

# SECULARITY & FREEDOM OF RELIGION IN SENEGAL

## Between a Constitutional Rock and a Hard Reality

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# SECULARITY AND FREEDOM OF RELIGION IN SENEGAL

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# Religions in Senegal

## The statistics (official one and real one)

- Muslim 94%
- Christian 5% (mostly Roman Catholic)
- Indigenous beliefs 1%
- N.B. (caveat) Indigenous faith still shapes the spiritual beliefs of the majority of Senegalese people.

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# Religions in Senegal

## The statistics (official one and real one)

- Senegal's first president, the famed poet L.S. Senghor, who was a Catholic raised by missionaries, testified about the continued existence of indigenous faith in both Christian and Muslim men African men and women.

# Religions in Senegal

## The statistics (official one and real one)

- *As today a Moslem Head of State will consult the “sacred wood”, and offer in sacrifice an ox or a bull, I have seen a Christian woman, a practicing medical doctor, consult the sereer “Pangool” (the snakes of the sacred wood). In truth, everywhere in Black Africa, the “revealed” religions” are rooted in the animism which still inspires poets and artists, I am well placed to know it and to say it . . . (Senghor, Preface, Les Africains, Pierre Alexandre, Lidis, Paris, 1982, p. 6)*

## RELIGIONS IN SENEGAL

### A Tradition of Secularity – The Charter of Kurukan Fuga 1236

- The Charter of Kurukan Fuga is the Constitution of the empire of Mali. It was transmitted orally from generation to generation.
- In its heyday, in the thirteenth century, the Mali empire covered most of West Africa. It included Guinea and Mail (the heart of the empire), Senegal and the Gambia, a part of Mauritania, Côte d'Ivoire, Burkina Faso, Guinea Bissau, and Sierra Leone.
- During his visit to that great West African Empire in the fourteenth century, the famous Moroccan traveller Ibn Battuta wrote about the fact that although the Mansa (emperor) and the people of the towns he stayed in were Muslims, Shari'a / Muslim law was totally disregarded.

# RELIGIONS IN SENEGAL

A Tradition of Secularity – The Charter of Kurukan Fuga  
1236

- Article 2: The *Nyamakalas* (traditional jurists/archivists, and artisans: weavers, smiths, shoemakers) have a duty to tell leaders the truth, be their advisers and defend with the word the rules laid down, and law and order on the whole territory. **(Religions and the laws of the land are kept separate.)**
- Article 3: The *Morikanda Lolu* (Muslim scholars) are our masters and our teachers in Islam. Everyone owes them respect and consideration. **(Muslim leaders' role is limited to teaching their religion.)**
- **The mandatory respect for everyone regardless of religious beliefs** (Art. 3 in fine, 5-everybody, 13-mediators, 14-women, 20-slaves, 24-foreigners, 41-the enemy)

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## SECULARITY & FREEDOM OF RELIGION A Constitutional Principle

- The Constitution of Senegal, article 1, 1:
- *The Republic of Senegal is secular, democratic and social. It ensures equality before the law for all citizens, **without distinction** of origin, race, sex, **religion. It respects all beliefs.***

# SECULARITY & FREEDOM OF RELIGION

## A Constitutional Principle

- Article 4, 1:
- *Political parties and coalitions of political parties contribute to the exercise of suffrage. They are obliged to respect the Constitution and the principles of national sovereignty and democracy. **They may not identify with one** race, ethnic group, sex, **religion**, sect, language or region.*

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# SECULARITY & FREEDOM OF RELIGION

## A Constitutional Principle

- Article 5, 1:
- *Any act of racial, ethnic or **religious discrimination**, as well as regionalist propaganda that may affect the internal safety of the state or territorial integrity of the Republic shall be punished by law.*

# SECULARITY & FREEDOM OF RELIGION

## A Constitutional Principle

- Article 24:
- *RELIGION AND RELIGIOUS COMMUNITIES*  
*Freedom of conscience, freedom and religious practice or worship, the profession of religious educator are guaranteed to all, subject to public order. Institutions and religious communities have the right to develop without hindrance. They are free from tutelage of the state. They regulate and administer their affairs independently.*

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# SECULARITY & FREEDOM OF RELIGION

## A Constitutional Principle

- The Universal Declaration of Human Rights is part of the Constitution (see Preamble)
- Article 18:
- *Everyone has the right to freedom of thought, conscience and religions; this right includes freedom to change his religion or belief, and freedom, either alone or in private, to manifest his religion or belief in teaching, practice, worship and observance.*

# SECULARITY & FREEDOM OF RELIGION

## The ECOWAS Protocol

- Western Africa is composed of 16 countries: Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo.
- All, except Mauritania, are secular states who recognize freedom of religion and are members of the Economic Community of West African States (ECOWAS).

# SECULARITY & FREEDOM OF RELIGION

## The ECOWAS Protocol

- Protocol on Democracy and Good Governance, Dakar, 2001
- Preamble
- *WE, THE HEADS OF STATE AND GOVERNMENT OF THE MEMBER STATES OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS);*
- *CONCERNED about the increasing wave of international terrorism;*
- ***CONCERNED also about the increasing incidence of conflicts caused by religious intolerance, political marginalization and non-transparent elections;***
- (...)
- *HAVE AGREED AS FOLLOWS:*

# SECULARITY & FREEDOM OF RELIGION

## The ECOWAS Protocol

- SECTION I: CONSTITUTIONAL CONVERGENCE PRINCIPLES
- Article 1:
- *The following shall be declared as constitutional principles shared by all Member States:*
- (...)
- *f) Secularism and neutrality of the State in all matters relating to religion;*

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# SECULARITY & FREEDOM OF RELIGION

## The ECOWAS Protocol

- *freedom for each individual to practice, within the limits of existing laws, the religion of his/her choice everywhere on the national territory. The secularism shall extend to all parts of the State, but shall not deprive the State of the right to regulate, with due respect to human rights, the different religions practiced on the national territory or to intervene when law and order break down as a result of any religious activity.*



## SECULARITY & FREEDOM OF RELIGION

### The ECOWAS Protocol

- g) The State and all its institutions belong to all the citizens; therefore none of their decisions and actions shall involve any form of discrimination, be it on an ethnic, racial, **religion** or regional basis.

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## SECULARITY & FREEDOM OF RELIGION

### The ECOWAS Protocol

- *h) The rights set out in the African Charter on Human and People's Rights and other international instruments shall be guaranteed in each of the ECOWAS Member States; **each individual or organization shall be free to have recourse to the common or civil law courts, court of special jurisdiction, or any other national institution established within the framework of an international instrument on Human Rights, to ensure the protection of his/her rights.** In the absence of a court of special jurisdiction, the present Supplementary Protocol shall be regarded as giving the necessary powers to common or civil law judicial bodies.*

# SECULARITY & FREEDOM OF RELIGION

## The ECOWAS Protocol

- The ECOWAS Court of Justice functions as the European Human Rights Court.
- On September 14, 2007, Hadijatou Mani Koraou filed a complaint against the Republic of Niger in the ECOWAS Court of Justice.
- The Court found the Republic of Niger guilty of not protecting the claimant against the practice of slavery in Niger. *Dame Hadijatou Mani Koraou v. the Republic of Niger*, October 27, 2008.

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# SECULARITY & FREEDOM OF RELIGION

## The Reality

- In order to:
- Firstly, secure Muslim leaders' support,
- Secondly, attract the financial aid given by the oil rich Muslim countries as a form of "Islamic solidarity",
- Senegal has conveniently put aside its obligations as a secular state.

# SECULARITY & FREEDOM OF RELIGION

## The Reality

- A former French colony, Senegal is officially declared a sovereign state, April 4<sup>th</sup>, 1960.
- The Senegalese Family Code is enacted in 1973.
- Denotes marked preferential treatment for Muslim law.
- The Family Code is a secular statutory law; however, it contains a section called 'Muslim inheritance law' but there is no section for 'Catholic inheritance law' or 'Animist inheritance law'.
- The code allows a man to have simultaneously up to four wives, and it has ten clauses for divorce but no provision is made for the Catholic prohibition of polygamy and divorce.

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# SECULARITY & FREEDOM OF RELIGION

## The Reality

- The composition of the Drafting Comity (created by Decree in 1965):
  - two French judges, four Senegalese judges,
  - eight members of the National Assembly,
  - one justice of peace,
  - two lawyers, one court registrar, one attorney, one bailiff,
  - one law professor, the deans of the Law faculty and of the Faculty of Arts and Human Sciences,
  - six cadis (Muslim judges),
  - two presidents of the statutory indigenous courts of justice (abolished by decree unifying the judicial system in Senegal, November 14, 1960),

# SECULARITY & FREEDOM OF RELIGION

## The Reality

- One faith alone has a representative appointed as such: the Muslim faith.
- In the directives given to all the members of the comity, one faith alone is mentioned as worthy of respect: the Muslim faith.

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# SECULARITY & FREEDOM OF RELIGION

## The Reality

- The Minister of Justice gave the Comity the following directives:
  - *Elaborate one Code for one Nation.*
  - *Admit rare exceptions to the uniform rule in cases where such uniformity is not possible.*
  - *Take into account and modernize the rules common to all customs.*
  - *Find a compromise while making sure to distinguish what is of a truly religious nature from what is wrongly thought of as a religious rule in cases of opposition between the traditional status and the modern one.*
  - *As for the Muslim law, only **what is imperatively prescribed by the Qurân will be applied.***

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## The Reality

- So far Islamic associations have successfully fought legal reforms that they consider contrary to Muslim law: i.e. de-criminalisation of homosexuality, de-criminalisation of abortion, equality of rights for women in family law, abolition of the prohibition of paternity suit, etc.
- Although a statutory law against trafficking passed in 2005 specifically prohibits putting children into the street to beg, Quoranic teachers who exploit their pupils this way are still not prosecuted.

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## IN SENEGAL

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Attention