



THE NATIONAL FRAMEWORK FOR THE IMPLEMENTATION OF KAFAALAH CARE FOR CHILDREN IN KENYA

2022



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FORWARD

The significance and role of the family in the care, nurturing, growth, and development of children is anchored in the United Nations Convention on the Rights of the Child (UNCRC). The Constitution of Kenya recognizes the family as a fundamental unit of society where the responsibility of childcare is bestowed on.

The National Care Reform Strategy for Children in Kenya (2021) comes as a response to the requirements of the UNCRC. The strategy seeks to give national guidance on three pillars: Prevention and family strengthening, enhanced alternative family care services, and tracing, reintegration, and transitioning of children from residential care to family and community-based care for all children in need of protection and care. Kafaalah is a child protection measure that is practiced by Muslims. It is based on the Islamic Law. Islamic law does not recognize the adoption of children as adoption changes the lineage of a child therefore Kafaalah becomes a solution of choice for children without parental care and those at risk of separation. The UNCRC gives recognition to Kafaalah as an alternative care option for children.

To this end, The National Framework for the Implementation of Kafaalah Care for Children in Kenya (2022) will guide how to care for children in need of protection and care within the Muslim community.

The Directorate of Children's Services (DCS) jointly with the relevant Muslim stakeholders with the support of partners realized the need to develop this framework which will provide harmonized national guidance for childcare practitioners to improve the quality of family support and alternative care services in Kenya.

The Ministry is calling upon all partners and stakeholders in the childcare sector to join hands in complementing the Government's efforts to transform the childcare system from institution-based care to family and community-based care. The successful implementation of this framework will make it possible for children within the Muslim community in Kenya to enjoy their right to grow up in a family environment and receive appropriate care for wholesome growth and development.

Nelson Marwa Sospeter, CBS
Principal Secretary
State Department for Social Protection

PREAMBLE

The population of Muslims in Kenya is 11% and a majority of them are found in the Coastal and North-Eastern parts of Kenya with a significant number spread in major towns in the Republic. It is in these same places that Charitable Children's Institutions (CCIs) have over the years thrived to cater to the growing number of orphan children in the urban centers. The Muslim community takes care of orphaned, abandoned, and neglected children in the family set up but with a more focus on children of close relations.

Islam protects the rights of children even before birth and that protection is extended throughout as they grow into adulthood. The Qur'an requires parents to provide their children with food and clothes according to their means. The Qur'an asks those entrusted with orphans to protect and care for their wealth and use it favorably for the benefit of the orphans. It also urges them to deliver back the wealth to the orphans when they have reached maturity.

Taking care of orphans is a charitable act in which one earns rewards from God. Additionally, it is a humane act that Islam enjoins on the faithful to alleviate suffering from the vulnerable.

The National Framework for the Implementation of Kafaalah Care for Children in Kenya (2022) has been developed to guide the process of taking in vulnerable children by families, whether they are related to the specific families or not and bringing them up the same way they bring up their biological children. It is an important and historic document for fellow Muslims in Kenya as there has not been much attention by Muslims to the subject of Kafaalah as an alternative to adoption and other forms of care.

The framework will also guide key stakeholders in childcare, protection, and those in the justice system in making decisions that are in the best interest of the child.

Hon. Ahmed Shariff Hussein Al- Muhdhar
Chief Kadhi of the Republic of Kenya

ACKNOWLEDGMENTS

The National Framework for the Implementation of Kafaalah Care for Children in Kenya (2022) was developed through a series of highly consultative, inter-sectoral, and multi-agency ideation meetings in a process involving key stakeholders.

The Directorate of Children's Services (DCS) was supported by a Kafaalah Technical Working Team to develop the framework. The Technical Team comprised of an inter-sectoral and multi-disciplinary team of State and non-state professionals working in areas related to care reform. The Team was tasked to undertake a comprehensive review of relevant literature and in-depth consultation to finalize the draft framework.

We are highly indebted to the invaluable support from the National Council on the Administration of Justice (NCAJ), Kadhi Court representatives, NCCS, CSOs SUPKEM, CIPK, and CMTPA.

In addition, we are thankful to the Muslim Imams, Sheikhs, Ustadhas from the various communities that were involved in the process for their commitment to this noble task.

Further, we appreciate Changing the Way We Care (CTWWC) and UNICEF for their financial and technical support.

Shem Nyakutu
Secretary Children's Services

ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
AFC	Alternative family-based care
BIC	Best Interest of the Child
BID	Best Interest Determination
CCI	Charitable Children's Institutions
CIPK	Council of Imams and Preachers of Kenya
CHVs	Community Health Volunteers
CM	Case Management
CMTPA	Council of Muslim Teachers and Preachers Association
CPVs	Child Protection Volunteers
CTWWC	Changing the Way We Care
CPMIS	Child Protection Management Information System
CSOs	Civil Society Organizations
CRC	Convention of the Rights of the Children
DCS	Directorate of Children's Services
INGOs	International Non- Governmental Organization
MOE	Ministry of Education
MOH	Ministry of Health
NCAJ	National Council on the Administration of Justice
NCCS	National Council for Children Service
NGAO	National Government Administration Officers
PBUH	Peace Be Upon Him
SOP	Standard Operating Procedure
SUPKEM	Supreme Council of Kenya Muslim
UN	United Nations
UNICEF	United Nations Children's Fund
UNCRC	United Nations Convention on the Rights of Children

DEFINITION OF KEY TERMS

Alternative care¹: Is a formal or informal arrangement whereby a child is looked after at least overnight outside their parental home, either by decision of a judicial or administrative authority or duly accredited body, or at the initiative of the child, his or her parent(s) or primary caregivers, or spontaneously by a care provider in the absence of parents.

Biological parents: refer to the birth family into which a child is born. It can mean both parents if they are together, or the mother, or the father.

Case management: Is the process of ensuring that an identified child has his or her needs catered for, cared for, protection and support met. This is usually the responsibility of an allocated social worker who meets with the child, the family, any other caregivers, and professionals involved with the child to assess, plan, deliver or refer the child and/or family for services, and monitor and review progress.

Child: Is an individual who has not attained the age of eighteen years².

Child Placement: Is a social work term for the arranged out-of-home accommodation provided to a child or young person on a short or long-term basis.

Continuum of Care³: includes a range of care options for children who have been separated or are at risk of being separated from parental care reflecting the contents of the UNCRC and the Guidelines for the Alternative Care of Children. It includes family strengthening, alternative family, and community-based care options, and residential care options.

Imam: a person leading prayer in a mosque.

Kadhi: a judicial officer (magistrate/judge) presiding over Kadhi's court.

Kafaalah⁴: Is the provision of alternative care within the Islamic faith⁵ and occurs without altering the child's original kinship relations.

Kafiil(ah): Is a person or family taking a child under Kafaalah.

Makfuul(ah): Child deprived of parental care for diverse reasons and placed in Kafaalah.

Reintegration: Is the process of a separated child making what is anticipated to be a permanent transition back to his or her immediate or extended family and the community (usually the community of origin), to receive protection and care and to find a sense of belonging and purpose in all spheres of life.

¹ Guidelines for Alternative Family Care for Children in Kenya (2014).

² Article 260 of the Constitution

³ Faith To Action (2019). Continuum of Care and Child Placements [webpage]. Retrieved from, <<http://www.faithtoaction.org/family-care-toolkit/continuum-of-care/>>

⁴ *ibid* Guidelines for AFC 2014

⁵ In extenuating circumstances, the order can be appealed via the Court of Appeal, or varied via the Court which issued the order.

Reunification: Is the physical reuniting of a child and his or her family or previous caregiver with the objective of this placement becoming permanent.

Supported Independent Living: Refers to arrangements in which a young person is supported in his/her own home, a group home, hostel, or other forms of accommodation, to become independent.⁶

Ustadha: A female religious teacher

Wasiyah: Will⁷.

Yatim: a child whose father is dead⁸ (**Ajiiy:** a child whose mother is dead. **Latiim:** a child whose parents are dead⁹)

Young people: This can be understood as older children, as well as those aged eighteen and over who are still residing in children's institutional care or are care leavers aged eighteen and over requiring an extension of support¹⁰.

⁶ Guidelines for the Alternative Family Care of Children in Kenya

⁷ In this context it refers to an oral statement or a document in which the will maker appoints a guardian to care for his/her child(ren).

⁸ A pupil or a child who has not reached or completed puberty see. *Mausu'a Al fiq al kuwaitiyah vol 45 pg. 254*

⁹ See <https://www.islamweb.net/ar/fatwa/6580285>

¹⁰ Definition as per the national care reform strategy for children in Kenya.

CHAPTER ONE: INTRODUCTION TO THE FRAMEWORK

1.1 Content Overview

The framework includes:

- Definition of key terms.
- Introduction to the framework.
- Objectives of the framework.
- Background information on Kafaalah.
- The guiding principles.
- The actors, roles, and coordination.
- Monitoring and evaluation.
- Annexes.

1.2 Intended audience

This Kafaalah framework has been developed to primarily guide state and non-state childcare actors¹¹ to support children in need of Kafaalah care to ensure that the placement of children and services provided to the child(ren) are systematic, safe, and in a standardized manner. Other users may include:

- Care Reform Committees¹²
- Area Advisory Committees
- Child Protection Volunteers
- Police officers
- Chiefs
- Kadhi Court
- Children court
- Court users committee
- Health personnel such as nurses and
- Civil registrar
- Mosque Committees
- Community-based Health Volunteers
- Social Workers
- Caseworkers
- Civil Society Organizations
- Kafiil
- Civil register
- Community members
- Children Officers.

1.3 Effective use of the Kafaalah Framework

This framework should be used when Kafaalah care is deemed necessary. Any placement into Kafaalah care relies upon rigorous case management. However, some of the Kafaalah care placement may not fully follow the entire case management process. Therefore, whether, the placement will follow a rigorous case management process or not, the process must be followed and completed to determine that the care is necessary and to guide whether Kafaalah care may be suitable to meet the child's unique needs.

The use of the Kafaalah standard operating procedure (SOP) that sets out the relevant procedures in the establishment and support of Kafaalah placements is encouraged¹³. These SOPs should be utilized together with the case management guidebook (2019).

¹¹ Caseworkers/social workers, Kafiils, case managers, Imams, and Ustadhas, and other stakeholders

¹² Definition provided by NCCS in the National Care Reform Strategy for Children. The name care reform committee replaces the alternative care committees.

¹³ The SOP does not include Kafaalah sponsorship arrangements

1.4 Justification

For a long time, the Muslim children in need of care and protection have been housed in institutional centers (children's homes, orphan centers) and have been deprived of the opportunity to grow and developed in a family setup. Kenya is part of the global shift from overreliance on institutions as a model of care for children towards family and community-based care. The Muslim donors continue to support the centers but have also shifted their focus to supporting children within their families and community.

The framework, therefore, aims to formalize and strengthen Kafaalah as an alternative care system that encompasses all forms of care. It further intends to provide for long-term alternative care for children but not through adoption which is not accepted by the Islamic Law in accordance with the global as well as country care reform shift.



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CHAPTER TWO: OBJECTIVES

2.1 Overall Objective

This framework has been developed as a guide for stakeholders around Kafaalah care to support the operationalization of the Guidelines for Alternative family care of children in Kenya, 2014.

2.2 Specific Objectives

The specific objectives of this framework include:

- To provide effective coordination, implementation, and reporting mechanism of Kafaalah care.
- To define the roles and functions of all stakeholders in the implementation of Kafaalah care.

CHAPTER THREE: BACKGROUND

The United Nations Convention on the Rights of the Child (UNCRC), the UN Guidelines for the Alternative Care of Children, the African Charter on the Right and Welfare of the Child (ACRWC), the Kenyan constitution, Children Act 2001, Islamic law, and other legal frameworks, recognize the vital and irreplaceable role of a family environment for the growth and development, well-being, and protection of children. In particular, the Government of Kenya has hinged the right of every child to parental care within the Constitution and the Guidelines for the Alternative Family Care of Children in Kenya (2014). These instruments clearly state that all efforts should be made to preserve families, prevent child-parent separation, and return separated children to their families and communities.

The UN Guidelines recognize Kafaalah as an ‘appropriate and permanent solution’ for children who cannot be kept in or returned to their original families. Kafaalah is thus able to provide stability and continuity for the progressive growth and development of the child.

3.1 The Continuum of Care

Includes a range of care options for children who have been separated or are at risk of being separated from parental care reflecting the contents of the UNCRC and the Guidelines for the Alternative Care of Children. It includes family strengthening, alternative family, and community-based care options, and residential care options.

Once alternative care has been deemed necessary through the case management processes, the continuum of care, as described in the Guidelines for the Alternative Family Care of Children in Kenya (2014), should be followed. The continuum requires that all family and community-based care options are prioritized and that all efforts are made to place children in need of alternative care into family-based or community-based options. Residential care options should only be considered when all family and community-based options have been exhausted.

The framework emphasizes the importance of placing children in family based Kafaalah care options. It recognizes that families are of critical importance to children’s growth and development.

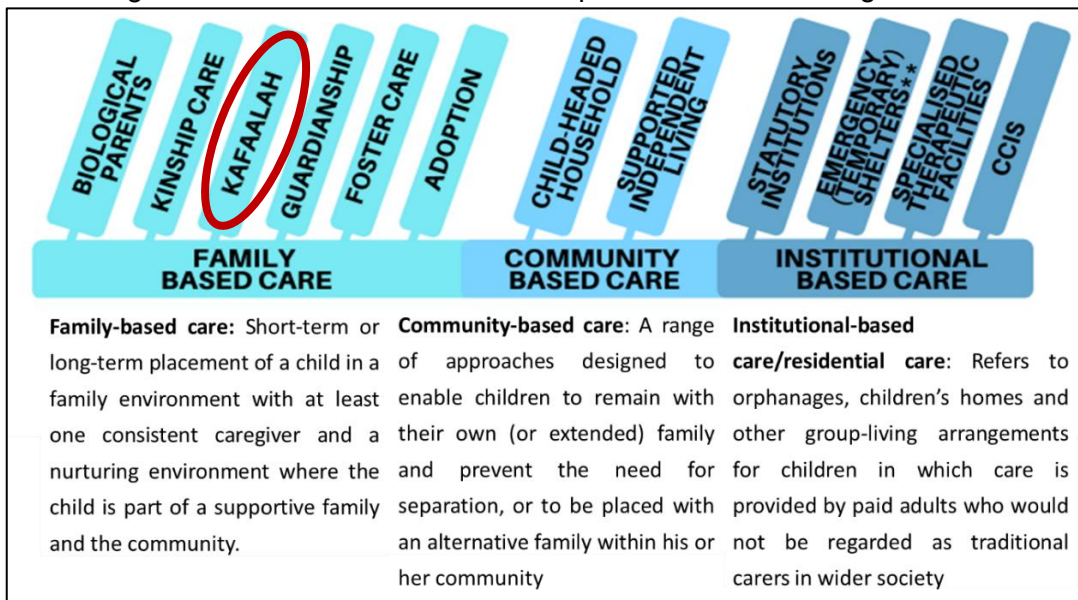


Figure 1: The Continuum of Care

3.2 Perspectives of Kafaalah Practices

3.2.1 Kafaalah from the Islamic perspective

3.2.1.1 Pre-Islamic History

Adoption was recognized and practiced in pre-Islamic Arab societies, whereby adopted son become as one born to their adoptive parents. Consequently, the rules of affinity and consanguinity were applicable in which case marriage between an adopted child and any member of the adoptive family was prohibited. The story of the Prophet Muhammad (Peace Be Upon Him) and Zayd consequently abolished the adoption practice in accordance with the Holy Qur'an Chapter 33(4-6)¹⁴.

The prohibition of adoption was further fortified since pre-Islamic Arabia adoption was practiced together with certain acts that were considered legal fiction with no place in Islam. For example, a family could disclaim a member and a person could renounce his biological family.

3.2.1.2 Kafaalah Practices in Islam

Kafaalah¹⁵ is viewed as a good practice deed by Muslims and widely by all Islamic communities. Kafaalah is a voluntary alternative childcare practice considered as a social norm that brings the caregiver closer to Allah.

From a more contemporary perspective, Kafaalah as a child protection measure is now enshrined in legal systems that are based on or influenced by Islamic law, especially relating to filiation, paternity, marriage, and inheritance.

Protecting life including all children is a moral duty prescribed by the Qur'an. Many verses of the Qur'an address the issue of orphans and the vulnerable (generally covering all children deprived of parental care) and the duties and proper conduct of the believer towards those categories. According to these texts, orphans should not be mistreated or cheated, but be treated fairly, kindly, and generously¹⁶. The Qur'an encourages the charitable upbringing of orphans and describes Allah as their ultimate caregiver. According to Islamic tradition, the Prophet Muhammad (Peace Be Upon Him), who had lost his father, asked believers to provide for vulnerable children irrespective of whether related to them or not.

In Islamic *fiqh*¹⁷, a foundling¹⁸ is considered a fellow Muslim and as such a holder of the same rights and bearer of the same duties as others. The classical *fiqh* books discuss extensively his or her rights as well as the duties and the proper conduct of the finder of such a child. In these texts, the finder of an abandoned child has the individual duty to care for the baby if the child is at risk of dying or the person voluntarily took custody of the baby. Otherwise, taking care of a

¹⁴ According to the Holy Qur'an: 30 ... nor hath He made those whom ye claim [to be your sons] your sons. This is but a saying of your mouths. But Allah sayeth the truth and he showeth the way. Proclaim their real parentage. That will be more equitable in the sight of Allah. And if ye know not their fathers then [they are] your brethren in the faith and your clients.

¹⁵ There are three features which distinguish Kafaalah from adoption: non-severance of biological ties; non-transference of inheritance rights; and no change in the child's family name.

¹⁶ Holy Qur'an, Chap 93 v 9 'Therefore, treat not the orphan with harshness' also the early life of the Prophet, having himself been left a destitute orphan, greatly influenced the emphasis on caring for orphaned/abandoned children.

¹⁷ Theory or philosophy of Islamic Law

¹⁸ JJ Nasir The Islamic law of personal status (2002) 155. 'A foundling is a newborn baby, abandoned by its parents on grounds of poverty or shame [or young child found in the street and who does not know his family] and so unable to fend for itself. Care of a foundling is a religious duty, if there is any risk that the baby might otherwise die.'

foundling is considered to be communal responsibility and the non-fulfillment of this religious duty is a communal sin¹⁹.

Further, traditional records reveal that Prophet Muhammad (PBUH) once asked, “Do you like your heart to be tender, and your wishes fulfilled? Be merciful to the orphan, touch softly his head, and feed him from your food, and your heart will be tender, and you will attain your wishes”.²⁰

Another *hadith* on the command to treat orphans and abandoned children with kindness, mercy, and dignity. Prophet Muhammad (PBUH) stated:

“A person who touches with compassion the head of an orphan will be rewarded for each lock of hair his hand touches”.

“Whoever treats kindly a female or male orphan who is under his sponsorship (Kafaalah), I shall be his companion in Paradise”²¹.

“I and the person who looks after an orphan and provides for him, will be in Paradise like this’ (while putting his index and middle fingers together)”.

To be acceptable, such good deeds must be based on the correct intention (*niyyah*), which is to do it with sincerity and without ulterior motives.

3.2.2 Legal perspective: Kafaalah in International and National Laws.

3.2.2.1 International perspective:

Kafaalah is regarded as an internationally recognized form of alternative care for children deprived of their natural family environment as well as one of the measures for providing a global system for improving the protection of children in international situations. Kafaalah care processes and procedures in Kenya are guided by the following legal instruments:

Convention on the Rights of the Child, 1989

Article 20

- 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in the environment, shall be entitled to special protection and assistance provided by the State.*
- 2. State Parties shall in accordance with their national laws ensure alternative care for such a child.*
- 3. Such care should include, inter alia, foster placement, Kafaalah of Islamic law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard should be given to desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.*

¹⁹ Mausu’a al fiqh alkuwaitiyyah vol. 35 pg. 310-311

²⁰ Related by Abu-Al-Darda, al Tabanani,

²¹ Al-Tabarani in Al-Mu’jam al-Kabir 8/239 Hadith 7821

Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally- 41/85 of 3 December 1986.

It recognizes that under the principal legal systems of the world, various valuable alternative institutions exist, such as the Kafaalah of Islamic law, which provides substitute care to children who cannot be cared for by their parents.

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.

Article 3(e), Kafaalah is provided as one of the measures that can be taken to ensure the 'protection of the person or property of the child.'

UN Guidelines on the Alternative Care of Children and UN General Assembly Resolution²². Article 2(a) 'To support efforts to keep children in, or return them to, the care of their family or, failing this, to find another appropriate and permanent solution, including adoption and Kafaalah of Islamic law.'

3.2.2.2 Domestic Law

There is no formal mention and recognition of Kafaalah under Kenyan domestic law especially Statutory laws²³. However, by dint of Article 2(6) of the Constitution and the inclusion of Kafaalah in CRC gave recognition to Kafaalah formally for the first time²⁴.

²² All UN member states, including Kenya, welcomed the resolution in the UN General Assembly of 2010

²³ Current Children Act 2001 does not give legal recognition of Kafaalah and the practice of Kafaalah is largely informal, spontaneous and unregulated. However, the current Children Bill only defines Kafaalah.

²⁴ The Monist approach in the application of international law essentially entails the direct observance of international law as part of the laws of the state without the necessity of domesticating the enabling treaty or convention. Treaties and Conventions therefore apply as a source of law of the party state upon the signing thereof and ratification. Article 2(5) and 2(6) of the Constitution of Kenya provides: "(5) The general rules of international law shall form part of the law of Kenya (b) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution".

3.2.3 Recognition and Enforcement of Kafaalah by a Receiving State²⁵²⁶

Spain	A domestic Kafaalah resolution declared in a foreign country, will have to undergo a process of 'incidental recognition' in Spain. This involves verifying those proper procedural requirements were met when the Kafaalah was declared. If the foreign Kafaalah, was granted by way of non-contentious proceedings, in order to take effect in Spain, a Spanish authority will need to be engaged, for the Kafaalah to comply with incidental recognition, depending on the effect sought (functional qualification).
USA	A cross-border Kafaalah placement seems often to be dealt with through intercountry adoption proceedings.
Norway	According to Norwegian legislation, a Kafaalah is dealt with as a foster care placement. The only way a Kafaalah placement can be made in Norway in co-operation with Norwegian authorities is if it fulfills the requirements for a cross-border placement set out in Article 33 of the 1996 Hague Convention and Section 4-4a in the Child Welfare Act.
New Zealand	Kafaalah cases would need to be dealt with as an adoption according to New Zealand law through the Family Court as falling outside the 1993 Hague Convention. An adoption order would either need to be pronounced in the child's country of habitual residence or it would need to be a placement for the purpose of adoption in New Zealand. For such placements, it would need to comply with section 17 of the Adoption Act 1955.
German	According to the International Family Law Procedure Act- IFLPA, a cross-border Kafaalah is dealt with as a cross-border placement. As per a working document prepared by the working group composed of different regional child and youth authorities in 2016, the German law considers Kafaalah placements as akin to a long-term foster care placement combined with the guardianship of the child. In some cases, Kafaalah can also be comparable to kinship care (Section 33 Child Services Law VIII Kinder – und Jugendhilfe) if there is a kinship relationship between the persons involved. Possibility of national adoption: after two years of taking care of the child, there is a possibility for Kafiiil parents to file a request for a national adoption to the German Court. In such cases, the Court will take into account the opinion of the local Child and Youth Services.
Algeria	Kafaalah exists in conjunction with foster care (remunerated foster care families) and institutional care and is primarily regulated by articles 116 through 125 of Chapter VII of the Family Code.
Saudi Arabia	The care of children deprived of family is governed by the 2014 Child Protection Act as well as the Protection from Abuse Act and its regulations. Questions relating to children in need of alternative care and placed under State guardianship are provided for in article 7 of Part II of the 2014 Child Protection Act where Kafaalah is an alternative solution in cases where the nuclear or extended family cannot take care of the child
Nigeria	Child's Rights Act 2003 under section 143 recognizes other forms of adoption under any law in force in any part of Nigeria or under the law of any other country other than Nigeria.
Ethiopia	Alternative Child Care Guidelines, 2009, recognizes Kafaalah as alternative care for an orphan and vulnerable child.
Somalia	In accordance with article 2 & 3 of the Constitution of the Federal Republic of Somalia recognizes Kafaalah

²⁵ Kafaalah preliminary analysis of national and cross-border practices, page 7, Accessed on <<https://bettercarenetwork.org/library/the-continuum-of-care/adoption-and-kafala/kafalah-preliminary-analysis-of-national-and-cross-border-practices>>

²⁶ Kafaalah may be considered as a cross-border placement when the child's habitual residence is different from that of the Kafiiil

3.2.4 Forms of Kafaalah

The details of how Kafaalah operates in practice, especially the different modalities and procedures, largely depend on the practice of the respective community.

Formal: Subject to a formal process with the involvement of public authorities and is a formal care placement.	Informal: Involvement of public competent authorities is absent i.e., child entrusted to female members of the maternal and then paternal family with tacit agreement.
Judicial: Granted following a legal procedure that establishes the relationship between the Kafiil and Makfuul.	Notarial: Takes place when a private contract or arrangement is established between the biological parent(s) and the Kafiil parent(s), and then validated through a notarial deed drafted by an accredited professional.
Intrafamily: A child is cared for by a member of their (nuclear or extended) family.	Extra family: A child is placed with a person or people outside of their family.
Financial: Limited financial support can either be placed with the biological parent(s) or in an institution.	Non-financial: Involves the child's integration into the Kafiil family's home.

3.2.5 Kafaalah and other Forms of Alternative Care²⁷

Kafaalah and Kinship: Kinship care refers to 'family-based care within the child's extended family or with close friends of the family known to the child, whether formal or informal in nature. Kinship care is also based on the assumption that blood relationship is central to the definition of family. Kafaalah is similar to kinship care to the extent that they both generally promote continuity in upbringing in relation to children's cultural and religious backgrounds. This is primarily due to the fact that, in both cases, the closest relatives available usually absorb the children (on an informal, largely spontaneous, and unregulated basis).

Kafaalah and Guardianship: Legal guardianships are temporary legal relationships where an adult who isn't the child's parent provides care for a child. A parent who **consents to guardianship** hasn't necessarily given up all parental rights. Like Kafaalah, the guardian appointed over the child is responsible to ensure that the child gets adequate food; shelter; clothing; moral guidance; education; medical care; emotional support, and all other rights that a child has to ensure their all-rounded growth. If the child has property, the guardian is entrusted to ensure that property is not wasted, and that the property is utilized solely for the child's benefit.

Kafaalah and Foster care: Foster care is a system of care whereby children deprived of parental, or family care are placed in the care of individuals to whom they are unrelated for a period of time. Kafaalah is similar to (long-term) foster care in the conferment of some (not full) parental rights and responsibilities for a child's upbringing in respect of both the person and property of the child. Further, fostering is recognized and permitted under Islam (unlike adoption) as an alternative care form that is distinct from Kafaalah. However, foster children are not permitted to marry anyone with whom they were fostered, but those taken in under Kafaalah may marry anyone from that family unless he was brought up and breastfed by Kafiil. Children under Kafaalah care have no automatic inheritance rights unless through a will or *hiba* (gift).

Kafaalah and Adoption: Adoption refers to the creation of a legal and permanent parent-child relationship through a child's acquisition of new family ties which are equivalent to biological ties

²⁷ For detailed definition of these forms of care refer to Guidelines for Alternative Family Care for Children in Kenya (2014)

and extinguish (completely or partially) a pre-existing (biological) parent-child relationship. Kafaalah, on the other hand, represents the Islamic alternative to adoption. Two features of adoption can be observed in Kafaalah: permanence and elements of a simple and/or open adoption.

3.2.6 Qualifications of a Kafiil

1. Any person who meets the following criteria may qualify to be a Kafiil:
 - Must profess Islam.
 - Preferably an extended family member of the child.
 - Married couple.
 - A single woman not below the age of twenty-five years.
 - A single man not below the age of twenty-five years.
 - Must have full legal capacity, as well as the social and moral capability to exercise guardianship over a child.
 - Must be willing and able to support a child.
2. No single man may qualify to foster a female child and no single woman may qualify to foster a male child under Kafaalah.
3. No person shall be appointed to be a Kafiil in case there is a legal dispute between him/her and the next friend of a child and/or child's family.
4. No person shall be appointed Kafiil unless the person is a citizen of the Republic of Kenya.
5. A Kafiil shall not remove a child from the jurisdiction of the Republic of Kenya without the leave of the court and such leave shall only be granted upon exceptional circumstances being shown.
6. Where such leave is granted, the court shall impose such conditions and restrictions as it shall deem appropriate having regard to the best interests of the child.
7. Has not committed any offense that will have an impact on the child.

Note: Charitable organizations with child welfare programs can mobilize resources to support children under Kafalaah.

3.2.7 Benefits of Kafaalah to children

- Early family integration for babies and in some cases, breastfeeding including warmth.
- Live and grow in a family setting.
- Enjoy the right to education, healthcare, and social services.
- Can be gifted properties by Kafiil.
- Can benefit from wasiyah (Will) as they cannot inherit intestate automatically²⁸.

3.2.8 Requirements to be a Kafiil

- National Identification Card.
- Certificate of good conduct.
- Marriage certificate.
- Recommendation letter from Imam or Muslim recognized organizations e.g., SUPKEM
- Contact address including telephone.

²⁸ They are provided for from the required one-third portion of an individual personal estate (testamentary), as indicated in the Book of Bukhari 51:7: The power of testator is limited in two ways, firstly he can't bequest more than a third (1/3) of his net estate. Secondly, he cannot make a Will in favor of a legal heir or vide court's discretion where no Will was left behind as an obligatory will (wasiyah wajibah) is a form of wealth transition by inheritance from the deceased to an heir who was not otherwise entitled to obtain it. It is done by a judge without the approval of the deceased nor legal heirs.

- Medical report.
- Consent for joint application from the other spouse.

3.2.9 Categories of children who qualify for Kafaalah

- Orphaned.
- Children with disabilities.
- Abandoned.
- Neglected.
- Rescued.
- In Institution.
- Street-connected children.
- Abused and those at risk.
- Children in emergency situation.
- Children of imprisoned parent(s).
- Children offered by their parent(s) (e.g., mother offer).
- Lost and found children.

3.2.10 Closure of Kafaalah Care Placement

- Legal maturity of a child unless decree of extension is granted by the court.
- The demise of a child and/or Kafiil.
- Legal incapacitation of Kafiil.
- Kafiil has left the country Permanently.
- Child or family not willing to be in that care arrangement.
- Inability to assert parental responsibility by Kafaalah parents.
- Reclaim by the biological parents of a child anytime if the reasons for vulnerability cease to exist.
- Termination based on the recommendation from a recognized Muslim organization.



Photo by Anthony Nyandiek/Catholic Relief Services (CRS). Image used for representation.

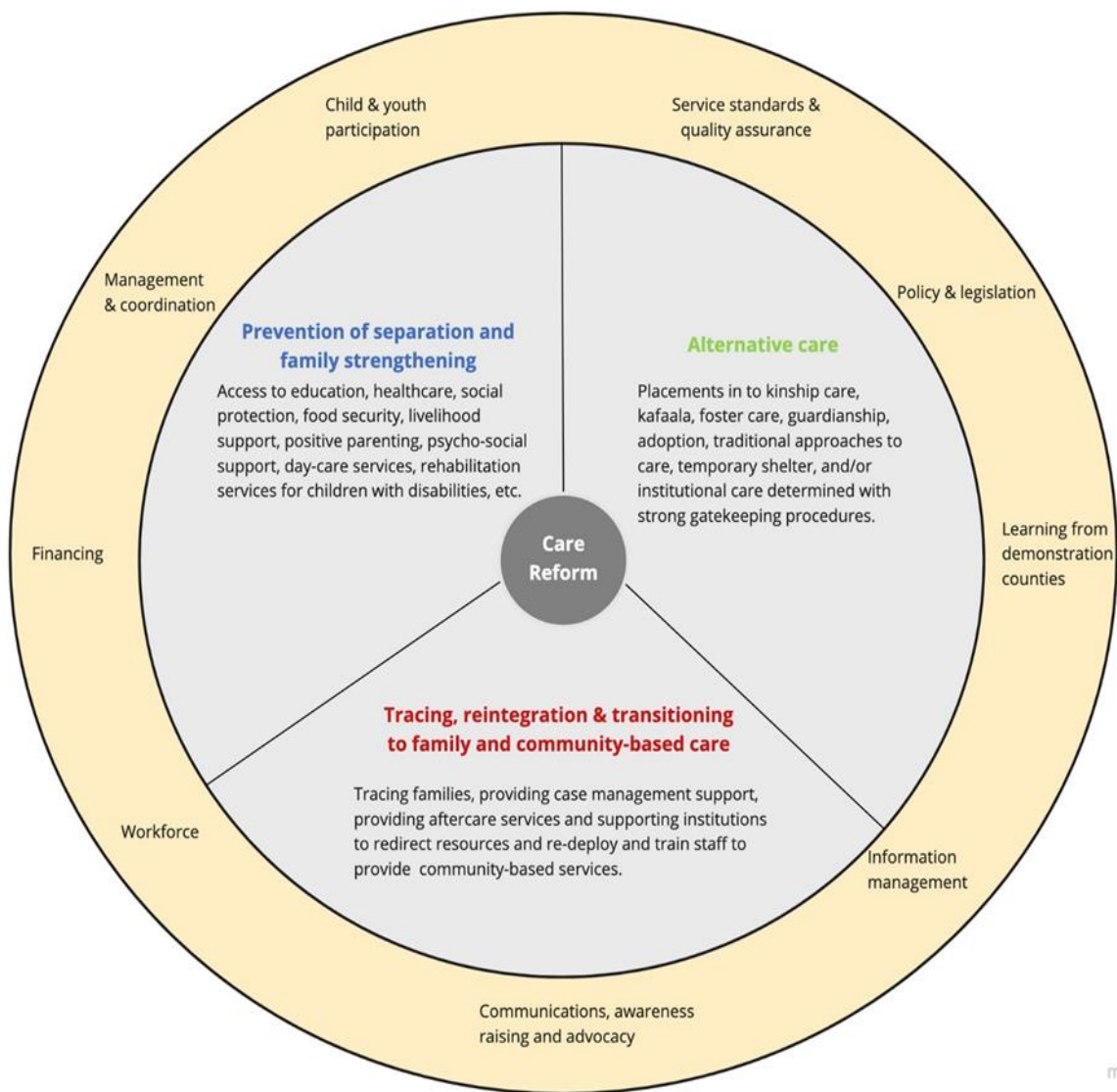
CHAPTER FOUR: THE FRAMEWORK DEVELOPMENT PROCESS

4.1 The Pillars of Care Reform

Care reform is a change process within the systems and mechanisms that provide care for children separated from their families or at risk of separation. It consists of three pillars as described in figure 2, all of which need to function and fulfill their purpose for care reform to be holistic and sustainable.

Figure 2: The pillars of Care Reform in Kenya

Strategic approach to care reform



The care reform process changes the attitudes and practice of duty bearers and other stakeholders towards family and community-based care solutions and away from institutional care as a primary response. It strengthens duty bearers' accountability in meeting their obligations to ensure children's rights are met. It involves the meaningful participation of children and young people. It will result in more children in Kenya living safely, happily, and sustainably in families and communities where their best interests are served.

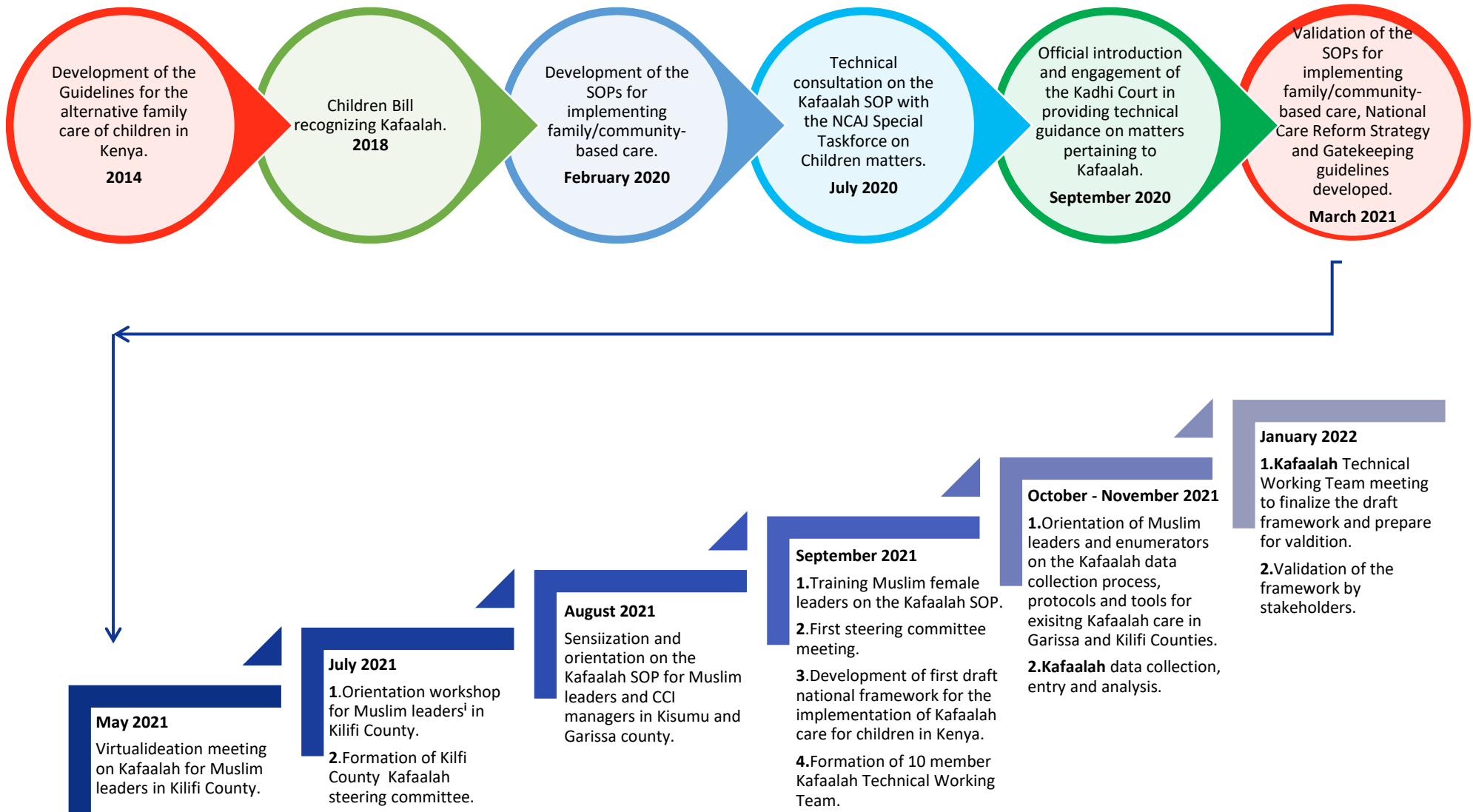
4.2 How the Framework was Developed

The Directorate of Children's Services (DCS) was supported by a Kafaalah Technical Working group to develop the framework. The Technical Team is an inter-sectoral and multi-disciplinary team of State and non-state professionals²⁹ working in areas related to care reform. The Technical Team was tasked to undertake a comprehensive review of relevant literature and in-depth consultation to finalize the draft framework developed through a process of consensus-building by members from various stakeholders.

The framework was developed through a series of highly consultative, inter-sectoral, and multi-agency ideation meetings, consensus-building workshops, and reviews. These included input from the National Council on the Administration of Justice (NCAJ), Kadhi Court representatives, Muslim leaders, DCS, NCCS, CTWWC, and UNICEF. A summary of the framework's development process, including timelines and key stakeholders involved is as detailed in figure 3.

²⁹ The technical working group consisted of 10 members: 3 DCS, 2 CTWWC, 1 Technical Advisor (former DCS director), 2 Kadhi court representatives, 2 Muslim clerics (CMTPA Malindi and SUPKEM Garissa).

Figure 3:Kafaalah Care Journey

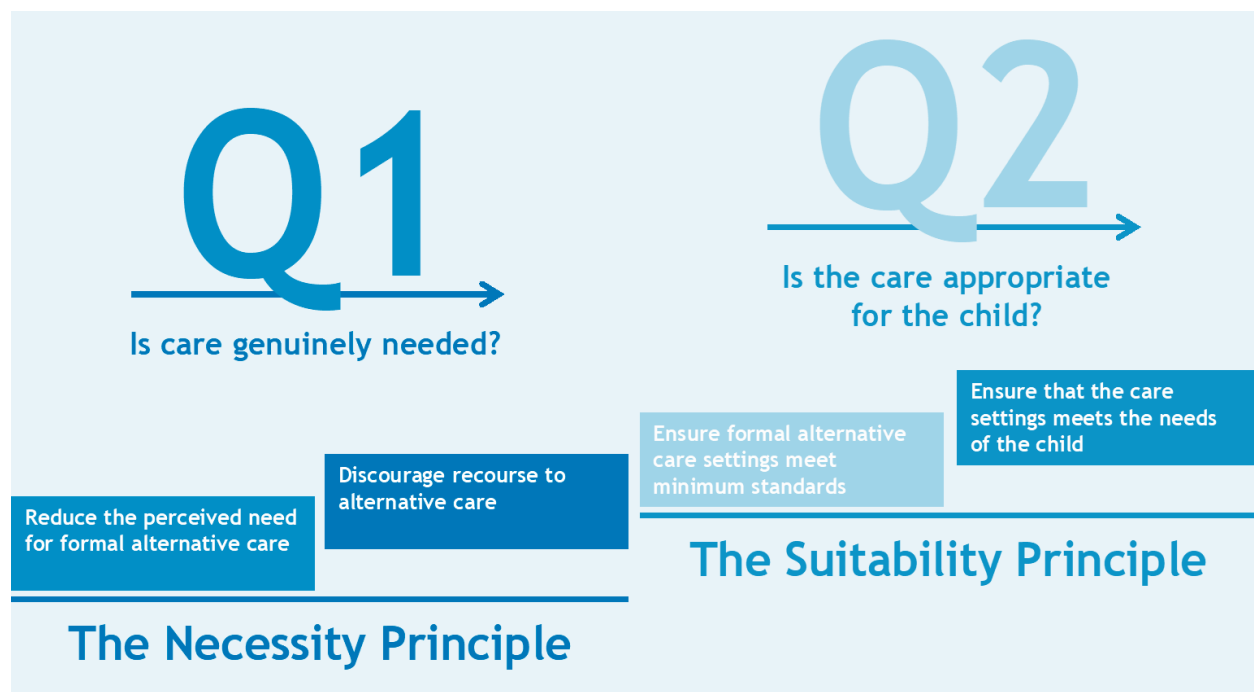


CHAPTER FIVE: GUIDING PRINCIPLES

The two primary principles which must be considered throughout cases of alternative care are **necessity** and **suitability**; As the child grows and develops and the situation evolves, both principles should be continuously examined.

Necessity: ensures that children are not unnecessarily separated from their families and discouraged unwanted recourse to the alternative care, in this case, Kafaalah. Essentially, poverty should NEVER be the driving factor for removing a child from their family and placing them in alternative care.

Suitability: a range of care services should be available to meet the unique needs of each child and care options should meet minimum standards. The care option for each child should be selected on a case-by-case basis and provision should promote long-term solutions.



Alternative care is grounded in a set of operational principles informed by best practices, values, and ethical standards. They include:

	<p>Family-based care, the UN Convention on the Rights of the Child's preamble calls for all children to be raised in families and explicitly obligates governments to provide necessary social support services to enable parents and legal guardians to fully perform their childrearing responsibilities.¹⁷ Additionally, the African Charter on the Rights and Welfare of the Child, specifically calls for the prevention of child–family separation and the reintegration of children into family care whenever possible.¹⁸ The primacy of family-based care should be upheld throughout all decisions related to child's care, ensuring that biological family is prioritized, followed by alternative families, before community-based care options are considered. Residential care should only be used as a last resort.</p>
	<p>Best interest of the child, UN Convention of the Rights of the Child, Article 3: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'¹⁹. The best interest of the child should be continually assessed because it is a dynamic concept comprised of various elements which are continuously evolving.</p>
	<p>Child-centered approach, adoption of a child-centered approach will ensure that the best interest of the child is met. This approach requires the child to remain at the forefront of all deliberations and that their wellbeing and welfare of the child is held as a paramount consideration in decision-making</p>
	<p>Permanency, though temporary forms of alternative family are necessary and suitable in many situations, permanency must always be the goal for all children in care. Permanency should be considered even before placement and must be built into all case planning as soon as a child is placed into care.</p>
	<p>Children's participation in care decision-making increases the likelihood that decisions will be based on a holistic and accurate analysis of the child's and family's conditions and that any placements will be in the child's best interest²⁰. While considering their evolving capacities and maturity, children must be supported to sufficiently understand matters that affect them according to their evolving capacity and maturity, to be able to form their point of view. This includes ensuring that:</p> <ul style="list-style-type: none"> ▪ The child is provided with various options to select from; ▪ The child is made aware of all possible care options available; ▪ The child is explained, in a child-friendly manner, all conditions under which they will be asked to express their views and the possible impacts of decisions made²¹; and ▪ Where children are not able to verbally express their views, all efforts must be made to facilitate their expression in a form that is most comfortable to them. There must be full recognition of non-verbal forms of communication (e.g., play, body language, facial expressions, drawing, etc.)²².

The following additional principles³⁰ shall fortify the general and operational principles outlined in the UN guidelines in support of Kafaalah placement in a Muslim context.

- Any measure taken for placement of a child under Kafaalah must be guided by the best interest of the child and for upholding the rights of the child.
- Every child has a right to grow up in a family environment. The family should be seen as a shield of defense from the violation of a child's rights, and as a necessary tool for the wholesome development of a child.
- If a child cannot be cared for by his/her biological parent(s), the DCS shall consider all alternatives for temporary/permanent care within the child's extended family.
- Placement of a child in Kafaalah outside his/her biological parent(s) shall be considered only if no appropriate placement within the extended family is possible.
- Placement of a child in Kafaalah does not dissolve the identity of the child by establishing paternity and/or maternity between the child and Kafiil.
- Kafaalah though temporary in nature may be extended beyond adulthood, if necessary, based on a periodic review of the placement, if no long-term solution is available.
- Caring for orphans and vulnerable children generally is a key tenet of Islam³¹, to provide them with the safety and security that a family environment offers.
- All procedures for placement of a child in Kafaalah must be completed and decisions rendered without undue delay.
- As a matter of priority, a child shall be placed in Kafaalah within Kenya. Intercountry Kafaalah can only be considered as an alternative only after having ensured that a satisfactory solution for the child cannot be found in his/her country of origin.
- The child, biological parent(s), Kafiil, and his/her family have a right to privacy. Access to personal recorded information by any party shall be strictly treated in accordance with relevant laws.
- In all procedures relating to Kafaalah, it is of great importance that the highest standards of practice are followed within the realization of the higher objectives of the law (Maqasid Sharia)³².

³⁰ Kadhi Ishaq (2019): Unpublished write up on Kafaalah Procedure and Practice Guidelines.

³¹ Hadith Related by Sahl Ibn Sa'd (ra) the Prophet stated: 'I and the person who looks after an orphan and provides for him, will be in paradise like this' (putting his index and middle figures together) in another narration; 'Do you like your heart to be tender, and your wishes fulfilled? Be merciful to the orphans. Touch softly his head and feed him from your food. Your heart will be tender, and you will attain your wishes.

³² The higher objective of law revolves around the question of how to understand the eternal message in light of the challenges posed by changing social, economic, and political environment of modern world. The usefulness of the principle of philosophic-legal cum hermeneutical tool is meant to protect life, wealth, intellect, religion, and lineage

CHAPTER SIX: THE ACTORS, THE ROLES, AND COORDINATION.

The framework outlines the Kafaalah practice where a child/young person is physically placed with a Kafiil and includes financial support arrangement (or 'sponsorship') of a child who does not reside with the Kafiil. The framework helps to highlight linkages and coordination to ensure that this form of care is implemented and aligned with existing alternative care procedures.

The term Kafaalah in Islamic law is used to describe a situation like adoption without severing family names or ties. It is when a person (Kafiil) voluntarily cares for the needs (Maintenance, education, and protection) of a child deprived of his or her family (Makfuul)

6.1 Key roles and functions of the stakeholders in Kafaalah

6.1.1 The role of the State

NCCS, DCS, NGAO, NCCS, MOH, Civil registrar, immigration, MOE, Police, etc.

- Give leadership and direction.
- Formulate policy and guidelines.
- Resource mobilization and allocation.
- Child tracing and rescue.
- Monitoring and following up on children's welfare.
- Registration and supervision of institutions.
- Assessment (for suitability and matching) of the Kafiil.
- Guiding and advising the committee on legal issues.
- The state ensures the harmonious co-existence of all stakeholders in the process of Kafaalah for the benefit of the child.
- Ensure proper provision and identification of the documents.
- Ensure safety and security.
- Ensure the health of the child.
- Provision of education services.
- Issuance of travel documents.
- Formation of support networks of Kafiils.
- Linkages to the social protection programs.
- Family strengthening.

6.1.2 The role of the judiciary

- The Kadhi's Court ensures proper procedures are followed in the entire process.
- Issuance of appropriate orders i.e., placement, revocation, extension orders, etc.
- Maintain registers at the Kadhi's court.

6.1.3 The role of Kafiil and Caregiver

- To provide the best care and protection to the Makfuul.
- Reporting progress of the Makfuul to the Imam.

6.1.4 The role of the Makfuul

- Respecting the Kafiil.
- Working for the cohesion and unity of the family.

6.1.5 The role of front-line workers (e.g., Imams, CPVs, CHVs, etc.)

- Sensitize the community on child protection and safeguarding.
- Identification and assessment of the Kafiil/Makfuul.
- Formation of support networks of Kafiils.
- Documentation and reporting progress of placement to the committees.
- Referrals and linkages.
- Monitoring of care placement.
- Membership to relevant committees.
- Family strengthening.

6.1.6 The role of non-governmental and civil society organizations

- Mobilization of resources.
- Community awareness.
- Advocacy and lobbying.
- Monitoring and evaluation.
- Membership to relevant committees.
- Formation of networks of Kafiils.
- Family strengthening.

6.1.7 The role of the Community

- Identification of the child at risk.
- Identification and vetting of Kafiils.
- Report Monitoring and evaluation of the care placement.
- Protection, care, and support of the child at risk.
- Support Kafiils in caring for the Makfuul.
- Support the implementation of Kafaalah.
- Advocacy.
- Refer for services.
- Resource mobilization.

6.1.8 The role of Mosque Committees

- Sensitization of congregants on Kafaalah
- Acts as a case committee for determination and vetting of Kafiils and Makfuul
- Support supervision of existing placements
- Membership of care reform committee.

6.2 Coordination Mechanism

Kafaalah requires a multi-sectoral and multi-agency approach for effective implementation. This entails continuous engagement, collaboration, and better coordination of all the stakeholders, the State and Non-State actors as drivers for change. These actors include DCS, NCCS, NGAO, Ministry of Health, Judiciary, Ministry of Education, etc. Non-State- CSOs (SUPKEM, CIPK), Red Cross & INGOs. Effective coordination of stakeholders for provision of Kafaalah care for children will ensure that:

- There is an enhanced sense of ownership.
- Improved communication for efficient use of resources.
- Transparency of the entire placement process.

Coordination of implementation of Kafaalah care will be done at four levels:

- a) Community-level: The Imams and the CPVs will be leading the coordination.
- b) Sub-county-level: The Subcounty Children Officers will take lead.
- c) County-level: The County Children's Coordinator will be in charge.
- d) National level: NCCS through the care reform strategy will take lead.

CHAPTER SEVEN: MONITORING AND EVALUATION OF THE FRAMEWORK

This relates to the process of generating and managing information to guide evidence-based decision-making in the provision of Kafaalah care at the national and county levels. The duty-bearers shall, therefore, be obligated to report on Kafaalah care information emanating from their activities through the child protection management and information system (CPIMS) in a manner that meets the safety and confidentiality requirements, and according to the information policies, regulations, and set standards.

The implementation of this framework will be tracked using the Kafaalah care indicators that were developed in consultation between DCS, NCCS, Kadhi Court, and care reform stakeholders. The indicators were also developed reflecting the National care reform strategy.

Progress on the implementation of the framework will be reviewed regularly to ensure timely implementation, monitoring, and evaluation of progress. Annual care reform reflection and planning workshops will be organized to assess progress.

CHAPTER EIGHT: ANNEXES

Note: These tools will be used with other existing DCS tools e.g., case record sheet.

Annex 1: Kafaalah forms

Consent Form

This form should be read to the Kafiil and completed. It should be clearly explained to the Kafiil that she/he can choose to respond to any or none of the options listed.

I, (Kafiil name) _____, give my permission to share information about my background, as explained below:

1. I understand that in giving my authorization below, I am giving permission to share specific information regarding my background with the relevant service providers.

2. I understand that at any point, I have the right to change my mind about sharing information.

I have been informed and understand that information will also be shared for purposes of reporting actual to child protection authorities to protect my safety and wellbeing or those of other children in my household.

I understand that shared information will be treated with confidentiality and respect.

Signature/Thumbprint of Kafiil:

Imam/Caseworker name:

Date:

Kafaalah Data Collection Form

(For existing Kafaalah cases)

Instruction: The form is supposed to be filled by the Imams together with the Kafiil and in the presence of child(ren) after placement has happened. (Note: When engaging children, please consider the evolving capacity of the child/children). The Imam will submit the original form to DCS. The Imam should file a copy of each case in their office. Where possible, please attach a copy of child's birth certificate and current photo, and copies of the identity card or death certificate/burial permit (if deceased) of both parents.

The Imams should explain and seek written consent from the Kafiil on the data collection exercise and the use of the data for programming.

Details of Kafiil/Sponsor

Full Name: _____ Age _____ Gender: _____ Marital status _____

Occupation: _____ Education level _____ National ID No: _____ Mobile No. _____

Area of Residence: County _____ Subcounty _____ Ward _____

Village _____ Nearest Landmark _____

Details of the child(ren) under Kafaalah

1. Name: _____ Date of Birth: _____ Gender: _____ Education: _____
Nickname _____

2. Name: _____ Date of Birth: _____ Gender: _____ Education: _____
Nickname _____

3. Name: _____ Date of Birth: _____ Gender: _____ Education: _____
Nickname _____

Is there any child with a disability? YES/ NO Which one? _____

Details of biological parent(s) If applicable

Full Name (father): _____ Age: _____ Occupation: _____

Education Level: _____ National ID No: _____ Mobile No. _____

Full Name (mother): _____ Age: _____ Occupation: _____
 Education Level: _____ National ID No: _____ Mobile No. _____
Area of Residence: County _____ Subcounty _____ Location _____
 Village _____ Nearest Landmark _____ **(Specify for both parents if they are separated)**

Date the child (ren) is/was placed in Kafaalah: D _____ / M _____ / Y _____

Reasons for placement into Kafaalah care (Tick one or more of the following circumstances)

<u>Reason</u>	<u>Child 1</u>	<u>Child 2</u>	<u>Child 3</u>
A parent being unable to provide care due to the death of the other parent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A serious illness or terminal illness of a parent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The physical or mental condition of the parent or the child such that proper care and supervision of the child cannot be provided by the parent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Imprisoned parent/s	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The loss of the child's home as a result of a natural disaster/man-made	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unable to locate a parent(s) at this time to notify them of the intended reintegration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Death or loss of both parents (orphanhood)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other reasons (please list below any other reason)			

Please list the support provided to the child/children by the Kafiil: _____ Education _____ Food _____ Shelter _____
 Medical _____
 Financial support _____ Others _____

Please state the type of Kafaalah care the child is under (Tick one that is appropriate)

<u>Type</u>	<u>Child 1</u>	<u>Child 2</u>	<u>Child 3</u>
Kinship Kafaalah	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gurdianship/Wasiya Kafaalah	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Foster Kafaalah	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Institutional Kafaalah	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Financial Kafaalah	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	_____	_____	_____

Please state the time the child is going to stay with the Kafiil and the exit plan

	<u>Child1</u>	<u>Child2</u>	<u>Child3</u>
Reunification with biological family/family of origin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Placement with another Kafiil for permanency		<input type="checkbox"/>	<input type="checkbox"/>
Supported Independent living	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other plans for the child's permanency placement:

Other additional information:

Kafail's Name: _____ Signature/thumbprint: _____ Date:

Imam's Name: _____ Signature: _____ Date:

Children Officer's Name: _____ Signature: _____ Date:

Other children living with Kafiil

No	Name	Sex (M, F)	DOB	School	Class	Remarks/Observation

Recommendations/Approvals

1. Area Mosque Imam

Recommended: Yes No

Reason(s):

Name.....Signature

Date..... Stamp.....

2. Area Chief

Recommended: Yes No

Reason(s):

Name Signature.....

Date..... Stamp

3. DCS:

Recommended: Yes No

Reasons(s):

Name..... Signature.....

Date Stamp....

ANNEX 2: KAFAALAH DATA COLLECTION FINDINGS³³

Data Collection Process

Scope of the Data Collection Exercise

The data collection exercise was carried out in Kilifi County, the Coast region of Kenya, focusing on four sub-counties of Kilifi North, Kilifi South, Malindi, and Magarini. The target population came from a total of 16 wards from the four sub-counties.

Data Collection Objectives

1. To provide an overview of Kafaalah practice as an alternative family care option.
2. To identify key actors (both children and caregivers) involved in Kafaalah care arrangements, the status of the practice in Kilifi, and existing best practices, gaps, and recommendations.
3. To use the data collection findings to inform policy and practice recommendations on Kafaalah as a formal alternative family care practice in Kenya.



Photo by Ustadh Masud/ CMTA.

Methodology

The exercise adopted a mixed-method approach. Ten Muslim leaders (both men and women) were trained as the data collector, researchers, and transcribers. The data entry process was conducted by four (3F,1M) data clerks from the DCS.

Data Collection Tools

Two instruments were utilized to collect quantitative data from the families practicing Kafaalah: (1) a structured form- Kafaalah registration form for existing Kafaalah cases and (2) a consent form. The Kafaalah registration forms were administered to each of the respondents (Kafiil) and collected information about the family, the number and profiles of children and sponsors residing in the family under Kafaalah practice, reasons for placement in Kafaalah, duration of stay in the family, the support offered to the child/children. The consent forms were administered to each respondent to seek permission to provide information about their family and Kafaalah practice situation.

³³ Note: Detailed information on the data collection findings can be found at the Kilifi County Children's Coordinator's Office.

Sampling

All 192 sponsors practicing Kafaalah in 16 wards where the religious leaders reside were targeted for quantitative data collection. DCS child protection volunteers and officers at the sub-county level worked closely with the religious leaders to generate a list of families known to be practicing Kafaalah in the four sub-counties of Kilifi North, Kilifi South, Malindi, and Magarini. New families were discovered during the data collection process through snowball sampling and were added to the list.

Orientation of Muslim Leaders and Child Protection Volunteers as Data Enumerators

The documentation and learning exercise began with a virtual orientation session for Muslim leaders, facilitated by the DCS, Kadhi Court, and CTWWC. In this meeting, the Muslim leaders representing four sub-counties in Kilifi County shared their experiences and understanding of Kafaalah. They confirmed that there are existing cases of children placed in this form of care and requested the organizers to support in collecting this information.



Data Entry and Analysis

The data collectors took detailed notes and later transcribed them into the standard template forms. Data cleaning occurred before the data entry process. Data was. Submitted data in the filled forms were exported to a Microsoft Excel spreadsheet by child protection volunteers who were sensitized as data enumerators.

Key Findings

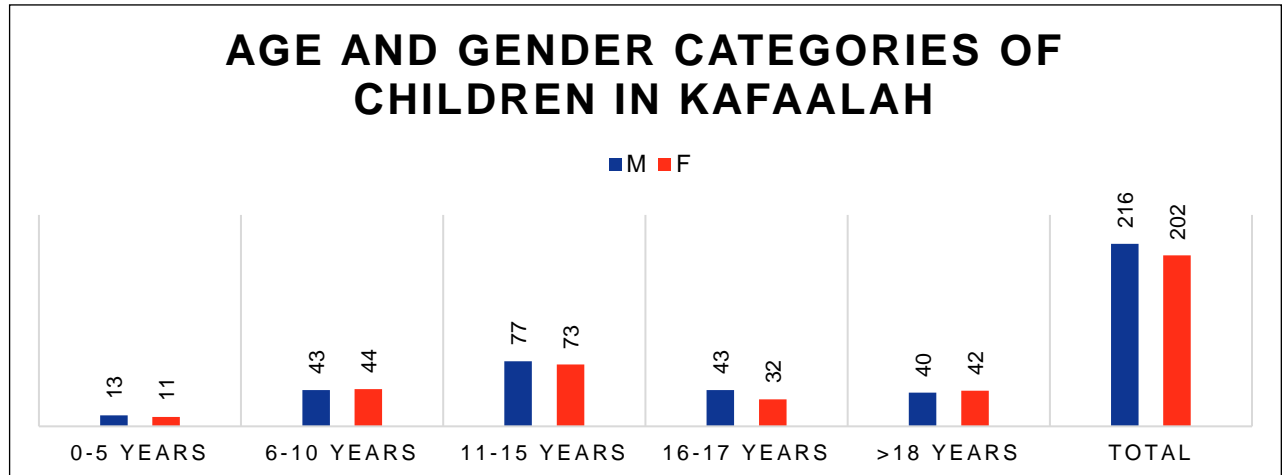
In October 2021, 10 (6M,4F) Muslim leaders embarked on the collection of data from 16 wards in the four sub-counties of Kilifi North, Kilifi South, Magarini, and Malindi. A total of 192(54M, 138F) respondents/sponsors supporting 418(216M,202F) children were interviewed. The teams were provided with a target of 100 families practicing Kafaalah for the three days but surpassed the numbers after finding more eligible respondents.

Distribution of Children placed in Kafaalah

The majority of the children were from Malindi and Kilifi North sub-counties, followed by Magarini, and Kilifi South.

Comparison of Age and Sex Distribution of Children in Kafaalah

Out of the 418 children in Kafaalah care, 52% were male while 48% were female. The majority of children in care were between 11-15 years, followed by 6-10-years and children over 18 years. The children over 18 years were still under the care of their sponsors.



Gender and Age Distribution of Sponsors (Kafiils)

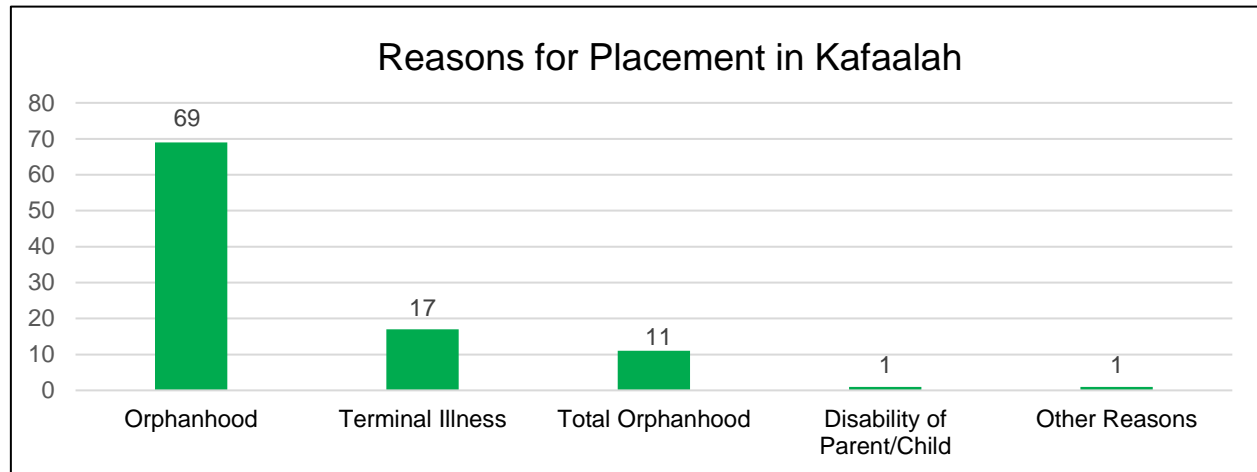
The majority of Kafiil are women, with 71% of total sponsors being women, 28% men, and 1% of the sponsors was an institution (Malindi Islamic Centre of Orphans) that provides support to orphaned children while they remain in the family/community. The average age of a sponsor was 46 years, with the oldest being 86 and the youngest 21 years.

Stakeholders Involvement in Kafaalah care process

The care arrangement is traditionally discussed and determined by family members or community elders, and in some instances, there is the involvement of respective Mosque committee members. Often, there is no involvement of the Department of Children Services or external authorities in the care arrangement process. From all the respondents, none had reported and registered themselves as Kafiil with the Department of Children Services.

Reasons for Placement in Kafaalah

69% of the children are placed in Kafaalah due to the death of one parent (mostly father), 11% due to total orphanhood, and 20% due to terminal illness.



Types of Kafaalah care arrangements

The majority of the Kafaalah care arrangements are kinship at 78%, Guardianship Kafaalah at 21%, and financial & Institutional Kafaalah at 1%.

Conclusion

This data collection exercise confirms that Kafaalah is a widely practiced form of alternative care in the Kilifi Muslim community and the members of the Muslim community members are aware of the practice. The Islamic religion places high value and moral obligation to the Muslim congregants to practice Kafaalah and keep familial and religious identities alive.

The exercise found that there are positive outcomes for children living in Kafaalah care. Children without parental care are placed in Kafaalah where their basic needs were met, as well as upholding their sense of belonging while still maintaining biological familial ties.

The data collection exercise noted that many religious leaders and their congregants were not aware of the procedures needed to be followed before admitting a child/ren into Kafaalah and the need to work with DCS to formalize the process.



Recommendations

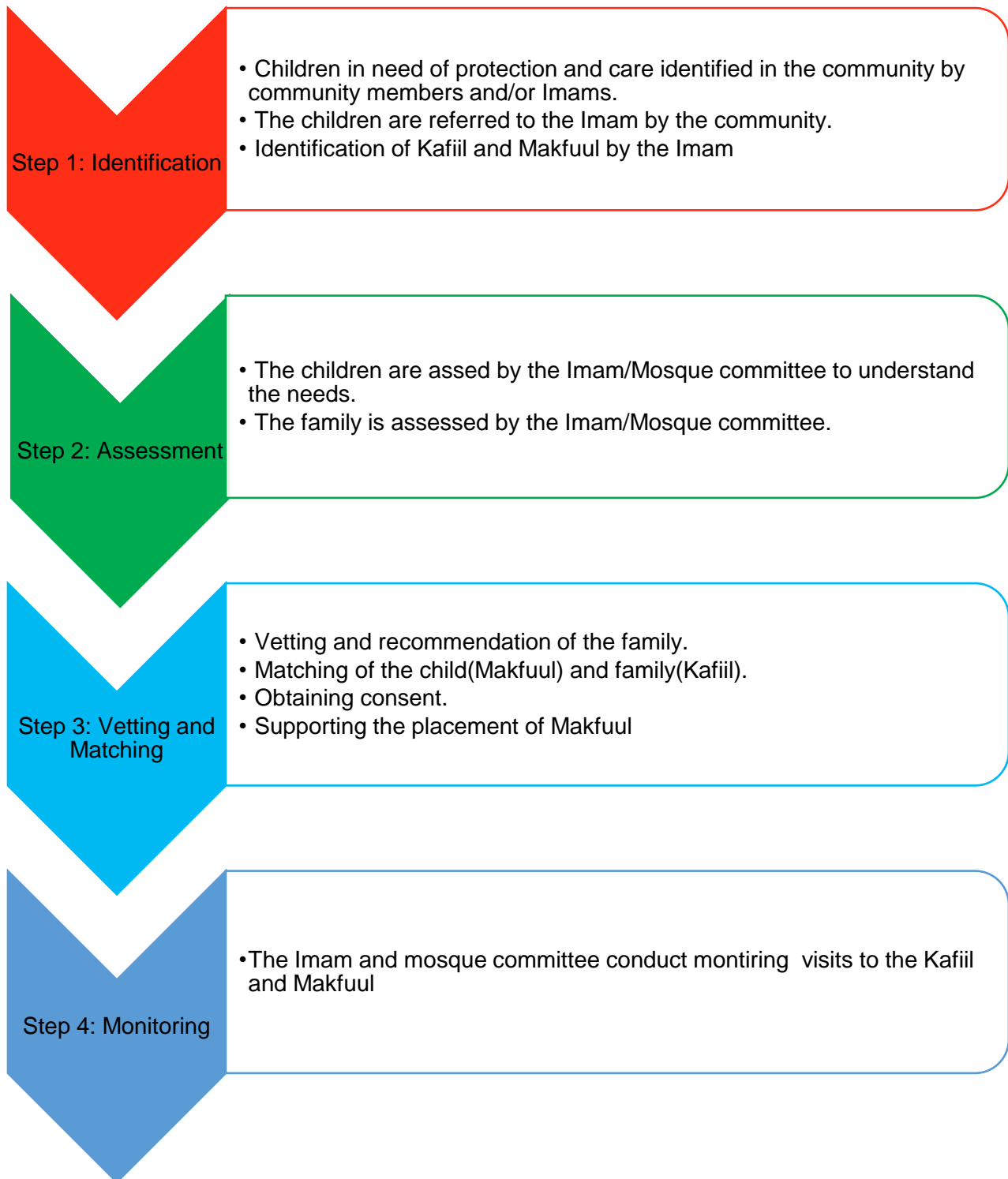
1. Sensitization and awareness to communities are key to ensuring the practice is standardized.
2. There is a need to reinforce family strengthening strategies such as skilful parenting and economic strengthening and psychosocial support services to support families that are practicing Kafaalah.
3. Linkages to ongoing social protection initiatives such as the government cash transfer programs, county government bursaries, and social safety net programs are also important to enable these families to provide a safe and nurturing environment for children to grow.
4. There to need to understand the complexities of sponsorship/Kafaalah and how the government and care reform actors can support this form of practice.
5. There is a need to constitute and mainstream community mechanisms for identifying, registering, and matching children and sponsors in Kafaalah, consider working with the Mosque committees to identify, place and monitor children and families in Kafaalah care.

The following key learning questions are recommended to inform policy/framework formulation and standardization of the practice:

- What are the social support mechanisms available for families practicing Kafaalah?
- How are the children involved in decision making for placement by ages, genders, and abilities?
- What are the perceptions of the biological families, children, sponsors, and sponsors' family in Kafaalah care arrangements?
- What factors are contributing to risks experienced within different Kafaalah care options?

Annex 3: Kafaalah Care Models Case Studies

Kafaalah Care in Practice: A case on the role of Mosque Committees in the Kafaalah Placement Process for Children in need of protection and care in Malindi Subcounty.



Kafaalah in Practice: The Case of Islamic Center for Orphans Practicing Community-based Kafaalah.

A charitable Organization supporting Orphans through the Kafaalah community-based care model.

- Islamic Centre for Orphans situated in Malindi town, Kilifi County was established in 1994 during the holy month of Ramadhan. The aim was to respond to the increasing needs of the Muslim orphans. The Centre mobilizes resources through Muslims in every Friday prayers and during the month of Ramadhan by organization a community fundraising event. The centre also runs a private school as a form of income generating initiative that helps run the Orphan support program.
- Currently the centre is taking care of **180 orphans**. All the children live with their families.
- The centre has 22 affiliate mosques. The members of these Mosques receive needy children from the community, they assess and recommend the orphans for support.
- The Mosques management committees' vet the recommended orphans and the secretariat register them using their enrolment forms.
- The dully filled and signed enrolment forms are then sent to the Center for filling and subsequent support. The support includes but not limited to, free integrated ECD and Primary Education, Bursary for orphans enrolled in primary, secondary and tertiary institutions, food, School uniform and clothes, medical cover, home visit and psychosocial support, and celebration during the Muslim Festive (Idd Ul Fitr & Adhaa).
- The Centre staff in collaboration with the Mosque committees hold regular monitoring visits to the family and children.

Annex 4: The Standard Kafaalah Care Placement Process ³⁴

Step 1: Introduction to Kafaalah.

Step 2: Identification of the child.

Step 3: Assessment of the child.

Step 4: Tracing of the child extended family.

Step 6: Assessment of prospective caregiver.

Step 7: Registration of Kafiil.

Step 8: Matching.

Step 9: Preparation/Training of prospective Kafiil.

Step 10: Placement approval.

Step 11: Case Planning.

Step 12: Placement.

Step 13: Exit Planning.

Step 14: Monitoring.

Step 15: Case review.



Photo by Anthony Nyanidek/CRS. Image used for representation.

³⁴ Note: For further information on these steps, refer to the Alternative Family and Community-Based Care (AFCB) SOPs 2021.

Annex 5: List of participants

No.	Name	Organization
1	Carren Ogoti	DCS
2	Ahmed Hussein	Technical Advisor
3	Ishaq Hussein	Judiciary
4	Tito Kunyuk	Judiciary
5	Khadija Karama	CRS CTWWC
6	Athman Ali Said	CMTPA
7	Alfred Murigi	DCS
8	Alividzah Kituku	CRS CTWWC
9	David Range	DCS
10	Abdullahi Salat	SUPKEM
11	Alice Wanyonyi	DCS
12	Sukyan O. Hassan	Judiciary
13	Thulkif Karanja	Judiciary
14	Abdinoor S. Muhammad	NCCS
15	George Migosi	DCS
16	Everlyne Annam	DCS
17	Fatuma J. Hussein	SPKM
18	Abdinasir Ali Abdi	CIPK
19	Isaac Korir	Civil Registrar
20	Masoud Ali Said	CIPK/CICC
21	Suleiman Mwambebe	Judiciary
22	Mishi B. Athman	Ustadha
23	Rashid Muhammad	SUPKEM
24	Ali Tawane Muhammad	Al-Mustaqbal University
25	Halima Nur	Ustadha
26	Fahad Ismael	Judiciary
27	Muhammad Khalif	Chairman CSO Garissa
28	Lilian Osero	DCS
29	Muhammad A. Hussein	DCS
30	Hudson Imbayi	DCS
31	Jane Munuhe	DCS
32	Humprey Wandeo	DCS
33	Samwel Masese	DCS
34	Guyo Golicha	DCS
35	Omar Shushe	CIPK
36	Mahmud Hambal	SUPKEM
37	Khamis Kassim	SUPKEM
38	Harun Musa	SUPKEM
39	Abud Salim Mbarak	SUPKEM
40	Masoud Ali Said	CIPK
41	Mahamud Abdillah	CIPK
42	Mohamed Ali	CIPK

43	Farhan .A. Mohamed	CIPK
44	Zeinudin Ali	CIPK
45	Mohamed .M. Malumbo	SUPKEM
46	Hassan Athman	SUPKEM
47	Omar Ibrahim	CICC
48	Richard Mutisya	CICC
49	Nadia Mnyazi	CICC
50	Moses Abwao	Kesho Kenya
51	Felister Ngugi	Kesho Kenya
52	George Migosi	DCS
53	Naomi Kazungu	DCS
54	Sebastian Muteti	DCS
55	Joyce Vidzo	DCS
56	Boniface Kisembi	DCS
57	Winifred Kaluku	DCS
58	Judith Muyuku	DCS
59	Maina Kennedy Kuria	DCS
60	Dorah M. Chovu	DSD
61	Fredrick Mutinda	CRS CTWWC
62	Mercy Ndirangu	CRS CTWWC
63	Diane Rop	CRS CTWWC
64	Charles Otieno	UNICEF
65	Catherine Kimotho	UNICEF
66	Zeinab Ahmed	UNICEF
67	Roselyne Kabata	NCAJ/UNICEF
68	Jackson Onyando	UNICEF
69	Naomi Kyule	DCS



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