

The legal framework of Kafala in Algerian Law: From event-based protection to a continuous child welfare model

Meriem Belkessam¹, and **Fayçal Belkessam**²

¹ LCA, Faculty of Law and Political Science, Mohamed El Bachir El Ibrahimi University, Bordj Bou Arreridj, Algeria. Email: meriem.belkessam@univ-bba.dz. <https://orcid.org/0009-0000-7563-0224>

² PhD Student, Faculty of Law, University of Sfax, Tunisia. Email: faybordjala34@gmail.com.
<https://orcid.org/0009-0005-4524-2147>

Correspondence: meriem.belkessam@univ-bba.dz/Meriem Belkessam

Abstract---This article critically examines the Algerian legal framework governing Kafala as the primary mechanism of alternative care for children deprived of a family environment. While Algerian law establishes relatively structured procedural safeguards at the stage of attribution, it lacks effective mechanisms for post-placement monitoring and long-term supervision. Adopting a combined doctrinal and socio-legal approach, the study analyzes the relevant provisions of the Algerian Family Code and Law No. 15-12 on Child Protection, alongside institutional practices. The analysis is further situated within the normative framework of the Convention on the Rights of the Child and the interpretative guidance of the Committee on the Rights of the Child, particularly General Comment No. 14 (2013). The article argues that the Algerian system reflects an event-centered protection paradigm, in which legal safeguards are concentrated at the moment of placement but are not sustained over time. This temporal fragmentation undermines the effective realization of the child's best interests by limiting protection to a single legal act rather than ensuring continuous oversight. The study concludes that aligning the Algerian framework with contemporary international standards requires a shift toward a continuous protection model, based on periodic review, strengthened institutional coordination, and proactive intervention mechanisms.

Keywords---Kafala, Child Protection, Best Interests of the Child, Algeria, Alternative Care.

How to Cite:

Belkessam, M., & Belkessam, F. (2026). The Legal Framework of Kafala in Algerian Law: From Event-Based Protection to a Continuous Child Welfare Model. *The International Tax Journal*, 53(3), 1213–1219. Retrieved from <https://internationaltaxjournal.online/index.php/itj/article/view/636>

The International tax journal ISSN: 0097-7314 E-ISSN: 3066-2370 © 2026

ITJ is open access and licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

Submitted: 09 March 2026 | Revised: 27 April 2026 | Accepted: 18 May 2026

1. Introduction

The protection of children deprived of a family environment constitutes a fundamental obligation of contemporary legal systems (UNICEF, 2019). In Algeria, Kafala represents the principal legal mechanism for providing alternative care to such children, as adoption is prohibited under Islamic law and explicitly excluded by the Algerian Family Code (Boukhris, 2017). Unlike adoption, Kafala establishes a form of legal guardianship that ensures the child's care, education, and protection, without creating filiation or conferring inheritance rights (Nasir, 2009). It thus reflects a distinct normative model situated at the intersection of religious principles and modern child protection concerns. At the international level, the legal framework governing alternative care has undergone significant evolution. The Convention on the Rights of the Child recognizes Kafala as a legitimate form of alternative care under Article 20, while simultaneously imposing obligations on States to ensure appropriate supervision, periodic review, and institutional accountability (UN Committee on the Rights of the Child, 2013). This evolution has been further clarified through General Comment No. 14 (2013), which emphasizes that the principle of the best interests of the child must be understood as a dynamic and continuous standard, requiring ongoing assessment rather than a one-time judicial determination (Zermatten, 2013). Despite this progressive international framework, domestic legal systems often retain structurally fragmented approaches to child protection (Cantwell, 2010). In the Algerian context, the legal regime governing Kafala—primarily structured by the Algerian Family Code and Law No. 15-12 on Child Protection—provides relatively structured procedural safeguards at the stage of attribution. These include judicial authorization, verification of the kafil's suitability, and, in some cases, social inquiry mechanisms (Ben Achour, 2015). However, these safeguards are predominantly concentrated at the moment of placement, with limited mechanisms ensuring systematic follow-up, monitoring, or periodic reassessment after the child has been entrusted to the kafil.

This article advances the argument that the Algerian Kafala system reflects an event-based protection paradigm, in which legal and institutional safeguards are primarily activated at a single decisive moment—the attribution of Kafala—without being sustained over time. By contrast, a continuous protection model requires the establishment of ongoing supervisory mechanisms, periodic judicial or administrative review, and coordinated institutional intervention throughout the duration of care (Daly, 2017). The absence of such continuity produces what may be described as temporal fragmentation, namely the disconnection between the legally intensive moment of placement and the relative normative and institutional silence that follows.

This temporal fragmentation has significant implications for the effective realization of the principle of the best interests of the child. By confining protection to the initial act of placement, the system risks rendering the child legally and institutionally invisible in the post-placement phase, thereby undermining the State's ongoing responsibility to ensure the child's well-being (Lundy, 2014). In this respect, the Algerian framework appears misaligned with evolving international standards that conceptualize child protection as a continuous and proactive obligation.

Adopting a combined doctrinal and socio-legal approach, this article examines the extent to which the Algerian legal framework ensures effective and sustained protection for children placed under Kafala. It analyzes the relevant legislative provisions, institutional practices, and their interaction with international child rights standards. The central research question guiding this study is: to what extent does Algerian law ensure continuous protection of children under Kafala, and how does this framework align with the requirements of international child rights law?

The article ultimately argues for a shift from an event-centered logic toward a continuous protection model, grounded in periodic review, strengthened institutional coordination, and proactive monitoring mechanisms. Such a transformation is necessary to ensure that the child remains at the center of legal protection not only at the moment of placement, but throughout the entirety of the Kafala relationship.

2. Methodology and Analytical Framework

This study adopts a dual methodological approach combining doctrinal and socio-legal analysis in order to provide a comprehensive assessment of the Algerian Kafala system. The doctrinal analysis focuses on the interpretation of the relevant legal provisions governing Kafala, primarily those contained in the Algerian Family Code and Law No. 15-12 on Child Protection. This analysis examines the internal coherence of the legal framework, the scope of judicial oversight, and the extent to which existing rules provide safeguards for children deprived of a family environment (McConville & Chui, 2017). In particular, it evaluates how legal norms are structured and whether they adequately reflect the principle of the best interests of the child. Complementing this approach, the socio-legal analysis seeks to explore the gap between normative provisions and institutional practices. It considers how legal rules are implemented in practice, particularly with regard to post-placement monitoring, the role of administrative and social services, and the effectiveness of existing supervision mechanisms (Banakar & Travers, 2005). This dimension is essential to assess whether formal legal guarantees translate into actual and sustained protection for the child.

The analytical framework of the study is informed by international child protection standards, notably those derived from the Convention on the Rights of the Child and the interpretative guidance of the Committee on the Rights of the Child (UN Committee on the Rights of the Child, 2013). In particular, the study adopts a dynamic understanding of the best interests of the child, conceived not as a one-time evaluative criterion but as an ongoing obligation requiring continuous assessment, monitoring, and adjustment (Zermatten, 2013). Within this framework, the article conceptualizes child protection through a fundamental distinction between two models. The first is event-centered protection, defined as a legal approach in which safeguards are concentrated at a specific decisive moment—such as the judicial attribution of Kafala—without ensuring sustained follow-up thereafter. The second is continuous protection, understood as a model based on ongoing supervision, periodic review, and adaptive institutional intervention throughout the duration of the child's placement (Cantwell, 2010). This conceptual distinction provides the analytical lens through which the Algerian Kafala system is evaluated, allowing the study to identify its structural limitations and to assess its alignment with evolving international standards of child protection.

3. Legal Foundations of Kafala in Algerian Law

3.1. Kafala under the Family Code

The legal framework governing Kafala in Algeria is primarily established by the Algerian Family Code, which defines Kafala as a voluntary commitment to assume responsibility for the care, education, and protection of a child without establishing filiation. This definition reflects the specific normative nature of Kafala as a form of legal guardianship distinct from adoption (Nasir, 2009). The attribution of Kafala is subject to judicial authorization, which constitutes a central safeguard within the system. Courts are required to assess the suitability of the prospective kafil, including their moral integrity, financial capacity, and ability to provide a stable and protective environment for the child (Boukhris, 2017). In practice, this evaluation may involve administrative inquiries and, in certain cases, social investigations aimed at verifying the conditions of reception (Ben Achour, 2015). This framework demonstrates a relatively structured procedural approach, reflecting a strong commitment to the principle of the best interests of the child at the moment of placement (Zermatten, 2013). However, this judicial control remains predominantly confined to the attribution phase, with no explicit legal provisions ensuring continued oversight once Kafala has been granted. As a result, the system prioritizes *ex ante* verification over *ex post* monitoring, thereby limiting the effectiveness of long-term protection (Cantwell, 2010).

3.2. Law No. 15-12 on Child Protection

The adoption of Law No. 15-12 on Child Protection marks a significant development in the Algerian child protection system, as it introduces a broader and more preventive approach to safeguarding

children in situations of risk. The law establishes mechanisms for early intervention, identifies categories of children in danger, and assigns responsibilities to public authorities and specialized institutions (UNICEF, 2019).

Notably, the law promotes institutional involvement in monitoring and protecting vulnerable children, including the possibility of administrative and judicial measures aimed at ensuring their safety and well-being. It thus reflects a shift toward a more proactive conception of child protection (Lundy, 2014). However, despite its broad scope, the law does not explicitly integrate children placed under Kafala within its system of monitoring and follow-up. The absence of specific provisions linking Kafala arrangements to the protective mechanisms established by this law significantly limits its effectiveness in ensuring ongoing supervision. As a result, children placed under Kafala may fall outside the operational reach of institutional protection once the placement has been formalized.

3.3. Structural Incoherence of the Dual Framework

The coexistence of these two legal instruments reveals a form of structural incoherence within the Algerian child protection system.

On the one hand, the Algerian Family Code provides a detailed framework for the attribution of Kafala, ensuring judicial control and procedural safeguards at the initial stage. On the other hand, Law No. 15-12 on Child Protection promotes a broader protective logic based on prevention and institutional intervention, but without explicitly incorporating Kafala into its scope of application.

This disconnection results in a fragmented system in which legal responsibility is clearly established at the moment of placement, while institutional continuity remains weak or absent thereafter. The lack of coordination between judicial authorities, social services, and child protection bodies further exacerbates this gap (Banakar & Travers, 2005).

From a functional perspective, this structural incoherence contributes to the phenomenon of temporal fragmentation identified in this study. By failing to ensure continuity between attribution and follow-up, the legal framework risks transforming Kafala into a one-time legal act rather than an ongoing protective relationship. This, in turn, may undermine the effective realization of the child's best interests, which require sustained attention, monitoring, and the possibility of intervention when necessary (UN Committee on the Rights of the Child, 2013).

4. Toward a Continuous Protection Model

Reforming the Algerian Kafala system requires a fundamental paradigm shift from an event-based logic of protection toward a continuous and dynamic model. Such a transformation is necessary to ensure that the child's best interests are not confined to the moment of placement, but remain central throughout the entire duration of care, in line with the evolving standards of the Convention on the Rights of the Child (UN Committee on the Rights of the Child, 2013).

4.1. Legal Reforms

At the normative level, the existing legal framework should be amended to introduce explicit mechanisms ensuring post-placement supervision. This includes the establishment of mandatory monitoring obligations following the attribution of Kafala, as well as the introduction of periodic judicial review procedures. Such mechanisms would allow courts to reassess the child's situation at regular intervals and to intervene when necessary (Cantwell, 2010). In this context, Kafala should be expressly recognized as a reviewable legal status, rather than a definitive legal act. This would align the system with contemporary child protection standards, which emphasize adaptability and responsiveness to the evolving needs of the child (Daly, 2017).

4.2. Institutional Reconfiguration

Legal reform must be accompanied by a reorganization of institutional actors involved in child protection. In particular, stronger coordination mechanisms should be established between judicial

authorities, social services, and child protection institutions. The current fragmentation of responsibilities significantly weakens the effectiveness of post-placement supervision (Banakar & Travers, 2005). The creation of a centralized national registry of Kafala cases would further enhance institutional coherence by enabling the tracking of placements and facilitating information-sharing between relevant authorities. In addition, the development of specialized units within child protection services could ensure more targeted and professional follow-up of children placed under Kafala (UNICEF, 2019).

4.3. Procedural Innovations

Beyond legislative and institutional reforms, procedural mechanisms must be strengthened to ensure effective implementation. Regular home visits conducted by qualified social workers should be made mandatory, allowing for direct assessment of the child's living conditions. These visits should be complemented by periodic social reports submitted to judicial or administrative authorities. Furthermore, the establishment of early warning and intervention systems would enable authorities to detect and address potential risks at an early stage. Such mechanisms are essential to move from a reactive to a preventive model of child protection (Lundy, 2014).

4.4. Conceptual Transformation

Ultimately, the proposed reforms require a deeper conceptual redefinition of Kafala itself. Rather than being understood as a one-time legal act completed upon judicial attribution, Kafala should be reconceptualized as a continuous legal and institutional responsibility, subject to ongoing evaluation, supervision, and, where necessary, corrective intervention.

This shift reflects a broader transformation in child protection law, where the focus moves from formal legal validity to the sustained realization of the child's best interests (Zermatten, 2013). Only through such a reconceptualization can the Algerian Kafala system overcome its current temporal fragmentation and evolve toward a truly protective and child-centered framework.

5. Comparative Insight

Comparative perspectives highlight that the effectiveness of child protection systems depends less on the formal legal structure of care arrangements than on the existence of robust and institutionalized monitoring mechanisms (Cantwell, 2010).

In France, alternative care arrangements are subject to continuous supervision, supported by legally mandated follow-up procedures and the active involvement of social services. This ensures that the child's situation is regularly assessed and that authorities retain the capacity to intervene when necessary (Martin, 2013). The French model illustrates how sustained institutional engagement can transform legal placement into an ongoing protective process rather than a one-time decision.

Similarly, in Morocco, the Kafala system incorporates a more structured role for administrative authorities, particularly in ensuring post-placement follow-up. Social services play a central role in monitoring the child's living conditions and maintaining institutional oversight beyond the initial placement (Bargach, 2002). This approach reflects a more integrated model in which legal and administrative mechanisms operate in tandem. These comparative examples demonstrate that institutionalized oversight constitutes the decisive factor in ensuring effective and sustained child protection, regardless of the specific legal form through which alternative care is provided (Lundy, 2014). They reinforce the argument that the Algerian system would benefit from strengthening its mechanisms of continuous supervision in order to align with evolving international standards, particularly those derived from the Convention on the Rights of the Child (UN Committee on the Rights of the Child, 2013)

6. Conclusion

The Algerian Kafala system reflects a relatively strong procedural commitment to child protection at the moment of placement, particularly through judicial oversight and eligibility requirements imposed on prospective caregivers. However, this protection is not effectively sustained over time, due to the absence of structured mechanisms for post-placement monitoring and institutional follow-up. This imbalance reveals a deeper conceptual limitation within the existing framework: the tendency to treat child protection as a discrete legal event rather than as an ongoing and adaptive process. As a result, the child's best interests risk being assessed only at the initial stage of placement, without sufficient guarantees that they will continue to be safeguarded throughout the duration of the Kafala relationship. Aligning the Algerian system with contemporary international standards, particularly those enshrined in the Convention on the Rights of the Child, requires a fundamental shift toward a continuous protection model. Such a model must be grounded in the establishment of periodic review mechanisms, strengthened institutional coordination between judicial and social actors, and the development of proactive intervention tools capable of responding to evolving risks. Ultimately, ensuring the effective realization of the child's best interests demands more than formal legal recognition at the moment of placement; it requires sustained legal and institutional engagement over time. Only through such a transformation can Kafala evolve from a static legal arrangement into a genuinely protective and child-centered system.

Acknowledgments

I would like to express my sincere appreciation to my co-authors, whose names appear on this article, for their valuable collaboration, insightful contributions, and unwavering commitment throughout the development of this work. It has been a privilege to work alongside such dedicated and inspiring colleagues. I am also deeply grateful to all those who provided support, guidance, and encouragement during the completion of this research. Finally, I dedicate this work to the cherished memory of my beloved brother, Belkessam Fouad, whose love and spirit continue to inspire me every day. May his soul rest in peace. I also dedicate this work to the memory of my dear father, whose values and support have profoundly shaped my path, and to my beloved mother, to whom I wish a long life filled with health and happiness. May this work stand as a heartfelt tribute to them.

References

- Banakar, R., & Travers, M. (2005). *Theory and method in socio-legal research*. Oxford: Hart Publishing.
- Bargach, J. (2002). *Orphans of Islam: Family, abandonment, and secret adoption in Morocco*. Lanham, MD: Rowman & Littlefield.
- Ben Achour, Y. (2015). *Child protection systems in North Africa: Legal and institutional challenges*. Tunis: Arab Institute for Human Rights.
- Boukhris, F. (2017). Kafala in Algerian law: Between religious foundations and legal modernization. *Journal of Family Law Studies*, 12(2), 45–67.
- Cantwell, N. (2010). *The implementation of the UN Guidelines for the Alternative Care of Children*. New York: UNICEF.
- Daly, A. (2017). *Children, autonomy and the courts: Beyond the right to be heard*. Leiden: Brill.
- Lundy, L. (2014). United Nations Convention on the Rights of the Child and child participation. *International Journal of Children's Rights*, 22(3), 340–356. <https://doi.org/10.1163/15718182-02203003>
- Martin, C. (2013). Child protection systems in France: Legal and institutional perspectives. *International Journal of Law, Policy and the Family*, 27(3), 350–368.
- McConville, M., & Chui, W. H. (2017). *Research methods for law* (2nd ed.). Edinburgh: Edinburgh University Press.
- Nasir, J. J. (2009). *The Islamic law of personal status* (3rd ed.). The Hague: Kluwer Law International.

- UN Committee on the Rights of the Child. (2013). General comment No. 14 (2013): The right of the child to have his or her best interests taken as a primary consideration (Art. 3, para. 1). Geneva: United Nations.
- UNICEF. (2019). *Alternative care for children: Global framework and best practices*. New York: UNICEF.
- Zermatten, J. (2013). The best interests of the child principle: Literal analysis and function. *International Journal of Children's Rights*, 18(4), 483–499