AMNESTY INTERNATIONAL

Index: AMR 51/067/2012
20 July 2012

USA: Politics of punishment

Iowa governor flouts spirit if not letter of US Supreme Court decision on young offenders

Three weeks after the US Supreme Court outlawed *mandatory* life imprisonment without the possibility of parole (life without parole) against anyone who was under 18 years old at the time of the crime – thereby bringing the USA a step closer to compliance with its obligations under international law on this issue – the Iowa governor has set an example of how individual US states should *not* respond to the ruling, in Amnesty International's view.

The *Miller v. Alabama* decision of 25 June 2012 came two years after the Supreme Court found life without parole sentences imposed for non-homicide crimes committed by under-18-year-olds unconstitutional, and seven years after the Court prohibited the death penalty against offenders from this age group. The *Miller* decision built on these earlier rulings in finding that mandatory life without parole for those under 18 at the time of the crime violates the US constitutional ban on "cruel and unusual punishments".

Such mandatory schemes, the Court ruled in *Miller*, prevented 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.

Prisoners serving automatically imposed life without parole sentences for crimes committed when they were younger than 18 are entitled under the *Miller* ruling to a new sentencing hearing at which any mitigation evidence could be taken into account.

Iowa Governor Terry Branstad appears, however, to have sought to slam the door on such hearings in his state. On 16 July 2012, he responded to *Miller* by commuting 38 life without parole sentences being served in Iowa by inmates convicted of first degree murder committed when they were under 18 to life imprisonment without the possibility of parole for 60 years.

In other words, most such individuals would not be eligible for parole until they are at least in their mid 70s or beyond. Or to look at it another way, Governor Branstad has changed their sentences from actual life without parole to sentences which in practice for most of them will be the same thing in all but name.

Whether or not, under US law, what Governor Branstad has done is technically compatible with the *Miller* ruling, it surely flouts the spirit of the decision. Amnesty International considers that the inmates concerned are still entitled to new sentencing hearings at which any mitigation evidence presented should be considered.

Governor Branstad's blanket commutation was made regardless of the existence of any mitigating evidence that may have been available, but was not heard, at the time of the sentencing of these 38 individuals because its consideration was precluded by the automatic imposition of the life without parole sentence.

The US 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."

Governor Branstad said that the 38 commutations were "in compliance" with the *Miller* ruling, and that he was taking this step "to prevent the release of dangerous murderers", to "protect the safety of all Iowans", and in memory of those whose murders led to these sentences. He said his move would ensure "justice is balanced with punishment". He has clearly left the scales of justice weighed heavily in favour of punishment, however, with any notion of rehabilitation absent from his announcement or apparent motivation.

Governor Branstad said that what he was seeking to pre-empt was a situation where "up to 38 dangerous juvenile murderers in Iowa [would] seek re-sentencing and more lenient sentences" following the *Miller* decision. He played an all too familiar card – stoking public fears of "dangerous prisoners" being released, rather than seeking to promote confidence in the criminal justice and parole systems to do the right thing for both prisoner and public safety, or to recognize that international standards place an obligation on states to act to maximize the possibility of the future reintegration into society of children who come into conflict with the law.

The international legal ban on life imprisonment without the possibility of release for offenders who were younger than 18 years old at the time of the crime is a *minimum* standard. It is not an esoteric technical rule. It reflects commonly held standards of juvenile justice, indeed to use the US Supreme Court's words, it could be said to reflect "common sense" knowledge of the attributes of children. Recognition of such attributes – the sort of characteristics so clearly outlined in the *Miller* ruling – lies behind the international prohibition, regardless of the crime committed by the under 18-year-old in question.

The UN Convention on the Rights of the Child (CRC) expressly prohibits life imprisonment without the possibility of release for crimes committed by people under the age of 18. While Governor Branstad has ended 38 sentences that were in direct violation of that international legal standard, his move leaves much to be desired. Amnesty International urges him and other officials in the USA to reflect, for example, upon what the expert body established under the CRC to oversee its implementation has said in a general interpretative opinion on the treaty:

> "No child who was under the age of 18 at the time he or she committed an offence should be sentenced to life without the possibility of release or parole. For all sentences imposed upon children the possibility of release should be realistic and regularly considered. In this regard, the Committee refers to article 25 of CRC providing the right to periodic review for all children placed for the purpose of care, protection or treatment. The Committee reminds the States parties which do sentence children to life imprisonment with the possibility of release or parole that this sanction must fully comply with and strive for the realization of the aims of juvenile justice enshrined in article 40 (1) of CRC.[1] This means *inter alia* that the child sentenced to this imprisonment should receive education, treatment, and care aiming at his/her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on his/her possible release. Given the likelihood that a life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the Committee strongly recommends the States parties to abolish all forms of life imprisonment for offences committed by persons under the age of 18."

The USA is not a state party to the Convention – it and Somalia are the only countries that are not. It has signed the treaty, however, thereby binding itself under international law not to do anything to defeat its object and purpose, pending a decision on whether to ratify it. The administration of President Barack Obama has told the UN Human Rights Council that it favours US ratification of the treaty. It should be doing everything it can to ensure that the USA does not undermine the CRC's object and purpose, as well as ensuring that the USA upholds principles of juvenile justice articulated in other international instruments.

Amnesty International welcomed the *Miller* ruling as another step towards bringing the USA into compliance with international law on the treatment of children in the criminal justice system. There is much further to go, however, and for the USA to travel this distance, principled human rights leadership will be required at all levels of government. Such leadership was not on display when Governor Branstad made his recent decision.

ENDNOTE

[1] CRC Article 40.1 reads: "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated 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 reintegration and the child's assuming a constructive role in society."