APPENDIX FOUR

OVERVIEW OF SELECT NATIONAL CONSTITUTIONS

1. Africa

Kenya is analyzed due to the fact of the existence of indigenous peoples in its territory. Tunisia has reported regularly to human rights treaty bodies, and there is adequate documentation that allows for a more complete overview of the situation. There are no references to cultural rights in either one of their Constitutions.¹ In the case of Kenya there appears to be policy awareness of the need for radio broadcasts in the many indigenous and ethnic languages of the country. In the case of Tunisia, which underlines the cultural homogeneity of the population and emphasizes the promotion of Arab, North African and Islamic cultures, there is policy awareness of the need for cultural contacts with other cultures outside the country.

Kenya

According to a report of the Government of Kenya to the Committee on the Rights on the Child,² Kenya has over 40 predominantly African indigenous cultural ethnic groups, each with its culture and language. These account for about 99 per cent of the population. The groups are located across 67 administrative districts, whose boundaries are largely co-terminus with ethnic boundaries. Kenyans thus display diverse cultures in terms of language and social organization. They are further divided into clans and families based on blood relationships. They maintain a variety of traditional cultural beliefs and practices. Key influences on cultural change are patterns of migration and urbanization, education change, economic development and the growing influence of globalization. Kenya recognizes both positive and negative effects of cultural practices on children.

¹ For the Constitution of Kenya, see http://www.idlo.int/texts/leg5519.pdf. For the Constitution of Tunisia, see http://www.oefre.UNibe.ch/law/id/t00000_.html.
² CRC/C/3/Add.62, para. 40.
The Government has an extensive radio broadcasting service. There are two national services in English and Kiswahili, and a regional service, which broadcasts in 17 local languages that cover the rural areas. Although Kenya does not have special provisions on cultural rights in the Constitution, it points out in its report to the Committee on the Rights of the Child that in matters relating to personal laws, the communities have freedom to do things according to their traditions and customs, “except where these are repugnant to morality and justice”.3

Tunisia

Tunisia has traditionally been responsive in its reporting obligations under the international human rights treaties and has submitted five reports under the various instruments.4 Despite the lack of reference to cultural rights in the Constitution, the intention of the Tunisian legislator in this area appears through various legislative acts, where it is repeatedly stressed that Tunisian society is homogenous, while at the same promoting openness to international culture. The Child Protection Code, for example, states that the objective is to raise the child to be proud of his national identity and have a sense of belonging to the national, North African and Islamic cultures, while immersing himself in the culture of the brotherhood of mankind and openness to others.5

When reporting under article 30 of the Convention on the Rights of the Child, Tunisia points out in a report in 2001 that, given its cultural, linguistic and ethnic homogeneity, there is no issue of children belonging to a minority or an indigenous group.

A 2002 report states that Tunisia has a profound and homogenous identity and that the preservation and consolidation of that identity form a strategic priority of its cultural policy.6 The document continues to point out that this choice does not contradict the equally important requirement of openness to other cultures, respect for differences, dialogue and exchanges with other peoples and the prohibition of all forms of cultural intolerance and chauvinism. A 1993 report indicates that as Tunisia’s population is an integrated Arab/Berber one, a Berber

3 Ibid., para. 555.
5 CEDAW/C/TUN/3–4, para. II.2.6.
6 CERD/C/431/Add.4, para. 86.