

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF JUVENILE PROCEDURE
(THREE-YEAR CYCLE)**

CASE NO. SC09-141

**COMMENTS OF THE UNIVERSITY OF MIAMI SCHOOL OF LAW
CENTER FOR THE STUDY OF HUMAN RIGHTS IN SUPPORT OF THE
PROPOSED AMENDMENT TO RULE 8.100, FLORIDA RULES OF
JUVENILE PROCEDURE**

The University of Miami School of Law Center for the Study of Human Rights (“Center”) submits these comments regarding the proposed amendment to Florida Rule of Juvenile Procedure 8.100 as outlined in the report submitted by the Juvenile Court Rules Committee and the Florida Bar. The mission of the Center is to increase knowledge and understanding of international human rights issues, to bring theoretical insights to the study and practice of human rights, to assist public and private human rights organizations throughout the world in addressing the increasingly complex developments in this field, and to equip succeeding generations of lawyers and other professionals with the skills needed to play vital roles in the world community.

The Center strongly urges this Court to approve the proposed amendment. Doing so will bring the rules governing the use of restraints on juvenile offenders into conformity with the United States’ obligations under international law, including the International Covenant on Civil and Political Rights.

I. International Law Is Binding on This Court

The United States is a party to the International Covenant on Civil and Political Rights (“ICCPR”).¹ As set out in Section II below (pages 4-20), the ICCPR places severe restrictions on a state’s treatment of those under detention, particularly juveniles. The Court is obligated to give careful consideration to these restrictions in determining whether to approve the proposed amendments. Under Article VI, clause 2 of the U.S. Constitution, the ICCPR is part of the “supreme Law of the Land.” As the Restatement puts it, a treaty constitutes binding “law of the United States and [is] supreme over the law of the several States.” Restatement (Third) of the Foreign Relations Law of the United States § 111(1) (1986) (“Restatement”). Consequently, the State of Florida is under an obligation to bring its laws, practices, and procedures into conformity with the ICCPR.

The proposed amendment presents an opportunity for the State of Florida to achieve compliance with an important part of the ICCPR. Moreover, in considering the issues under Florida law and U.S. constitutional law, the Court should take into account that a decision not to adopt the proposed amendment will leave Florida—and consequently the United States—in a position of violating its international

¹ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, entered into force March 23, 1976; ratified by United States; entered into force for U.S. Sept. 8, 1992. The ICCPR is available at <http://www2.ohchr.org/english/law/ccpr.htm>. All the major U.N. human rights documents can be found through the website of the U.N. High Commissioner for Human Rights at <http://www2.ohchr.org/english/law/>.

law obligations. That outcome should be avoided if at all possible. *Cf. Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804) (Marshall, C.J.) (“an Act of Congress ought never to be construed to violate the law of nations if any other possible construction remains”).

Finally, it should be noted that one objection commonly raised to application of human rights treaties has no bearing on the question before the Court. In ratifying the ICCPR, the Senate approved an understanding that the ICCPR would be “non-self-executing.”² The Senate’s action would pose a potential barrier to judicial enforcement of the ICCPR in a case or controversy in which an individual sought to assert claims for affirmative relief under the treaty in the absence of implementing legislation. This proceeding, however, is not a case or controversy. Accordingly the issue of non-self-execution is irrelevant.

More generally, a declaration of non-self-execution does not detract in any way from the treaty’s status as “law of the United States . . . and the law of every [U.S.] State.” Restatement § 111, comment d. Nor does it undercut the obligation to comply with the treaty. *See id.* § 111, comment h (“If an international agreement or one of its provisions is non-self-executing, the United States is still under an international obligation to adjust its laws and institutions as may be necessary to

² *See* U.S. Reservations, Understanding, and Declarations, ICCPR, ¶ III(1), S. Exec. Rep. No. 23, 102d Cong., 2d Sess. 9, 19, 23 (1992); 138 Cong. Rec. 8068, 8070-8071 (1992), *reprinted in* 31 Int’l Leg. Mat. 645 (1992).

give effect to the agreement.”). In short, the Court has a duty to take international law into account in considering the proposed amendment to Rule 8.100.

II. International Law Forbids the Routine Use of Restraints on Juveniles Under Detention

There are two fundamental international law rules that are relevant to consideration of the proposed amendment to Rule 8.100. The first is an obligation to treat all persons under detention with humanity and respect for their dignity. The second is an obligation to provide children who are detained with all measures of protection required by their status as juveniles.

Both these obligations are embodied in the ICCPR and also form part of customary international law. As set out in more detail below, both obligations have been authoritatively interpreted to preclude the use of restraints on a juvenile detainee except where a determination has been made that the particular individual poses a risk of flight or harm to self or others that cannot be dealt with except through the use of restraints, and even then only to the extent strictly necessary to achieve those purposes.

A. The Routine Use of Restraints on Juvenile Detainees Is Inconsistent with the Obligation to Treat All Persons Under Detention with Humanity and Respect for Their Dignity, as Embodied in the United States’ Treaty Obligations and Customary International Law

Article 10(1) of the ICCPR provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the

human person.” This fundamental obligation is, for the reasons given in Section I above (pages 2-4), fully binding on the State of Florida.

This treaty obligation is binding in itself, but it does not stand in isolation. On the contrary, it reflects an obligation under customary international law. Customary international law results from a “consistent practice of states followed by them from a sense of legal obligation.” Restatement §§ 102(1)(a), 102(2). *See id.* § 701 (“The United States is bound by the international customary law of human rights.”). Evidence of international customary law norms can take a number of forms. Treaties, particularly multilateral treaties, not only bind the parties to them but “may lead to the creation of customary international law when such agreements are intended for adherence by states generally and are in fact widely accepted.” *Id.* § 102(3) & comment i. In addition, resolutions of the U.N. General Assembly and other international bodies, as well as judgments of international tribunals, may provide evidence of customary law norms. *Id.* § 103.

As does the ICCPR, customary international law requires a state to treat all individuals under detention with dignity and respect for their humanity. The norm is embodied in a number of multilateral human rights treaties, *see, e.g.*, American Convention on Human Rights, Art. 5(2) (“ . . . All persons deprived of their liberty

shall be treated with respect for the inherently dignity of the human person.”);³ African Charter of Human and Peoples’ Rights (“Banjul Charter”), Art. 5 (“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. . . .”).⁴ Respect for the humanity and dignity of persons under detention is also embodied as Principle 1 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by the U.N. General Assembly in 1988.⁵

As the U.N. Human Rights Committee (the body charged with overseeing implementation of the ICCPR) has put it:

Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party. This rule must be applied without distinction of any kind, such as race, colour, sex,

³ American Convention on Human Rights, 1144 U.N.T.S. 123, O.A.S.T.S. No. 36. Entered into force July 18, 1978. Signed by U.S. on June 1, 1977; not yet ratified by U.S. (available at <http://www.oas.org/juridico/english/treaties/b-32.html>).

⁴ African Charter on Human and Peoples’ Rights (“Banjul Charter”), Art. 5, OAU Doc. CAB/LEG/67/3 Rev. 5, *reprinted in* 21 I.L.M. 58 (1982). Entered into force Oct. 21, 1986 (available through the African Union website at <http://www.african-union.org/root/au/Documents/Treaties/treaties.htm>).

⁵ G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) (available at <http://www2.ohchr.org/english/law/bodyprinciples.htm>) (“All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.”).

language, religion, political or other opinion, national or social origin, property, birth or other status.⁶

The fact that the obligation embodied in Article 10(1) of the ICCPR and in customary international law is framed in broad terms does not, of course, render it meaningless or non-binding, just as the breadth of many provisions in the U.S. and Florida Constitutions does not render those provisions non-binding. Rather, the question is what this broad obligation requires as to the use of restraints in particular. The answer to this question is clear: States and international organizations have widely interpreted the obligation to treat those under detention with dignity and humanity as forbidding the routine use of restraints on persons under detention. This interpretation is embodied in a number of authoritative resolutions adopted by international bodies including the United Nations General Assembly, the Council of Europe, and international criminal tribunals.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) were adopted by the U.N. in 1957 through its Economic and Social Council, with the General Assembly reaffirming the U.N.'s approval in 1971 and 1973 through resolutions calling on states to implement them.⁷ The

⁶ Human Rights Committee, *General Comment 21, Article 10*, ¶ 4 (Forty-fourth session, 1992), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI\GEN\1\Rev.1 at 33 (1994).

⁷ United Nations Standard Minimum Rules for the Treatment of Prisoners, approved by U.N. Economic and Social Council Resolution 663 C (XXIV) (1957);

Standard Minimum Rules place strict limitations on the use of restraints for all prisoners:

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Further, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:
 - (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
 - (b) On medical grounds by direction of the medical officer;
 - (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.
34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.”

Part I of the Standard Minimum Rules (which includes ¶¶ 33-34) applies “to all categories of prisoners, criminal or civil, untried or convicted,” Standard Minimum Rules ¶ 4.

The Standard Minimum Rules are not merely statements of aspiration. As Nigel Rodley, a distinguished scholar and member of the U.N. Human Rights Committee, has put it, the Standard Minimum Rules’ provision on the use of phys-

U.N. General Assembly affirmation by G.A. Res. 2858, 26 U.N. GAOR Supp. 29, at 94, U.N. Doc. A/8588 (1971); G.A. Res. 3144, 28 U.N. GAOR Supp. 30, at 85, U.N. Doc. A/9425 (1973), amended by U.N. Economic and Social Resolution 2076 (LXII) of 13 May 1977 (available at <http://www2.ohchr.org/english/law/treatmentprisoners.htm>).

ical restraints “does more than just state something desirable: it appears to be restating . . . what has been seen to be a rule of international law.”⁸

Significantly, the United States itself treats the Standard Minimum Rules as an authoritative interpretation of its international law obligations regarding persons under detention. In looking to relevant international standards in considering whether deliberate indifference to serious medical needs of prisoners violates the Eighth Amendment, the Supreme Court specifically cited the Standard Minimum Rules. *Estelle v. Gamble*, 429 U.S. 97, 103 n.8 (1976).

Equally important, the U.S. Department of State advises its consulates to seek to ensure that U.S. citizens detained abroad are “treated humanely in accordance with conventions in force and commonly accepted international standards.” The State Department’s advice specifically refers to the Standard Minimum Rules, as well as the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (1990) (discussed below, *see* p. 18).⁹ It is simply unsupportable for Florida to treat juveniles under detention who appear in court by standards worse than those the U.S. government urges foreign governments to apply to U.S. citizens detained abroad. Indeed, flouting treaty obligations at home may undercut

⁸ NIGEL S. RODLEY, *THE TREATMENT OF PRISONERS UNDER INTERNATIONAL LAW* 281 (2d ed. 1999).

⁹ *See* United States Department of State Foreign Affairs Manual, vol. 7, 433.1(2), (3) (08-26-04) (available through the United States Department of State website at <http://foia.state.gov/REGS/Search.asp>).

international law-based protections of U.S. citizens abroad by weakening respect for them generally.

The U.S. is not alone in treating the physical restraint provisions of the Standard Minimum Rules as statements of binding international law. One example is the reliance on the Standard Minimum Rules by the U.N.'s Special Rapporteur on Torture, who cited them in condemning Pakistan's use of bar fetters as discipline.¹⁰

Equally telling is the Council of Europe's adoption of requirements very similar to those contained in the Standard Minimum Rules. The Committee of Ministers is the Council's decision-making body, composed of the Foreign Affairs Ministers of all the member states of the Council of Europe. In 1973, the Committee adopted the Council of Europe Standard Minimum Rules for the Treatment of Prisoners.¹¹ In so doing it made a number of revisions to the U.N.'s Standard Minimum Rules, but it adopted ¶¶ 33 and 34 of the Standard Minimum Rules nearly verbatim. The Committee of Ministers revised the rules in 1987 and renamed them

¹⁰ RODLEY, *supra* note 8, at 281.

¹¹ Standard Minimum Rules for the Treatment of Prisoners, Council of Europe Res. 73(5), Appendix, adopted by the Committee of Ministers at the 217th Meeting of Ministers' Deputies, 19 Jan. 1973, as revised by Recommendation No. R(87)3 of the Committee of Ministers to Member States on the European Prison Rules, Appendix, adopted by the Committee of Ministers at the 404th Meeting of the Ministers' Deputies, 12 Feb. 1987; current version, European Prison Rules, Appendix to Recommendation Rec(2006)2 of the Committee of Ministers, adopted by the Committee of Ministers at the 952nd Meeting of the Ministers' Deputies (available through the Committee of Ministers' website at http://www.coe.int/T/CM/adoptedTexts_en.asp).

the European Prison Rules, and has made a number of revisions since then, but the prohibition on the routine use of restraints has remained. The European Prison Rules' provision on restraints is essentially the same as that in the Standard Minimum Rules, though phrased somewhat differently:

- 60.6 Instruments of restraint shall never be applied as a punishment.
- ...
- 68.1 The use of chains and irons shall be prohibited.
- 68.2 Handcuffs, restraint jackets and other body restraints shall not be used except:
 - a. if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise; or
 - b. by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority.
- 68.3 Instruments of restraint shall not be applied for any longer time than is strictly necessary.
- 68.4 The manner of use of instruments of restraint shall be specified in national law.¹²

¹² As is evident, the main differences between the European Prison Rules and the Standard Minimum Rules are (a) the subsumption of the specific medical exception in ¶ 33(b) of the Standard Minimum Rules into the more general provision in the European Prison Rules limiting the use of restraints to situations where other methods of control have failed or where necessary to prevent injury to self or others or damage to property, and (b) the express reference in ¶ 68.2(a) of the European Prison Rules to judicial or administrative authority to order the use of restraints where permitted under those Rules. Neither difference has any bearing on the essential point, which is the effective recognition by the Council of Europe of the status of the Standard Minimum Rules' provisions on restraints as customary international law.

In considering the Minority Report’s assertion that routinely shackling children under detention “could have several beneficial effects,”¹³ the Court may wish to consider that defendants charged with war crimes receive more consideration for their basic humanity and dignity than do juveniles in many Florida courts under the current Rule 8.100. Rules 48-50 of the “Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal,” adopted by the International Criminal Tribunal for Rwanda, provide as follows:

48. Instruments of restraint, such as handcuffs, shall only be used in the following exceptional circumstances:
 - a. As a precaution against escape during transfer from the Detention Unit to any other place, including access to the premises of the host prison for any reason;
 - b. On medical grounds by direction and under the supervision of the medical officer;
 - c. To prevent a detainee from self-injury, injury to others or to prevent serious damage to property.In all accidents involving the use of instruments of restraint, the Commanding Officer shall consult the medical officer and report to the Registrar, who may report the matter to the President.
49. Instruments of restraint shall be removed at the earliest possible opportunity.
50. If the use of any instrument of restraint is required under Rule 48, the restrained detainee shall be kept under constant and adequate supervision.¹⁴

¹³ In Re: Amendments to Florida Rules of Juvenile Procedure (Three-Year Cycle), SC09-141, Three-Year Cycle Amendments to the Florida Rules of Juvenile Procedure, at 15 (Minority Report).

¹⁴ International Criminal Tribunal for Rwanda, Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on

The Tribunal absolutely forbids the use of restraints during trial.¹⁵ The International Criminal Tribunal for the Former Yugoslavia has nearly identical rules.¹⁶

Finally, permitting the routine use of restraints on juveniles appearing in court puts Florida at odds with the practice of most other countries. In a U.N. survey in 1974 of member states, fifty-seven of the sixty-two responding states reported having fully implemented the Standard Minimum Rules on the use of restraints.¹⁷

the Authority of the Tribunal, Rules 48-50 (available at http://69.94.11.53/ENGLISH/basicdocs/detention/detention_07.pdf).

¹⁵ See International Criminal Tribunal for Rwanda, Basic Documents: Rules of Procedure and Evidence, Rule 83 (14 March 2008) (available at <http://69.94.11.53/ENGLISH/rules/080314/080314.pdf>) (“Instruments of restraint, such as handcuffs, shall not be used except as a precaution against escape during transfer or for security reasons, and shall be removed when the accused appears before a Chamber.”).

¹⁶ See International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal, Rules 50-52, IT/38/REV.9 (21 July 2005) (available at http://www.icty.org/x/file/Legal%20Library/Detention/IT38UNDU_rules_rev9_2005_en.pdf); International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Rules of Procedure and Evidence, Rule 83, IR/32/Rev.42 (4 Nov. 2008) (available at http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032_Rev42_en.pdf).

¹⁷ See Standard Minimum Rules for the Treatment of Prisoners in Light of Recent Developments in the Correctional Field, Fourth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, Annex I, at 39-50, U.N. Doc. A/CONF.43/3 (1970), as discussed in Daniel L. Skoler, *World Implementation of*

In sum, the routine use of restraints on persons detained, without any individualized determination of the necessity of the restraints or the availability of alternatives, violates the international law obligation to treat detainees with humanity and respect for their dignity. This obligation applies, as noted earlier (page 8), to all persons regardless of age. It is embodied in Article 10 of the ICCPR, to which the United States is a party. For this reason alone, the Court should adopt the proposed amendment to Rule 8.100.

B. The Routine Use of Restraints on Juvenile Detainees Is Inconsistent with the Obligation to Provide Children Who Are Detained with All Measures of Protection Required by Their Status as Juveniles, as Embodied in the United States' Treaty Obligations and Customary International Law

Article 24 of the ICCPR obligates states to provide “[e]very child” with “such measures of protection as are required by his status as a minor.” As the U.N. Human Rights Committee has noted, “this provision entails the adoption of special measures to protect children.”¹⁸ This fundamental obligation is, for the reasons given in Section I above (pages 2-4), fully binding on the State of Florida.

This treaty obligation reflects an obligation under customary international law. The obligation to provide special measures of protection for children is evi-

the United Nations Standard Minimum Rules for Treatment of Prisoners, 10 J. Int'l L. & Econ. 453, 460-61, 465-466, 482 (1975).

¹⁸ Human Rights Committee, *General Comment 17, Rights of the Child (Art. 24)* ¶ 1 (Thirty-fifth session, 1989).

dent in multilateral treaties. Article 3(1) of the Convention on the Rights of the Child (CRC), ratified by every country in the world except Somalia and the United States,¹⁹ provides that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”²⁰ Article 37(c) of the CRC is even more specific:

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, *and in a manner which takes into account the needs of persons of his or her age.*

(Emphasis added.) Article 40 provides that in the administration of juvenile justice, states must treat every child

in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s assuming a constructive role in society.

More specialized or regional conventions evidence the same customary international norm requiring special protection appropriate to their age. *See, e.g.,* American Convention on Human Rights, Art. 16 (“Every child . . . has the right the protection that his status as a minor requires from his family, society and the

¹⁹ *See Roper v. Simmons*, 543 U.S. 551, 576 (2005).

²⁰ Convention on the Rights of the Child, 1577 U.N.T.S. 3. Entered into force Sept. 2, 1990, signed by U.S. on Feb. 16, 1995; not yet ratified by U.S (available at <http://www2.ohchr.org/english/law/crc.htm>).

State.”);²¹ *id.* Art. 5(5) (“Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.”);²² African Charter on the Rights and Welfare of the Child (1990), Art. 17(1) (“Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child’s sense of dignity and worth and which reinforces the child’s respect for human rights and fundamental freedoms of others.”);²³ International Convention on the Protection of the Rights of All Migrant Workers and Their Families (1990), Art. 18(4) (“In the case of juvenile persons, the procedure [used in the determination of any criminal charge] shall be such as will take account of their age and the desirability of promoting their rehabilitation.”).²⁴

As was the case in interpreting Article 10(1) of the ICCPR, the important question is the particular significance for the use of restraints of the broad obliga-

²¹ American Convention on Human Rights, *supra* note 3.

²² *Id.*

²³ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999 (available through the African Union website at <http://www.africanunion.org/root/au/Documents/Treaties/treaties.htm>).

²⁴ International Convention on the Protection of the Rights of All Migrant Workers and Their Families, Doc. A/RES/45/158 (1990), entered into force July 1, 2003 (available at <http://www2.ohchr.org/english/law/cmw.htm>).

tion under Article 24 to provide juveniles with measures of protection required by their status as minors. Plainly, it would make no sense to apply the Standard Minimum Rules' provisions on restraints to adults but not to juveniles, and in any event doing so would be inconsistent with those Rules themselves, since they apply regardless of age. (See page 8 above.) The obvious possibility that routine use of restraints on juveniles may cause them psychological harm that adults would not experience makes this concern even stronger.

The Court need not, however, rely solely on inference to conclude that the routine use of restraints on juveniles appearing in court violates Article 24 and customary international law. U.N. General Assembly Resolutions and decisions of the European Court of Human Rights specifically address the issue of the routine use of restraints on children under detention. And they make it clear that international law forbids such a practice.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by the U.N. General Assembly in 1985, make it clear that juveniles are protected from the routine of restraints.²⁵ The Beijing Rules provide important guidance in applying the rules of customary international law requiring humane treatment of all detainees and protection of children as

²⁵ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), approved by U.N. General Assembly Resolution 40/33 (1985) (available at <http://www2.ohchr.org/english/law/beijingrules.htm>).

required by their status as juveniles. *See, e.g., T v. United Kingdom*, European Ct. Hum. Rts. No. 24724/94, 7 BHRC 659 (1999), at ¶¶ 71, 74-75 (Beijing Rules, though not a binding instrument in the same sense as a treaty, can provide “indication of the existence of an international consensus” on matters as to which they lay out rules for states). Paragraph 13.3 of the Beijing Rules provides that “[j]uveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.” Paragraph 13.3 is consistent with the basic principle that juvenile detainees are entitled to at least the level of protection accorded adult detainees.

In addition, the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, approved by the U.N. General Assembly in 1990, provide:

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.
64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries, to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.
- ...
65. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense

Beyond these U.N. Resolutions, the decisions of the European Court of Human Rights provide additional confirmation of the conclusion that the physical restraint provisions in the Standard Minimum Rules represent customary international law. In *DG v. Ireland*, [2002] ECHR 39474/98 (2002), a juvenile detainee who was handcuffed for court appearances asserted that Ireland had violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits degrading treatment.²⁷ The Court held that “treatment [of a detainee] may be considered degrading if it is such as to arouse in its victims feelings of fear, anguish and inferiority Moreover, it is sufficient if the victim is humiliated in his or her own eyes.” *Id.* ¶ 95. Observing that handcuffing was not per se a violation of Article 3, the Court ruled that the use of handcuffs was permissible in this case only in light of the fact that the Irish court had determined the detainee “to be a danger to himself and others in light of his history of criminal activity, of self-harm and of violence to others.” *Id.* ¶ 99. In reaching this conclu-

²⁶ United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, approved by U.N. General Assembly Resolution 45/113 (1990) (available at http://www2.ohchr.org/english/law/res45_113.htm).

²⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 3, 213 U.N.T.S. 221, E.T.S. 5, entered into force Sept. 3, 1953 (available through the Council of Europe website at <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?MA=3&CM=7&CL=ENG>).

sion the Court relied on *Raninen v. Finland*, (1998) 26 EHRR 563, [1997] ECHR 20972/92 (1997), in which the applicant challenged his handcuffing at the time of his arrest as a violation of Article 3. There the Court held:

. . . [T]he Court is of the view that handcuffing does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful arrest or detention and does not entail use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances. In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or abscond, cause injury or damage or suppress evidence.

Id. ¶ 56. *See also Herczegfalvy v. Austria*, [1992] ECHR 10533/83 (1992) ¶¶ 79-84 (upholding on grounds of “medical necessity” application of handcuffs to mentally ill prisoner who had violently refused medical treatment for the effects of a hunger strike).

III. Final Comments

The routine use of restraints on a juvenile detainee appearing in court, without any individualized determination that he or she poses a risk of flight or harm to self or others that cannot be dealt with except through the use of restraints, violates the United States’ treaty obligations under the ICCPR and customary international law. Adopting the proposed amendment to Rule 8.100 will ensure the individualized determination that international law requires.

More generally, the Center urges the Court to consider the judgment of the U.S. Department of State that “the promotion of human rights” – including “great-

er respect for . . . children’s rights” – is “an important national interest.”²⁸ This interest is not simply a matter of promoting human rights abroad, but also of “liv[ing] up to our ideals on American soil.”²⁹ Adopting the proposed amendment to Rule 8.100 will put the State of Florida in the position of affirming the binding legal commitment to protect human rights that the United States made when it ratified the ICCPR.

Accordingly, the Center respectfully urges the Court to approve the proposed amendment to Rule 8.100, Florida Rules of Juvenile Procedure.

Respectfully submitted,

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²⁸ See U.S. Department of State, Human Rights (available at <http://www.state.gov/g/drl/hr/>).

²⁹ See United States Department of State, 2008 Country Reports on Human Rights Practices, Preface (Hillary Rodham Clinton, U.S. Secretary of State) (available at <http://www.state.gov/g/drl/rls/hrrpt/2008/frontmatter/118982.htm>).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail this 31st day of March, 2009, to David N. Silverstein, Esq., Chair, Juvenile Court Rules Committee, 501 E. Kennedy Blvd., Suite 1100, Tampa, FL 33602-5242, and John F. Harkness, Jr., Esq., The Florida Bar, 651 E. Jefferson St., Tallahassee, FL 32399-6584.

Stephen J. Schnably

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this document complies with the font requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

Stephen J. Schnably