What is kafala?

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

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

**Domestically:**

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

**Internationally:**

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