

THE MFL-I Scorecard

(Q1) Is the *jurisdiction* of MFLs clearly defined? If it has changed since independence, what change(s) occurred, and when?

[*Explanation: MFLs include written or unwritten religious laws and relevant civil (non-criminal) legislation that MFL courts apply in the adjudication of marriage, divorce, maintenance, custody, and inheritance disputes. "Jurisdiction" has three meanings: 1) Subject Matter: denotes the specific circumstances that the law applies to (marriage, divorce, inheritance, etc.); 2) Territorial: concerns the geographical extent of the law (e.g., parts of the country in which MFL is applicable); 3) Personal: indicates which people (i.e., Muslims) fall under the purview of the MFLs.*]

	Score	Chronological Changes
Clear: (the jurisdiction of MFLs is clear; there is no ambiguity regarding what issues or which people fall under their purview or where they apply)	2	
Partly Clear	1	
Not clear (jurisdiction of MFLs is open-ended; it is not apparent what issues or which people fall under their purview or where they apply)	0	

(Q2) Are the applicable substantive (material) rules certain, predictable, and accessible to the population concerned? If the certainty, predictability, or accessibility of the MFLs has changed since independence, what change(s) occurred, and when?

[*Explanation: Substantive rules mean material rules that regulate individuals' rights and duties under the MFL in force. The certainty of the law refers to the law's state of being clear and free of doubt. The law's predictability refers to individuals' ability to know the rules in advance (e.g., there are codes, legal precedents, and authoritative sources that explain the law). The accessibility of the law refers to its state of being accessible to the public (e.g., the rules are available in the native language of the Muslim population).*]

	Score	Chronological Changes
Yes, rules are certain, predictable, and accessible.	2	

Rules are partly certain, predictable, and accessible.	1	
No, rules are not certain, predictable, or accessible.	0	

(Q3) Are MFL court (specialized religious “shari’a courts staffed with *qadis* or civil courts staffed with civil judges) decisions published? If the practice or rule concerning the publication of court decisions has changed since independence, what change(s) occurred, and when?

[Explanation: It is understood that the publication of court rulings (especially in family cases) may be subject to the presiding judge's permission due to privacy concerns. If decisions are not published, other methods of making decisions public (oral public announcement, posting on a community board, etc.) are also considered.]

	Score	Chronological Changes
Yes, both at trial (first instance) and appellate or high court levels (regularly or with varying regularity)	2	
Only at the first instance or appeal (high court) level (regularly or with varying regularity)	1	
No, at neither trial (first instance) nor appellate level	0	

(Q4) Does the law recognize individuals' right to legal counsel at MFL courts (specialized religious “shari’a courts staffed with *qadis* or civil courts staffed with civil judges)? If the rule concerning legal counsel at MFL courts has changed since independence, what change(s) occurred, and when?

[Explanation: "Legal counsel" includes civil lawyers as well as religious pleaders and lawyers.]

	Score	Chronological Changes
Yes, the law requires everyone appearing before the court to have a legal representative and provides pro-bono representation to those who cannot afford it. (Compulsory representation)	2	
Yes, the law recognizes the right to legal counsel, but individuals can waive it; there may or not be pro-bono counsel. (Optional representation)	1	
No, the law does not recognize the right to legal counsel.	0	

(Q5) Are MFL judges selected on the same meritocratic criteria that apply to other civil judges? If the rules concerning the selection and appointment of MFL judges have changed since independence, what change(s) occurred, and when?

[Explanation: The term "MFL judges" includes judges who preside over the MFL cases and thus interpret these laws. They may be civil judges at civil courts (as in Egypt and India) or religious judges (e.g., qadis) at specialized shari'a courts (as in Israel). Suppose the same selection and appointment rules apply to civil and MFL judges, which do not discriminate based on religion and require similar professional/educational standards. In that case, "2" is assigned. Suppose the relevant laws set different requirements for MFL judges (e.g., requiring MFL judges to be Muslim or male, seeking lower educational criteria, etc.) but are still standardized (e.g., a specific merit-based, non-arbitrary selection system), then "1" is assigned. If there are no standardized rules or criteria (educational, etc.) and the appointment of MFL judges is mainly based on arbitrary, non-meritocratic considerations, then "0" is assigned.]

	Score	Chronological Changes
The same rules (which do not disqualify people based on religion, etc., and require the same level of professional attainment) apply to civil and MFL court judges. (MFL judges may be required to have additional training in "shari'a" and civil law training, etc.)	2	
There are merit-based, standardized rules, but the law makes certain exceptions for the MFL judges (e.g., lower professional standards, educational rules, religion-based disqualifications, etc.).	1	
There are no formal, standardized rules for the selection and appointment of MFL judges.	0	

(Q6) Are women allowed to serve as judges and lawyers (counsel, pleader, etc.) at the MFL courts (civil or religious)? If the rules concerning women's appointment as judges and lawyers to MFL courts have changed since independence, what change(s) occurred, and when?

	Score	Chronological Changes
Women can legally serve as judges and lawyers (counsel, pleader, etc.) in MFL courts.	2	
Women are banned from judgeship but can serve as lawyers (counsel, pleader, etc.).	1	
Women are NOT allowed to serve as either judges or lawyers (counsel, pleader, etc.).	0	

(Q7) Are the rulings of MFL courts subject to constitutional review? If the rules concerning the constitutional review of MFL decisions have changed since independence, what change(s) occurred, and when?

[Explanation: Constitutional review differs from an appellate or a cassation court that decides whether the MFL court has acted within the bounds of its jurisdiction or applied the law correctly. The constitutional review examines whether MFL decisions comply with the fundamental rights and freedoms guaranteed by the constitution and/or international treaties, which are domesticated according to national law.]

	Score	Chronological Changes
Yes, MFL rulings become enforceable only after they go through ratification by civil courts (or by similar review bodies), which review their constitutionality (and/or compliance with international law) (ex-ante oversight).	2	
Yes, the constitutionality (and/or compliance with international law) of the MFL rulings can be challenged by parties at high courts (or at other relevant bodies) (ex-post review).	1	
No, MFL rulings are not subject to constitutional review.	0	

(Q8) Is the application of Islamic marriage law consensual? Can individual Muslims who do not consent to religious law marry under an alternative civil (non-religious) law? If the rule concerning the mandatory or consensual application of MFL rules on marriage has changed since independence, what change(s) occurred, and when?

[Explanation: The question seeks to determine whether people can opt out of Islamic marriage law and marry under an alternative secular law that applies to every citizen equally, irrespective of religion. Secondly, it also seeks to clarify whether opting out has any legal implication; for instance, whether the law openly discriminates against people who marry civilly in other areas such as inheritance, custody, etc.]

	Score	Chronological Changes
Yes, consensual. Individuals can <i>freely</i> choose to marry under MFL or civil law. OR There is no religious marriage. But a civil (non-religious) law uniformly applies to everybody regardless of religion.	2	
Yes, individuals can choose to marry under civil law, but this has negative legal consequences for the individuals who opt out of religious law (e.g., limitations relating to inheritance, custody, and nationality).	1	

No, MFL is mandatory.	0	
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(Q9) Is the application of Muslim divorce law consensual? Can individuals who do not consent to religious law divorce under an alternative civil (non-religious) law? If the rule concerning the mandatory or consensual application of Islamic divorce law has changed since independence, state what change(s) occurred and when?

[Explanation: The question seeks to find out 1) whether people can freely opt out of religious law and divorce under an alternative secular law even if they originally married according to Islamic law; 2) whether civil divorce is available only to those who married civilly; and 3) whether people who opt for civil divorce are legally discriminated against (e.g., the law may allow civil divorce but may also require people—especially women—to obtain a religious divorce for remarriage).]

	Score	Chronological Changes
Yes, consensual. Individuals can choose to divorce under either MFLs or civil law. (It does not matter if they were initially married under Islamic or civil law). OR Islamic divorce rules are not recognized, and a civil (non-religious) law applies uniformly to everybody.	2	
Civil divorce is available only to those who married civilly, OR Individuals can choose civil law over MFL (even if married under religious law), but this may have adverse legal consequences for parties who opt out of religious law.	1	
No, MFL is mandatory.	0	

(Q10) Is the application of MFL rules on (post-marital spousal) maintenance consensual? Can individuals who do not consent to religious law claim maintenance under an alternative civil (non-religious) law? If the law concerning the mandatory or consensual application of Islamic maintenance rules has changed since independence, what change(s) occurred, and when?

[Explanation: The question seeks to determine 1) whether people can freely opt out of religious law and claim spousal maintenance under civil law; 2) whether civil maintenance is available only to those who married civilly; and 3) whether people who opt for civil maintenance are legally discriminated against in any way.]

	Score	Chronological Changes
Yes, individuals can choose between MFL and civil law (It does not matter if they were initially married under MFL or civil law). OR Muslim maintenance rules are not recognized. There is a civil law (non-religious) that uniformly applies to everybody.	2	
Maintenance under civil law is available only to those who marry civilly. OR Individuals can choose civil law over MFL (even if married religiously), but this may have adverse legal consequences for the parties who opt out of religious law.	1	
No, MFL is mandatory.	0	

(Q11) Is the application of MFL rules concerning testate succession consensual? Can individuals who do not consent to religious law decide what happens to their estate by leaving a will according to civil (non-religious) succession law? If the law concerning the application of MFL rules on testate succession has changed since independence, what change(s) occurred, and when?

[Explanation: The question seeks to find out 1) whether people can freely opt out of religious law and leave civil wills to determine what is going to happen to their property after their death; 2) whether civil wills are available only to those who married civilly; and 3) whether people who opt for civil testamentary succession law are legally discriminated against.]

	Score	Chronological Changes
Yes, individuals (testators) can choose to leave wills according to Islamic or civil law. OR Islamic rules on testate succession are not recognized, and civil law (non-religious) applies uniformly to everybody.	2	
Testate succession, according to civil law, is possible only for those who marry civilly. OR Individuals can choose civil law over Islamic testate rules (even if married religiously), but this may have adverse legal consequences for the party who opts out of religious law.	1	
No, MFL is mandatory.	0	

(Q12) Is the application of MFL rules concerning intestate succession (distribution of the deceased's estate without a will) consensual? Can the heirs of the deceased opt for the distribution of his/her estate under civil law instead of MFL? If the law concerning the mandatory or consensual application of Islamic inheritance (intestate succession) rules has changed since independence, what change(s) occurred, and when?

[Explanation: The question seeks to find out 1) whether the heirs of a deceased Muslim can freely opt out of religious law and request the distribution of the deceased's estate under the civil inheritance law; 2) whether civil inheritance law is available only to the heirs of those who married civilly; and 3) whether people who opt for civil inheritance law are legally discriminated against.]

	Score	Chronological Changes
<p>Yes, consensual. The heirs can request that the deceased's estate be distributed according to either civil or Islamic law. It does not matter if the deceased initially married under MFL or civil law (unless the deceased has requested otherwise through a will) [In the case of Islamic succession law, all involved parties may need to explicitly consent to it (written or oral in front of witnesses/judge)].</p> <p>OR</p> <p>Muslim intestate succession rules are not recognized, and a civil (non-religious) law uniformly applies to everybody.</p>	2	
<p>Civil inheritance law is available to the heirs of only those who marry civilly.</p> <p>OR</p> <p>Heirs can choose civil inheritance law (even if the deceased married religiously), but this may have adverse legal consequences for the parties who opt out of religious law.</p>	1	
No, MFL is mandatory.	0	

(Q13) Is the application of MFL rules concerning child custody consensual? Can individuals who do not consent to religious law claim custody rights under an alternative civil (non-religious) law? If the law concerning the mandatory or consensual application of Islamic custody rules has changed since independence, what change(s) occurred, and when?

[Explanation: The question seeks to find out 1) whether parents/spouses claim custody of their children under civil law even if they originally married under MFL; 2) whether civil custody law is available only to parents who married civilly; 3) whether people who opt for civil custody law are legally discriminated against.]

	Score	Chronological Changes
Yes, parents/spouses can choose between MFLs and civil law. (It does not matter if they were initially married under MFL or civil law.) [If the MFL is chosen, both spouses must explicitly consent to it (written or oral in front of witnesses/judge).] OR Islamic custody rules are not recognized, and there is a civil law (non-religious) that uniformly applies to everybody.	2	
Civil custody law is available only to those who marry civilly. OR Parents/spouses can choose civil custody law (even if they married religiously), but this may have adverse legal consequences for the parties who opt out of religious law.	1	
No, MFL is mandatory.	0	

(Q14) Does the law recognize freedom of religion, including the right to convert from Islam? If the rules concerning conversion or apostasy have changed since independence, what change(s) occurred, and when?

[Explanation: The "law" means the constitution or relevant legislation regulating religious freedoms and conversions. It is possible that while the applicable civil legislation may recognize the right to convert (or adopt a religion other than Islam), under the MFLs in force, this may have negative consequences for the convert (or the "apostate"). For instance, the convert's marriage may be annulled, he/she may be denied custody, etc. In that case, option "1" is assigned. If there is a criminal prohibition/penalty, then "0" is assigned. If individuals are free to change their religion with no civil or criminal implications, then "2" is assigned.]

	Score	Chronological Changes
Yes, individuals can freely change their religion and adopt another religion (other than Islam or have no religion at all). No associated penalties or civil (familial) sanctions against converts (or "apostates") exist.	2	
Yes, individuals can freely convert from Islam, but this may have negative consequences for their family relations.	1	
No, conversion is punished under criminal/civil law.	0	

(Q15) Are polygynous (multiple wives) marriages valid under the MFLs? If the rules concerning Muslim polygyny have changed since independence, what change(s) occurred, and when?

[Explanation: The question seeks to determine the "validity" of polygynous marriages under MFLs. There may be a secular criminal prohibition/penalty against polygynous unions, but this may not

affect the validity of the marriage. For instance, in some jurisdictions, a husband who contracts a second marriage may be jailed, but his second marriage may still be valid. In that case, the marriage will have all the legal consequences of a valid marriage. If the applicable MFL clearly states that monogamy is the only form of a valid marriage, then "2" is assigned. If polygamy is recognized but requires the court's or the extant wife's explicit (oral before the relevant legal authority or written) prior consent, then "1" is assigned. If polygyny is recognized and does not require the extant wife's / court's explicit prior consent, then "0" is assigned. If the law allows for polygyny but demands that the husband has financial means to sustain multiple wives (and their children) or treat them equally without seeking the extant wife's or court's consent, then again, "0" is assigned.]

	Score	Chronological Changes
No, monogamy is the only form of marriage recognized as valid under the applicable MFL.	2	
Yes, polygynous marriages are recognized as valid. BUT the MFL in force requires the <u>explicit</u> prior consent of the extant wife/competent court.	1	
Yes, polygynous marriages are recognized as valid without the <u>explicit</u> prior consent of the existing wife (wives)/competent court.	0	

(Q16) Is extra-judicial and unilateral (does not require the wife's consent or any valid grounds) *talaq* (a Muslim husband's right to divorce by pronouncing the word "*talaq*") valid under the MFL in force? If *talaq* rules have changed since independence, what change(s) occurred, and when?

*[Explanation: According to some interpretations of MFL, a Muslim husband can divorce his wife by pronouncing *talaq*. In classical law and many contemporary jurisdictions, *talaq* is extra-judicial, unilateral, and available only to the husband. That is to say; the husband does not need to appear before a court, demonstrate any valid grounds, or have the wife's consent to divorce her. There may be penal sanctions against unilateral divorce in some jurisdictions, but this does not necessarily affect the divorce's validity. If *talaq* is wholly abolished, then "2" is assigned. If it is not abolished but regulated by requiring prior court authorization (no longer extra-judicial) and/or the wife's prior consent, then "1" is assigned. If it is not regulated, but the wife has a complementary or parallel right to no-fault, unilateral divorce (without the husband's consent) (such as the *khula* divorce under Law 1/2000 in Egypt), again, "1" is assigned. If *talaq* is not regulated and women have no access to no-fault, unilateral divorce, then "0" is assigned.]*

	Score	Chronological Changes
<i>Talaq</i> (extra-judicial, unilateral, and exclusively available to men) is abolished. Both spouses have equal access to divorce on the same grounds.	2	
<i>Talaq</i> is strictly regulated by requiring prior court authorization (no longer extra-judicial) and/or the explicit consent of the wife. OR <i>Talaq</i> is not regulated, but women have a right to no-fault (does not require any grounds for divorce), unilateral divorce (without the husband's consent).	1	
<i>Talaq</i> is unregulated (extra-judicial and unilateral). AND Women have no right to no-fault, unilateral divorce.	0	

(Q17) What is the minimum age of legal marriage; does the MFL in force consider underage marriages null and void? (Note: *When a marriage is null and void, it has no legal consequences; it would not require dissolution or annulment by following the procedures outlined in the law (talaq, khula, etc.)*)

If the marriage age rules have changed since independence, what change(s) occurred, and when?

[Explanation: The question seeks to determine the minimum age of marriage according to the MFL and other civil laws (which are applied by MFL courts along with so-called religious laws) in force, as opposed to criminal law. As in some jurisdictions, even if underage marriages are criminalized, this may not affect the marriage's validity.

If the applicable law (a) sets the minimum age for marriage as 18 or above (for both sexes), (b) allows no exceptions, and (c) considers the marriage of individuals under 18 null and void (legally nonexistent), "2" is assigned. If law (a) sets a minimum age of 16 or above (for both sexes), (b) allows no exceptions, and (c) considers underage marriage null and void, then "1" is assigned. In all other cases, "0" is assigned (Suppose the law sets a minimum age, such as 16 or 18, but allows for exceptions—for underage individuals with parental consent or permission from the court—or it does not consider underage marriage null and void, then "0" is assigned. Likewise, if the law imposes a minimum age for marriage for either sex lower than 16, again, "0" is assigned.)

	Score	Chronological Changes
The law sets 18 (or above) as the minimum age of marriage and considers underage marriages null and void. (No exception for either sex due to parental or judicial permission)	2	
The law sets 16 (or above) as the minimum age of marriage and considers underage marriages null and void.	1	

(No exception for either sex due to parental or judicial permission)		
The law sets no minimum age of marriage, OR It sets an age (16 or 18) but allows for exceptions for underage marriages (for either sex), OR does not consider underage marriages null and void.	0	

(Q18) What is the state's policy towards individuals and groups who challenge state-enforced MFLs and promote their alternative interpretations? If the state's policy towards such groups has changed since independence, what change(s) occurred, and when?

[Explanation: The question seeks to determine the state's policy towards groups or people who challenge state-enforced MFLs. These may include women's or human rights groups that use either secular or religious means to challenge and promote alternative interpretations of officially sanctioned religious laws. They lobby government officials for reform or bring lawsuits to courts to spearhead a judicial change. If the state actively supports and protects such groups, then "2" is assigned. "Active support" means providing institutional, logistical, or symbolic support by state leaders (including first ladies) or institutions. "Protection" means political and police protection of groups' physical safety and well-being that promote alternative views on MFLs. State support also means allowing reasonable access to legislative and judicial institutions to challenge state-sanctioned religious laws (meeting with legislators, proposing a bill, bringing a lawsuit, etc.). If the state does not support but merely tolerates such groups, then "1" is assigned. If the state actively discourages or bans such groups or such groups do not exist for any other reason, then "0" is assigned.]

	Score	Chronological Changes
The state actively protects/empowers groups and individuals who challenge state-sanctioned MFLs and allows them access to legislative and judicial channels to challenge MFLs.	2	
The state does not actively support but tolerates individuals and groups who challenge officially-sanctioned MFLs.	1	
The state actively discourages or bans individuals and groups who challenge state-sanctioned MFLs.	0	