);
3. **Assessment of the child's situation** aiming to collect all necessary information to determine steps 4 to 7;
4. **Temporary integration and quality care arrangements** in the host country (an individual support plan that assures quality care and personal development during their stay);

This ISS handbook has been developed to encourage greater solidarity between countries when it comes to the integration (or reintegration) of children on the move, and to establish effective transnational systems for their protection. It is both a practical guide and an aspirational ideal that can contribute to transforming the outcomes of children on the move.

References:

¹ ISS (2017). *Children on the move – From protection towards a quality sustainable solution. A practical guide*; available at: http://www.iss-ssi.org/images/Childrenonthemove_Guide.pdf.

² For further information, see: <http://www.resao.org>.

³ For further information, see: <http://www.ssi-suisse.org/fr/manuel-de-prise-en-charge-des-mineur-e-s-non-accompagne-e-s-en-suisse/117>.

READERS' FORUM

Tunisia: Adoption and *kafalah* from the perspective of children's rights

In this article, Hatem Kotrane, Professor of Law at Carthage University, Member and former Vice-President of the Committee on the Rights of the Child, shares his views on two measures of child protection, which co-exist within the Tunisian legal system: adoption and kafalah.

Since Tunisia ratified the UNCRC, some progress has certainly been made, but its adherence to the rights of the child only masks a reality. When faced with persistent problems (e.g. alarming numbers of children abandoned or on the streets), we should examine the issue of adoption and *kafalah* in the light of the rights of the child. It is symptomatic and distressing that the debate on adoption in Tunisia has, recently, been initiated not from the perspective of the improved implementation of the rights of the child, but within the framework of a campaign aimed to call into question the very concept of adoption. We are, once again, in a position to reiterate that adoption constitutes – in equal terms, if not more – a response to the right of the

5. **Evaluation in the country of origin** (locating and evaluation of the child's family and community for eventual family reunification in the country of origin);

6. **Determination of a sustainable solution** in the child's best interests (practical, sustainable solution in the country of origin, the host country or a third country);

7. **Implementation of the sustainable solution** (action plan to implement the sustainable solution, with the child's participation); and

8. **Monitoring and follow-up** (support in agreement with the child, to ensure continuity of development, well-being and adequacy of the life protect).

abandoned child to an alternative form of protection, when compared with *kafalah*. The debate should focus on the abandonment of children and the persistent discrimination between children, rather than on adoption.

Adoption: A response to the right to life of an abandoned child

Very early on, the Tunisian law-maker was aware of the issue of abandoned children, which particularly motivated them to adopt the Law of 1958 (see attached box), and this was certainly a major step forward, and made Tunisia an exception among Arab-Muslim countries 31 years before the adoption of the UNCRC. However, this accomplishment of prime importance has met with public opposition from numerous judges,

who try, at all costs, to give priority to unofficial guardianship (*kafalah*). Why does so much hostility exist towards the figure of adoption, often poorly presented by the lawyers themselves? Together with the abolition of polygamy, the suppression of unilateral repudiation and its replacement by legal divorce, adoption would be the evidence of the independence of the law-maker in breaking away from classic Islamic Law. Such a presentation must, in reality, be qualified:

- First of all, it does not take into account that, although it is forbidden by the *Fiqh* [Muslim jurisprudence and case-law], adoption did occur in Tunisia well before independence in 1956, thanks to judicial files or *Hiyal* [subterfuges] aimed at circumventing the prohibition, which Tunisian society refused to accept. In real terms, this entailed establishing parentage by creating a false civil status, or by initiating a lawsuit, which contested the supposed *nassab* [parentage], and which resulted in a judgement confirming the paternal parentage previously called into question. All these manoeuvres revealed the importance of adoption, which gives a person without a parental bond the legal status of a legitimate child.

- Secondly, the current perception of adoption belies the origins of the Law of 1958. Although the law-maker wanted to make an open display of the adherence of the new State to the values of freedom and equality between men and women, this Law in fact originated in the social environment of the time, and it would be misleading to impute it to idealistic and political speculation. However, the Law of 1958 needs to be situated within its historic context. During the very cold winter of 1955-1956, two children were found dead in the street; and public and private organisations sought to take in these deprived children, the numbers rising rapidly to several thousands. In 1957, the *Erradhi* [infant] Centre was founded at the Bardo to care for babies. A little later, in July 1958, the public authorities

opened the National Institute for the Protection of Children at Ksar Said.

A diversity of forms of care

More than half a century later, adoption is considered in an equal, or even superior, response to the right of the abandoned child to grow up in a family environment. The Law of 1958 still complies today with Article 21 of the UNCRC, by offering various forms of care: state guardianship, unofficial guardianship (*kafalah*) and adoption, as well as foster care (Law No. 67-47 of 1967 on foster care¹). In spite of the multiplication of the different types of care for abandoned children, it can be observed that

unofficial guardianship (*kafalah*) and foster care do not meet with sufficient approval from Tunisian families. The explanation may be found in the attitude of these families, who prefer to guarantee a real parentage through adoption.

Those children, who are neither adopted nor placed in *kafalah* or other form of family-type environment, are generally obliged to live in an institution, and are therefore condemned virtually inevitably to a life of social poor

adjustment, and this despite the praiseworthy efforts of the state and the specialised voluntary associative structures. This means that, over and above the constant recommendations to improve the different forms of care, there emerges one major conclusion: currently, adoption remains the ultimate opportunity for the highest number of abandoned children to be guaranteed a lasting right to grow up in a family environment, and even a right to life itself.

Strengthening prevention and abolishing all forms of discrimination

Irrespective of the circumstances, priority must be given to the protection of the biological family environment, while ensuring that the withdrawal from the family and foster and residential care should be used only as a last resort. This should

Tunisia's model

Tunisia ratified the UNCRC on 30 January 1992, and incorporated it into its domestic legislation, including through amendments to the Code on Child Protection in 1995.

Law No. 58-27 of 4 March 1958 on public guardianship, unofficial guardianship, and adoption provides for the coexistence of the *kafalah* and adoption.

Of the 496 children cared for by the National Institute for the Protection of Children in 2015, 88 were adopted, 21 were placed in *kafalah*, and 84 were placed temporarily in foster care.

For further information on recent numbers, see [Rapport national sur la situation de l'enfance en Tunisie](#) for the year 2015.

come about by encouraging preventive measures through support services to help parents assume their responsibilities, and by attacking the deep-rooted causes of child abandonment. These causes include socio-economic problems and persistent discrimination, in particular against single mothers and their children. The debate should therefore target not so much adoption, but rather the prevention of child abandonment, in accordance with the Concluding Observations and recommendations expressed by the Committee on the Rights of the Child in June 2010: the Committee remained '(...) concerned that discrimination against children born out of wedlock continues to exist, as does discrimination against single mothers owing to negative social attitudes, which has a negative impact on children as demonstrated, inter alia, by the high

rate of abandonment and the existence of some cases of infanticide of children born out of wedlock'². The situation, which exists in other countries governed by Muslim Law, reinforces the need to maintain and consolidate a policy of prevention, both through those measures required to establish the identity of the child born out of wedlock, including registration at birth, and establishment of parentage and nationality, as well as those measures, which aim to ensure that the child benefits from alternative care in a family-type environment. With regards to this subject, the Committee reminded numerous countries, such as Saudi Arabia, Iran, Lebanon, Oman, Pakistan and Qatar³, of the importance of implementing the standards laid down in the Guidelines for the Alternative Care of Children.

Despite the obstacles faced by Tunisia and the advantages/challenges of each alternative care option, the example of Tunisia demonstrates that the coexistence of kafalah, adoption and foster care is possible within a single legal system, and that it can benefit different profiles and situations of children deprived of their family.

References:

¹ Article 2 of the Law of 1967: a temporary solution for children. The family receives material assistance from the state, and, in return, ensures the care and maintenance of the child, as well as his or her education during the agreed period, at the end of which the placement could be '*transformed into unofficial guardianship or even adoption, in accordance with the Law of 4 March 1958*'.

² Paras. 25-26 of the Concluding Observations, CRC/C/TUN/CO/3, 2010.

³ See: Concluding Observations: Saudi Arabia, CRC/C/SAU/CO/3-4, 24 October 2016; Iran, CRC/C/IRN/CO/3-4, 13 March 2016; Lebanon, CRC/C/LBN/CO/4-5, 22 June 2017; Oman, CRC/C/OMN/CO/3-4, 14 March 2016; Pakistan, CRC/C/PAK/CO/5, 10 July 2016; Qatar, CRC/C/QAT/CO/3-4, 22 June 2017.

ISS ACTION WORLDWIDE

Algeria: Promoting a child-centred approach to the protection of children deprived of their family

This pilot project, carried out jointly by ISS Switzerland¹ and UNICEF Algeria, covers various aspects and has two main objectives: improving the quality of residential care for children deprived of their family (according to the [Quality4Children Standards](#)) and consolidating the kafalah system.

Despite a well-established and effective child protection system, children placed in residential care and *makful* children are still the most vulnerable children in Algeria. In response, ISS partnering with practitioners and competent authorities in Algeria², is working on a project to improve the protection of children deprived of their family and ensure an individualised approach.

Background to the project

In 2007, the ISS Switzerland was invited to contribute to the 2008 – 2015 National Action Plan for Childhood, and implement the 2009 child protection reform. Over the following years (2011-2014), a variety of courses and seminars were offered throughout the country on topics, such as international standards, children's rights, maintaining family-based care, strengthening the

kafalah system, and professional capacity-building in residential care.

In 2016, the ISS Switzerland, in collaboration with its local partners, developed two practical guides for professionals. Firstly, on *kafalah* and the screening, matching, preparation and monitoring of placements; and secondly, on the 'Quality4Children' methodology in an Algerian context³.

Improving the quality of residential care

Alarming findings show that many residential care placements are unjustified and placements are not systematically reviewed. Children's reintegration into their family is not prioritised, and there is little effort to support this, nor maintain family contact. In the project's three target regions, children placed in care made up 1% of the total population. Often, these placements were due to the family having insufficient resources.

International standards require that, in addition to all efforts at family reintegration and the promotion of family-based care, quality residential care must be guaranteed. Therefore, in line with the 'Quality4Children' standards, the project focuses on the processes that lead to the decision to place the child in residential care, the placement itself, and the child's transition into/out of the residential care placement. The project proposes the following actions, which are designed to support, in its implementation, an effective system that respects the rights of the child:

- In each institution in the three pilot *Wilayas* (local administrative divisions), individual screening of all children deprived of their family;
- Creating a monitoring plan (individual life project) for each child;
- Clarifying each institute's mandates and responsibilities;

- Reinforcement of interinstitutional cooperation (justice, social services, residential care institutions).

Assessment factsheets on the situation of the child and of the family

- Basic information on the child and family;
- Resources and skills of the parents for the care and education of their children (housing, income, health, social life, etc.);
- Motives of the placement in institution, expected outcomes and objectives (deprived of a family, withdrawal of parental responsibility, grounds and circumstances of the placement, life project, etc.);
- General description of the child (health, physical and emotional development, relations to others, socioprofessional project, etc.);
- Summary and analysis by the assessor.

Consolidation of the *kafalah* system

With regards to the protection of *makful* children, challenges remain in terms of: their precarious legal status and the possibility of revocation at any time; non-inclusion in the family record book; and the high risk of placement breakdowns (owing to the lack of

preparation and monitoring). These challenges are of particular concern in the case of direct/relative *kafalah* placements, which take place without any state supervision. In an attempt to remedy this situation, the actions proposed by ISS are intended to:

- provide support to single mothers, and thereby prevent relinquishment;
- encourage *kafalah* placements as an alternative to institutionalisation; and
- reinforce screening, preparation, supervision and monitoring of the placement.

Alongside its local partners, the ISS Switzerland seeks specific changes to *kafalah's* legal framework, which will ensure that children deprived of their families are treated equally in comparison to other Algerian children. ISS's recommendations include:

- revising the legal eligibility criteria for *kafil* parents and monitoring placements;
- reinforcing the legal status of the *makful* child, removing the right to revoke a *kafalah* placement, and allowing the child to be registered in the family record book.

Progress and challenges since the project's launch

This project is the start of a process of personalising children's care. However, there remain challenges in interinstitutional cooperation between relevant Ministries, and ensuring that professionals at all levels make decisions in the best interests of the children concerned.

Nonetheless, during the project, some operational implementation of the 'Quality4Children' standards has been achieved, particularly through the development of professional tools. For example, four questionnaires have been produced, designed to

guide the assessment of each child's situation and the objectives to be achieved during the placement (see attached box). In addition, the pilot group has gained awareness of the value of children, and of their participation.

The ISS/IRC would like to congratulate ISS Switzerland and its Algerian partners on this comprehensive project, aimed at facilitating cooperation amongst varied stakeholders and to develop tools for alternative care practitioners in order to make child-centred decisions. This wide-ranging approach demonstrates, once more, that a *kafalah* system must be part of an integrated child protection system, with mechanisms of prevention as well as professional mechanisms for screening, preparation, supervision and monitoring of each placement.

References:

¹ For further information, see: <http://www.ssi-suisse.org/en>.

² Local partners in the project: Ministry of National Solidarity, Family and Women's Rights (MSNFCE), Department of Social Action and Solidarity, and institutions (nurseries and residential care) in the three *Wilayas* (Alger, Oran and Annaba).

³ The above-mentioned documents can be requested at ISS Switzerland.

FORTHCOMING CONFERENCES AND TRAININGS

- **France:** **a)** *Accompagner les liens enfants-parents en pouponnière*, Pikler Lóczy, Paris, 11–12 September and 9–10 October 2017; **b)** *Cet enfant qui nous « déborde », Enfants difficiles, professionnels en difficultés?*, Pikler Lóczy, Paris, 21–22 September and 12–13 October 2017. For further information, see: <http://pikler.fr/>; **c)** *Les migrants et leurs familles : travailler « l'entre-deux »*, COPEs, Paris, 25–28 September 2017; **d)** *L'enfant placé*, COPEs, Paris, 25–28 September 2017; **e)** *Se séparer et être séparé*, COPEs, Paris, 11–14 September 2017; **f)** *Maltraitance à enfants*, COPEs, Paris, 25–29 September 2017; **g)** *Adoption, attachement et mémoire du corps*, COPEs, Paris, 11–14 September 2017. For further information, see: <http://copes.fr/>.
- **Hungary:** *Quality of Alternative Care for Children and Youth in Europe – The Past, the Present, the Future*, Conference and Seminar, FICE Europe, Esztergom, 18–19 September 2017. For further information, see: <http://ficeinter.net/wp-content/uploads/2017/05/FICE-Europe-20th-Anniversary-Conference-2018.docx.pdf>.
- **Serbia:** *Child poverty as social investment and economic reform program*, MODS Network of Organizations for Children of Serbia, Belgrade, 11–12 October 2017. For further information, see: <http://zadecu.org/en/>.
- **Switzerland:** **a)** *Mes « tissages »*, Art-therapy group for adolescents, Espace A, Geneva, September 2017 – May 2018 (monthly meetings); **b)** *Devenir parent d'un enfant grand*, Espace A, Geneva, 14 September 2017. For further information, see: http://www.espace-a.org/site_2015/wp-content/uploads/2017/06/Programme-Espace-A-2017-18.pdf.
- **The Netherlands:** *ISPCAN European conference on child abuse and neglect*, International Society for the Prevention of Child Abuse and Neglect, The Hague, 1–4 October 2017. For further information, see: <https://www.ispcan.org/>.
- **United Kingdom:** **a)** *Making good fostering assessments*, Workshop, CoramBAAF, Leeds, 13 September 2017; **b)** *Fostering for adoption: Providing and managing a service*, Workshop, CoramBAAF, Leeds, 20 September 2017. For further information, see: <https://corambaaf.org.uk/>.
- **World:** *Child Rights Situation Analysis*, Online course, The global human rights education and training centre (HREA), 1 November – 12 December 2017, early-bird registration: 1 September 2017. For further information, see: <http://www.hrea.org/learn/elearning/>.

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