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USA: Another welcome step on children in the criminal justice system

On 25 June 2012, by a vote of 5 to 4, the US Supreme Court outlawed mandatory life imprisonment without the possibility of parole (life without parole) for offenders who were under 18 years old at the time of the crime. Amnesty International, which had joined a [legal brief to the Court](#) seeking complete abolition of life without parole against children, welcomes the ruling as another step towards bringing the USA into line with international law on the treatment of children in the criminal justice system.

The *Miller v. Alabama* ruling comes two years after the Supreme Court found life without parole sentences imposed for non-homicide crimes committed by under-18-year-olds unconstitutional (*Graham v. Florida*, 2010), and seven years after the Court prohibited the death penalty against this age group (*Roper v. Simmons*, 2005). Yesterday's majority decision built on these earlier rulings in finding that mandatory life without parole for those under 18 at the time of the crime also violates the US constitutional ban on "cruel and unusual punishments".

There are currently about 2,500 people who were under the age of 18 at the time of the crime who are serving life without parole in murder cases in the USA, in some 38 states and in federal prison. According to Chief Justice John Roberts, one of the four Justices who dissented from the *Miller* opinion, more than 2,000 of these prisoners were sentenced under mandatory sentencing schemes.

The case before the Supreme Court concerned two prisoners – one in Arkansas and the other in Alabama – serving life without parole sentences for murders committed when they were 14 years old. Each had been sentenced under a mandatory sentencing scheme. Each was denied the individualized sentencing at which the judge or jury had the opportunity to consider mitigating circumstances, including youth and its attributes, as well as any specific mitigating factors relating to the defendant in question.

Such mandatory schemes, the Court ruled, prevent the sentencing authority from taking account of the characteristics associated with children, including their "lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking", their vulnerability to negative influences and pressures, and their particular capacity for change and development. Such attributes are commonly known – indeed, stressed the Court, are "what any parent knows" and this "common sense" knowledge is supported by science and social science research.

The Supreme Court's precedents, the *Miller* majority stated, "teach that in imposing a State's harshest penalties, a sentencer misses too much if he treats every child as an adult". In summary, the opinion said:

"Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him – and from which he cannot usually extricate himself – no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own

attorneys. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.”

According to the Court, 28 states and the federal government make life without parole sentences mandatory for some children convicted of murder in adult court. The ruling will have the effect of nullifying such laws and entitle to new sentencing hearings those sentenced under them for crimes committed when they were under 18.

The Court did not consider the alternative question raised in the case, of whether there should be a categorical prohibition on the imposition of life without parole against children. However, the opinion did comment that “given all we have said in *Roper*, *Graham*, and this decision about children’s diminished culpability, and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon”.

Life without parole for those under 18 outside the USA certainly is uncommon. Indeed, the USA is believed to be the only country in the world currently imposing such sentences on people who were under 18 at the time of the crime.

Recognition of the special attributes of children – the sort of characteristics so clearly outlined in the *Miller* ruling – lie behind the international prohibition of the use of the death penalty or life without parole for anyone who was under 18 year old at the time of the crime, whatever the crime. The UN Convention on the Rights of the Child expressly prohibits life imprisonment without the possibility of release for crimes committed by people under 18 years old. All countries except the USA and Somalia have ratified the Convention.

The administration of President Barack Obama has indicated that it supports US ratification of the Convention, and Amnesty International will continue to urge the administration to work with the Senate to bring this about. Congress and state legislatures should meanwhile work to bring the USA into line with international law and abolish life without parole for children in any case and for any crime.

** For further information please see Amnesty international’s 2011 report ‘[*This is where I’m going to be when I die’: Children facing life imprisonment without the possibility of release in the USA*](#)’