

## Definition

Equity in permanency refers to principles of child protection practice that prioritise the exploration of family placements,<sup>1</sup> without discrimination of any kind, to achieve optimal long-term outcomes for the child. The principles seek to empower child protection partners globally to have a child rights approach, and promote policies and protocols that ensure all family placement options are explored for any child who can no longer be cared for by their parents. Furthermore, equity in permanency aims to access and connect with a child's extended family both locally and overseas to provide the best opportunity for them to be raised with a strong sense of identity, belonging, roots and culture.

## Equity in Permanency: Why Now?

Global research indicates that children have a greater capacity to thrive when they are raised in families of origin, whenever it is safe and in their best interests. Child protection experts around the world widely acknowledge that government entities and those responsible for the protection of children should prioritise efforts to keep children with families, and offer increased support to these placements to ensure family members are able to fulfil their care responsibilities.<sup>2</sup> While extensive family finding and engagement is recognised as best practice, growing international research shows that at the local level there may not be adequate support to achieve this when children in care have family across international borders.

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<sup>1</sup> Family placements can take different forms and denominations depending on each country specificities (e.g. *kafalah* does often take the form of a family placement in countries whose legislations are based on or influenced by Sharia law). In international treaties, such as the *UN Guidelines for the Alternative Care of Children* it is usually referred to as *kinship care* (see para. 29 c)(i)).

<sup>2</sup> See *Public Law 110 - 351 - Fostering Connections to Success and Increasing Adoptions Act of 2008*, *First Prevention Services Act (FFPSA)*; Administration for Children and Families. Informational Memorandum, available at: <https://www.cwla.org/wp-content/uploads/2021/01/ACYF-CB-IM-20-09.pdf> and *The Case for Change - Independent Review into Children's Social Care*,

Globally, 281 million people are living outside their country of origin.<sup>3</sup> As a result, millions of children have family connections that cross international borders. While the global movement of children across borders is not a new phenomenon, few protection authorities have grown in their knowledge, tools, or political will to seek family placement options in another country. Despite the growing number of foreign-born populations in many countries, research conducted by ISS members indicates only a small percentage of children in care have an international family placement option explored.<sup>4</sup> Other investigations further highlight a dearth of policies to support international family finding and engagement at a national, jurisdictional or institutional level.<sup>5</sup> Child protection practitioners may be unsure of how to abide by foreign regulations and laws associated with securing permanency for a child when working outside of their jurisdiction and without clear guidelines informing practice.

Research findings also reveal deeply-rooted racial and ethnic biases that contribute to the significant hurdles that children of colour face in achieving permanency with family as compared to their white counterparts.<sup>6</sup> While race, ethnicity or nationality alone cannot be an indicator of whether a child has family overseas, failing to consider these elements compromises the ability of child protection systems<sup>7</sup> to seek placement options that prioritise a child's sense of identity, roots, language and culture.

Legislating bodies around the world are beginning to demonstrate progression toward addressing issues of racial equity among systematically excluded populations.<sup>8</sup> Equitable access to kin in

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<sup>3</sup> See World Migration Report 2022, available at: <https://worldmigrationreport.iom.int/wmr-2022-interactive/>.

<sup>4</sup> See ISS/IRC Newsletter n. 262 of September – October 2022. Editorial available at: [https://www.iss-ssi.org/wp-content/uploads/2023/04/Edito\\_262October\\_2022.pdf](https://www.iss-ssi.org/wp-content/uploads/2023/04/Edito_262October_2022.pdf).

<sup>5</sup> See Equity in Permanency: Assessing the Scope of International Kinship Placements for Children in the U.S. Foster Care System, available at: [https://www.iss-usa.org/wp-content/uploads/2022/04/Report.Equity-in-Permanency\\_Assessing-International-Placement-with-Kin-2.pdf](https://www.iss-usa.org/wp-content/uploads/2022/04/Report.Equity-in-Permanency_Assessing-International-Placement-with-Kin-2.pdf); LITTLECHILD, B. & HOUSMAN, C. Applying Universal Principles of 'Best Interest': Practice Challenges across Transnational Jurisdictions, Cultural Norms, and Values, Children (2023), available at: <https://www.mdpi.com/2227-9067/10/3/537> and [Cross-border child safeguarding: Challenges, effective social work practice and outcomes for children, Children and Families Across Borders \(2018\)](#).

<sup>6</sup> See [Disproportionality and race Equity in Child Welfare \(2021\)](#).

<sup>7</sup> References to 'child protection systems' throughout this document includes an entity or group of entities responsible for implementing child protection measures, i.e., government agencies and Non-Governmental Organisation (NGO) implementation partners.

<sup>8</sup> See [Kigali Declaration on Child Care and Protection Reform](#) ; Public Law 95 - 608 – Indian Child Welfare Act, available at <https://www.bia.gov/bia/ois/dhs/icwa> and <https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg3069.pdf>; the Equality Act, available at: <https://www.legislation.gov.uk/ukpga/2010/15/contents> and the Racial Discrimination Act 1975, available at: <https://www.legislation.gov.au/Series/C2004A00274>.

permanency planning and decision making must form part of a child's rights framework. It is crucial to create new opportunities to move from the discourse of protection towards building capacity for children's rights to guide practice. This includes the development of international guidance that integrates and recognises the knowledge and lessons from each region. Ultimately, child protection systems and Non-Governmental Organisation (NGO) partners must evolve their policies and practices to fully explore family and kinship placement options when a child can no longer be cared for by their parents, without discrimination of any kind.

ISS, an international network of members in nearly 125 countries who provide intercountry child protection casework services, proposes the following Principles and Recommended Practices that governments should prioritise to achieve equity in permanency for cross-border families.

## **Principles:**

**1. Children's Rights (Arts. 3, 8, 20, 21 and 30 CRC):** As declared in the UN Guidelines for the Alternative Care of Children and the 2019 Resolution of the United Nations General Assembly on the Rights of the Child, 9 it is the child's right to live in a safe and stable family home environment, for all decisions to emphasise the best interests of the child, and importantly, for the child to be afforded the opportunity to maintain their identity. Every child also has the right to participate in decisions that affect their life, permanent placement opportunities included.

**Recommended Practice:** All child protection systems should implement clear policies underpinned by a child rights approach to ensure family and kinship placements are explored and prioritised above other alternative care placement options (such as placements with non-relatives, foster care, institutional care) or other permanent child protection measure such as adoption. Child protection systems should make every effort to involve and promote the child's voice in decisions that will affect their life. This includes that they carry out best interests' assessments and determinations and promote children's right to family life and connections to family, kinship, and culture wherever they are in the world. When considering overseas placements, child protection systems and other involved authorities should address discrepancies in legal effects deriving from the different forms that kinship care/family placements can take in different legislations. This is particularly relevant - yet not exclusive - to cross-border kafalah placements.<sup>10</sup>

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9. See Resolution adopted by the General Assembly on 18 December 2019, available at: <https://digitallibrary.un.org/record/3848250>.

10. See Technical note: National family type kafalah, in Kafalah Preliminary analysis of national and cross-border practices (2020), available at: [https://www.iss-ssi.org/wp-content/uploads/2023/03/ISS\\_Kafalah\\_ENG.pdf](https://www.iss-ssi.org/wp-content/uploads/2023/03/ISS_Kafalah_ENG.pdf).

**2. Equal Opportunity (Art. 9 par. 2 CRC):** Child protection systems should create equitable opportunities for families to participate in placement decisions for children who can no longer be cared for by their parents, including family members who reside overseas.

**Recommended Practice:** All child protection system should explore family relations (art. 8 CRC) and kin connections, regardless of geographic location, when it is deemed to be in the child's best interests (art. 3 CRC). Child protection systems should utilise technology and alternative communication methods wherever possible and appropriate to consult with family members across borders when considering placement decisions for children who can no longer be cared for by their parents. This includes utilising professional interpretation services to promote language access as well as utilising local professionals to strengthen the family support system. It also requires a gender-based lens to consider the treatment of girls and young women vis-à-vis other groups. Also, in the case of a previous placement in the child protection system of a country, where the child will no longer live with their family, all parties involved should be given the opportunity to be heard and provide their informed consent.

**3. Local expertise:** Child protection systems should engage social workers or paraprofessionals in the same country as overseas family members for identification and assessments for potential placements.

**Recommended Practice:** Any time an overseas family member is located and expresses interest in caring for a relative child who can no longer be cared for by their parents, a local social worker or paraprofessional in that country should be engaged to conduct an assessment and to advise on local support services. This includes consideration of legally available alternative care options in the receiving country. Local social workers or paraprofessionals should be utilised because they understand their national legal frameworks, cultural values and language, systems and supports, and can conduct appropriate national background checks. Contracted agencies should be experienced in child protection support with verified credentials and professional profiles. As for any overseas placements, communication between States is key. Hence, existing co-operation mechanisms such as the one set in the HCCH 1996 Child Protection Convention should be effectively implemented.

**4. No Bias (Art. 2 CRC):** Child Protection systems should work to address implicit and unconscious biases that may exist amongst key decision makers regarding the complexities of transitioning a child into a family placement overseas and within a system or culture that might differ from their own.

**Recommended Practice:** Child protection systems should promote training on systemic, individual, and implicit and unconscious bias for professionals working at all levels. These biases may prevent and discourage social workers, lawyers, and judges from recommending a child be placed with family or kin overseas, even when a positive assessment recommendation has been made. To overcome deeply held views on what constitutes the best interests of a child when

considering an overseas family placement, decision makers must develop a keen awareness of how institutional and historical practices continue to influence whether or not an overseas kinship placement is viewed as viable.

**5. Identity (Arts. 8 and 20 CRC):** Child protection systems should prioritise a child's access to their culture, roots, language, extended family, community, and traditional land when making placement decisions. This approach respects the child's right to a robust family life and affords them the opportunity to maintain their identity.

**Recommended Practice:** Every country's child protection system should explore all potential placement options that enable a child to remain within their extended family and cultural systems, including the exploration of any potential family placement options overseas, when deemed in their best interests. This also applies to cross-border kafalah placement, where overseas solutions may have priority over national placements in case of strong family ties.

**6. Adequate Planning:** Child protection systems should always prepare a child for an impending placement with family members overseas through the development of a 'Transition Plan' that includes consideration of pre-placement support for carers to prepare for the child's arrival, and local post placement follow-up and connection to resources.

**Recommended Practice:** A comprehensive 'Transition Plan' should be developed by the child protection system, local professional/s, the child's current carer and prospective carer. The 'Transition Plan' should include pre-placement support for carers, as well as time-bound contingency plans agreed to by the sending and receiving authorities in the event of a placement break down. It should also include a clear plan to safely move the child to the new home, including ensuring a suitable travel companion. Consideration should also be given to funded post-placement support and visits to ensure the child's transition and carers are well supported from the outset. It should also be ensured that the various forms of care have the same legal conditions and opportunities for development. Also, in the case of a *kafalah* placement, children and families should be prepared and supported before, during, and after the placement. Indeed, pre-placement training of the *kafil* as for any other caregiver plays a vital role in ensuring the successful integration of the child into their new family.

**7. Accountability:** Child protection systems should seek to improve data collection, information management and reporting systems related to children without parental care in all settings and situations to close existing data gaps and develop global and national baselines.

**Recommended Practice:** Recognising the critical gaps in national and international data collection, further research, and capacity to monitor and report on child care and protection, child protection systems should be able to account for children they are responsible for, including the recording of when and where children are placed out of their jurisdiction, across international borders, for the purposes of analysis and improvement of system outcomes. It is important to establish systems for quantitative data collection as well as qualitative data, including

opportunities to gather knowledge and expertise from children and adolescents. In light of the informal nature of many cross-border kafalah placements, data collection and effective monitoring across borders are of utmost importance.

### **About ISS and the IRC:**

**International Social Service (ISS)** is a professional and specialised global network of 132 members founded in 1924. For almost 100 years, ISS has been serving the needs of children and families in the areas of cross-border child protection, custody, and child abduction. ISS's work in these matters has primarily taken the form of individual case management with families, Child Protection Authorities, and the Courts. Likewise, ISS has contributed to legislative advocacy and policy development in co-operation with national, regional, and international bodies in child protection and cross-border family disputes.

ISS also has a long history of close co-operation with the **Hague Conference on Private International Law (HCCH) and its Central Authorities** through involvement in the practical operation of conventions through our intercountry casework involving child protection. As stated in the HCCH Practical Handbook on the Operation of the 1996 Hague Child Protection Convention, 'particular tasks may be performed directly by the Central Authority, or indirectly through public authorities or other bodies. Central Authorities will have recourse to bodies of uncontested competence in the field, such as the International Social Service'.<sup>11</sup>

The **International Reference Center for the rights of children deprived of their family (ISS/IRC)** is a program of the ISS General Secretariat based in Geneva. Through its publications, training programs, and technical assistance, the ISS/IRC has been equipping alternative care and adoption professionals across the world for more than 30 years. Likewise, the ISS/IRC has always been at the forefront of implementing international standards and raising awareness of the need to protect children's rights and their well-being through its advocacy initiatives.

One of the ISS/IRC's most recent achievements is the publication of a Preliminary analysis of national and cross-border practices on *Kafalah*, an extensive study on *kafalah*, a child protection measure that is widely applied in countries whose legal system is based on or influenced by Sharia law. This analysis aims to improve the understanding of this particular child protection measure and hence the well-being of all the children concerned in cross-border situations.

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<sup>11</sup> See *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention* (p. 119), available at: <https://assets.hcch.net/docs/eca03d40-29c6-4cc4-ae52-edad337b6b86.pdf>.