

Alternative Care of Children
Deprived of Parental Care
In the MENA region
Egypt's case

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Agenda

- The case of Egypt as an example of MENA
- Pan-African Guidelines on Inter-country Adoption ??

International Legal Framework on Alternative Care

- UN Convention on the Rights of the Child (CRC)
- Hague Convention on Inter Country Adoption (1993)
- The Stockholm Declaration on Children and Residential Care
- Interagency Guiding Principles on Unaccompanied and Separated Children
- African Charter on the Rights and Welfare of the Child (ACRWC)
- The South Asian Regional Convention on Child Welfare
- National legislation and policies

Guidelines for the Alternative Care of Children (2009)

MENA Countries: The Case of Egypt

- Egypt like the rest of the MENA region (with the exception of Tunisia) caters for CWPC by kafalah (sponsorship)
- Adoption is prohibited by Law
- Egypt has not yet ratified the Hague Convention on Inter-country adoption
- Inter-country adoption is not permitted

Egypt's Case: Kafalah and the rights of the Child

Kafalah is a form of alternative care for children:

- “The commitment to voluntarily take care of the maintenance, education & protection of a *minor*, in the same way as a father would do for his son”

Kafalah and the rights of the Child

Pros

- Preservation of blood lineage
- Child can carry the fourth surname (important in Muslim social tradition)
- Provides for appropriate financial support and family-based care systems.
- reduce the dependence on institutional care offered by orphanages

Cons

- Cumbersome bureaucratic process. Lacks vision
- Best interest of the Child is not central.
- The child is not entitled to the same rights as biological children, (name and inheritance)
- Social stigma challenges child integration in the family & society.
- Emphasis on concordance of religion between the adults and adoptive child.

Egypt's Case | Kafalah: Practical Implementation

Implementation of the law is beset by tremendous gender bias:

- A man's word is enough to declare a child as his sibling
- A mother can not report the birth of her child without official proof of marriage
- Children born in Orfi (unregistered) marriages have no rights and are virtually non existent in the eyes of the law
- Orfi marriages subject women to immense social stigmatisation while men are encouraged to enter into them, even for convenience purposes

Kafala & the rights of the Child

To give an example of some of the prejudices that hinder the implementation of Kafalah

Girls are preferred in cases of kafala while boys are undesired and often become the subject of a more complicated parent-child relationship

Adoptive families are not guided by the best interest of the child but rather reflects a culture that discriminates against women and treats adoptive children as second class citizens

Younger children are preferred to older ones

Married couples are preferred to a single woman as adoptive parents

Few cases of illegal inter- country adoption before the courts- By Egyptians holding second nationality

Child Law No. 126/2008 : A rights based reformed legal framework triggered to alleviate the plight of CWPC

Focus on Prevention – Protection- early intervention

First / *The umbrella*

The State guarantees as a minimum; all rights provided for by CRC, its Ops & other enforced international HR Conventions

Second / *The right to family environment and care*

“The child shall have the right to”:

- Life, survival and development within a family that provides the child with care & protection from any form of violence or discrimination (Article 3)
- Kinship with legitimate parents & to enjoy their care
- Duty of parents to provide care & protection
- The State bears the responsibility to provide CWPC with alternative family care (Article 7)

Egypt's Case: Child Law No. 126/2008

Third / The right to an identity

- The child shall be registered immediately at birth and free of charge (Article 17)
- The State is obligated to spare no efforts and use “all means” to help the child know *his* biological parent(s) through all means, including scientific
- A child whose paternity is disputed is entitled to a birth certificate.
- For the first time under Egyptian law, Article 15 gives a mother the right to register her child and obtain a birth certificate (albeit with limitations)
- “Without prejudice to the provisions of articles 4, 21, and 22 of the present Law, the mother shall have the right to report the birth of her newborn, register him at the birth registry, and obtain a birth certificate in which her name as mother is recorded. This birth certificate **is to be used only as a proof of the birth and for no other purposes.**”

Egypt's Case: Child Law No. 126/2008

Fourth / The right to a nationality

The nationality law is amended to give the child born to an Egyptian father or mother, the right to bear the Egyptian nationality (without exception)

Egypt's Case: Child Law No. 126/2008

Fifth / A rights based approach to education

- “education is a right for all children, provided free of charge ”,
- “ A child deprived of education is a “child at risk”, needing greater protection.
- Article 96 criminalizes adults who deprive the child of education.
- The objectives of education echoed that of article 29th of CRC.
- The State is committed to provide financial support to assist poor children to access & continue their education including children:
 - 1. Orphans or of unknown parent/s.
 - 2. Of single or divorced mothers, even if she is remarried, or deceased.
 - 3. Of detained parent”

“Educational guardianship shall lie with the custodian. In case of disagreement, any of the parents shall bring such matter before the judge.” The decision of the judge will be guided by the best interests of the child and will not impair such right of the custodian

Egypt's Case: Child Law No. 126/2008

Alternative families:

Care for newborns of unknown parentage, foundlings, displaced & abandoned by:

- Creating an alternative environment for care o ensure a normal life appropriate for children
- Providing entertainment for children accompanied by their alternative families
- Developing educational programs to raise the awareness of alternative families on children's mental health
- Training personnel working in the alternative families system
- Supporting institutions that provide care and accommodation for children in cases where alternative family care was unavailable, and until it was provided

Egypt's Case: Child Law No. 126/2008

Children of women prisoners

A “nursery shall be established, meeting the conditions required for such nurseries, where children of the imprisoned women are allowed to be placed, until the age of four (4) years. The mother shall accompany her child during the first year of his life. The mother is prohibited to accompany her child into her jail. The mother shall not be deprived from seeing her child or taking care of him, as a punishment for her wrongdoing.”

Egypt's Case: Implementation of the Law

Protection mechanism

- Child Law 126/2008 establishes a new decentralized protection system. It provides for 3 new protection mechanisms with Civil society as an equal active participant.
 - General child protection committees at the Governorate level
 - District protection committees
 - Child Helpline, a national, toll-free, 24-hour service as a complaint mechanism

Egypt's Case: Implementation of the Law

General Child protection committees

- Established in each governorate
- Drafts child protection policy & receives district committee reports

District Child Protection Committees

- Front line in developing local child protection policies and recommending actions to help at-risk, abused, and abandoned children
- Removal of a child from home or placement in a social welfare institution, or with an alternative family, is taken only by the judiciary

Egypt's Case: Implementation of the Law

- Prosecutors & the courts continue to handle criminal matters and cases where protection &/or restraining orders are required.
- Specialized Family Courts may also intervene in cases of family disputes involving divorce, alimony, &/or other personal status issues that affect children.

Egypt's Case: Implementation of the Law

- In lieu of placing a child in a child protection facility, children may be placed in foster families registered & monitored by the Ministry of Social Solidarity MOSS.
- MOSS licenses & oversees a wide range of child protection facilities managed by non-governmental organizations, including a limited number of facilities targeting special groups of at-risk children, such as street children, orphans, & abandoned children

Egypt's Case: Implementation of the Law

Challenges facing the implementation:

The best interest of the child is not paramount.

Caring for a child can be sought after as a source of income.

Poor inspection and follow up mechanisms.

Egypt's Case: Implementation of the Law

- Challenges facing the implementation
- The Law is still infant. It needs more:
 - advocacy to raise awareness of its benefits.
 - Capacity building of all professionals dealing with vulnerable families and children.
 - Financial and human resources.
 - With the current political situation in Egypt some of the legislative gains achieved by children and women are threatened.
 - Calls in the Parliament to repeal some of the Laws.

Pan-African Guidelines on Inter-country Adoption??

Guidelines for Alternative care or inter-country adoption?

UN Guidelines for Alternative Care of Children

As a model to guide the Pan-African guidelines

UN Guidelines for Alternative Care of Children: Why?

Implement the existing legal framework, including CRC.

- (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 kafala of Islamic law;
- b) To ensure the most suitable forms of alternative care, under conditions that promote the child's full and harmonious development;
- (c) To assist and encourage Governments to better implement their responsibilities and obligations in these respects; and
- (d) To guide policies, decisions and activities of all concerned with social protection and child welfare

Guidelines for the Alternative Care of Children

Purpose

- support efforts to preserve or re-establish the family unit
- when needed, identify and provide alternative child care that promotes the child's development
- encourage governments to assume their responsibilities towards the rights of children without parental care
- encourage all concerned with child care to fully take into account the Guidelines in their policies and activities.

“The Guidelines apply to the use and conditions of alternative care for all children under the age of 18 years, regardless of the care setting and of its formal or informal nature, with due regard to both the important role played by the extended family and community.”

Source: Guidelines for the Alternative Care of Children

The 'necessity principle' in the Guidelines

Discourage unwarranted recourse to alternative care by

The 'appropriateness principle' in the Guidelines

'Appropriate/Suitable conditions' of alternative care

The care option must:

- meet minimum standards?
- cater for the specific needs of each individual child.

Guidelines and Prevention

- **Promote parental care**
- **Emphasize family strengthening services**
- **Invest in preventing family separation**
- **Promote family reintegration**

Guidelines and Determination of Alternative Care

- Best interest of child is the paramount factor
- Through judicial, administrative, or other adequate and recognized procedures with safeguards
- Rigorous, expeditious, careful assessments
- Planning for care provision and permanency

Guidelines and Provision of Alternative Care

- POLICIES | regulatory framework; provision for coordination and establishing service provider networks; service standards
- INFORMAL CARE | guides States to support its optimal provision, respect traditional forms of care
- GENERAL CONDITIONS | access to basic health, education, other social services; connection with family; protective measures; privacy; access to complaint mechanisms; special attention to high needs

Guidelines and Foster Care

Promotes the establishment of system that can:

appropriately assess and match the needs of the child with potential foster families;

Identify, train and monitor a pool of accredited foster carers;

Provide special support and counseling for foster carers

Pan-African Guidelines on Inter-country Adoption

I am confident that the rich deliberation and the success stories exchanged in this conference will guide the drafting process of the Pan-African Guidelines.

Consolidate the Traditional African communal cares.

Benefit from the UN Guidelines for Alternative Care of Children.

In a transparent participatory process involving all stakeholders especially children deprived of parental care.

A process that is solely guided by the best interest of the child