



# LIVING IN LIMBO

BENIN'S LAST DEATH ROW PRISONERS

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First published in 2017

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street  
London WC1X 0DW, UK

Index ACT 50/4980/2017

Original language: English

[amnesty.org](http://amnesty.org)

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# GLOSSARY

DEFINITION	EXPLANATION
<b>ABOLITIONIST FOR ALL CRIMES</b>	Countries whose laws do not provide for the death penalty for any crime.
<b>ABOLITIONIST FOR ORDINARY CRIMES</b>	Countries whose laws provide for the death penalty only for exceptional crimes, such as crimes under military law or during war.
<b>ABOLITIONIST IN PRACTICE</b>	Countries which retain the death penalty in law for ordinary crimes but have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions.
<b>RETENTIONIST</b>	Countries that retain the death penalty in law for ordinary crimes, such as murder, in times of peace and do not meet criteria for “abolitionist in practice”.
<b>CLEMENCY</b>	An act showing mercy or leniency, usually by the executive, by lessening or even completely eradicating a sentence; used as a general term covering both commutations and pardons.
<b>COMMUTATION</b>	The death sentence is replaced by a less severe punishment, such as a term of imprisonment, often by the judiciary on appeal, but sometimes also by the executive.
<b>PARDON</b>	The convicted person is completely exempted from further punishment; this can be granted for a variety of reasons, usually by the executive such as the head of state or government, or in some cases by clemency boards which have been given final authority.
<b>EXONERATION</b>	After sentencing and the conclusion of the appeals process, the convicted person is later freed from blame or acquitted of the original criminal charge, and therefore is regarded as innocent in the eyes of the law.
<b>MOST SERIOUS CRIMES</b>	The only category of crimes for which international law allows the death penalty. International bodies have interpreted this as being limited to crimes involving intentional killing.
<b>MORATORIUM ON EXECUTIONS / ON THE USE OF THE DEATH PENALTY</b>	A public commitment made by the highest authorities or courts, which officially suspends the carrying out of death sentences, or even imposition of the death penalty as such; to be distinguished from a period of time where executions have in fact not been carried out.

# 1. BACKGROUND

**“Prison officials told me that I would not be executed. But I still do not know what is going to happen to me. Am I going to spend the few years I have left in jail or will my case be reviewed? I am sick and I do not get the medicine I need in jail. If this continues, I will just die in jail anyway.”**

Azonhito Yaovi Christophe, Akpro-Misséréte Prison, 30 May 2016

In the last three decades the West African country of Benin has made significant progress on the abolition of the death penalty. The last known execution in Benin was carried out in 1987, and the last death sentence was imposed in 2010. In 2012 the country acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolishing the death penalty (ICCPR-OP2).<sup>1</sup> The treaty commits Benin not to carry out executions and to take all necessary measures to abolish the death penalty within its jurisdiction.<sup>2</sup> Benin has fulfilled its obligation, under the treaty, not to carry out executions.

In addition, two landmark decisions of the Constitutional Court have entrenched abolition of the death penalty in Benin. A recent judgement of 2016 makes it impossible for the courts to impose death sentences, effectively abolishing the death penalty in Benin. Death penalty provisions have already been removed from the Criminal Procedure Code while a bill seeking to revise the Criminal Code and expressly remove death penalty provisions completely is pending at the National Assembly.

Benin is the 104<sup>th</sup> country in the world and 19<sup>th</sup> country in Sub-Saharan Africa to abolish the death penalty for all crimes. Additionally, seven countries have abolished the death penalty for ordinary crimes. A further 30 countries are abolitionist in practice.<sup>3</sup> Only 57 countries retain the death penalty in law for ordinary crimes such as murder. Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution. Benin has played an active role in the death penalty abolition movement in Africa. In 2014, it co-organised the continental conference on the abolition of the death penalty calling for the adoption of a Protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty in Africa.

However, despite the remarkable progress made by Benin on the abolition of the death penalty, 14 people are still languishing on death row with an uncertain future. Benin has committed not to execute them, yet it has not commuted their death sentences. This briefing urges the Benin authorities to take urgent steps to adopt legislation to abolish the death penalty and to commute the death sentences of all death row prisoners – bringing to an end the agony of uncertainty that these 14 men have faced for nearly 20 years.

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1 Benin became the 75th State Party to the ICCPR-OP2, as at 30 October 2016 there were 83 State Parties to the treaty.

2 The ICCPR-OP2 was adopted by the UN General Assembly Resolution 44/128 of 15 December 1989.

3 They have not executed for at least 10 years and are believed to have an established practice or policy not to execute.

# 2. FORGOTTEN ON DEATH ROW

**“When we are sick, we rely on the help we can get from outside. If you have money and family to provide you with treatment, you survive. If you don't, you die.”**

Fataï Bankole, Akpro-Misséréte Prison, 30 May 2016

In Benin 14 people – 10 Beninese, two Nigerians, one Togolese and one Ivorian – are currently under the sentence of death. On 30 May 2016, an Amnesty International delegation visited the death row section of the Akpro-Misséréte Prison, close to Port Novo, the capital of Benin, meeting the 14 death row prisoners and the head of the prison.

## CONDITIONS OF DETENTION

The 14 death row prisoners, who are all male, have been under sentence of death for between 17 and 18 years and are held under stricter prison conditions than the general population of the prison.

They are held in a single cell with bunk beds in a separate high level security building within the prison yard. Contact with the outside world is limited to infrequent and supervised visits from family or other approved visitors such as humanitarian organizations. The men are only allowed out of their cell into the death row courtyard five days a week at restricted times of day. They are not allowed to mix with the general prison population who are able to move freely within the bigger open prison courtyard. When there are disciplinary issues and one of the death row prisoners is disciplined for misconduct, the whole group is locked up in the cell for several days as a collective sanction.

The prisoners told Amnesty International that, over the years, they had suffered from life-threatening diseases, including malaria and tuberculosis, and that three death row prisoners had died due to inadequate medical care when held in Cotonou prison, before they were transferred to Akpro-Misséréte Prison. Death row prisoners said that they had to rely on relatives for medication, and those that do not have relatives that visit them are obliged to use the limited medication of other prisoners to self-medicate. The prison authorities acknowledged that medical care for the prisoners is limited.

The conditions faced by those on death row in Benin violate the prisoners' right to humane treatment and may in some regard constitute cruel, inhuman or degrading treatment or punishment. As for all individuals in the custody of the state, the state is responsible for the death row prisoners' physical and psychological welfare. All detainees must be treated with humanity and respect for their dignity, independent of the availability of material resources. The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) state that all prisons should have health-care service, at the same standards as are available in the community, and consisting of an interdisciplinary team with sufficient

qualified personnel, including expertise in psychology and psychiatry.<sup>4</sup> Everyone, including individuals in custody, has the right to the highest attainable standard of physical and mental health.<sup>5</sup>

### **AZONHITO YAОВI CHRISTOPHE**

54 year-old Azonhito Yaovi is a Beninese national who was convicted of criminal conspiracy, armed robbery, and assault and battery; he was sentenced to death on 2 August 1998. When reflecting on his 18 years on death row he told Amnesty International: “The fear of death is often worse than death itself. For years, I woke up wondering: will I be executed today, tomorrow, in a few months or in a few years?”

Azonhito Yaovi told researchers that he is ill and has had constant and growing pain in his lower-abdomen since 2007. He has had several medical examinations at the prison, but he still does not know what his medical condition is. He said when the pain gets too strong, the doctors from the prison prescribe drugs to him, but he does not have the money to buy them. He said: “When you have money or family visits, you can cope. But when you don’t, you stay with your disease and you die.”

Death row prisoners receive two meals a day, brought at the same time between 12 noon and 1pm. The prisoners stated that the daily meals are insufficient and they supplement their meals with the food that some relatives bring, which they cook in their cell. Failure to provide adequate food for prisoners violates the right to adequate and suitable food.<sup>6</sup>

Some of the death row prisoners described the conditions in Cotonou prison, where they were held from the time of their sentencing until March 2010, as much worse than conditions in Akpro-Misséréte Prison. They said that in Cotonou prison, they had no family visits and were locked up in a poorly lit 10m<sup>2</sup> cell infested with rats, and were only allowed to leave the cell once a month for 15 minutes to be shaved.<sup>7</sup> The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment concluded, following a visit to the Cotonou prison in 2008, that the “situation is an affront to human dignity and constitutes cruel and inhuman punishment.”<sup>8</sup>

## **STATUS OF PRISONERS’ SENTENCES**

Amnesty International was provided with a summary of prison records of the 14 death row prisoners by Akpro-Misséréte Prison. The organisation found from the records that offences the prisoners were sentenced to death for – including armed robbery; criminal conspiracy; assault and battery – do not meet the threshold of “most serious crimes”, which is the only category of crimes for which international human rights law allows the death penalty,<sup>9</sup> and which is defined under international human rights standards as intentional killing.<sup>10</sup>

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4 Rules 24, 25; the revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) were adopted unanimously by the UN General Assembly on 17 December 2015. Rule 27.1 also requires that sick prisoners who require specialist treatment or surgery shall be transferred to specialized institutions or to civil hospitals; where hospital facilities are provided in an institution of detention, their staffing and equipment shall be appropriate for the medical care and treatment of sick prisoners.

5 The Committee on Economic, Social and Cultural Rights - in its General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), para 34 - has emphasized that states cannot deny or limit equal access to preventive, curative and palliative health services for prisoners or detainees.

6 The UN Standard Minimum Rules for the Treatment of Prisoners state that “Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.” Failure to meet this standard would constitute a violation of the right to adequate and suitable food under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights. Benin became a party to the International Covenant on Economic Social Cultural Rights in 1992

7 Subcommittee on Prevention of Torture: Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Benin, 9 March 2011, available at <http://www2.ohchr.org/english/bodies/cat/opcat/docs/ReportVisitBenin-AdvanceCopy.pdf> para 290

8 Subcommittee on Prevention of Torture: Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Benin, 9 March 2011, available at <http://www2.ohchr.org/english/bodies/cat/opcat/docs/ReportVisitBenin-AdvanceCopy.pdf> para 290

9 Article 6 (2) of the International Covenant on Civil and Political Rights provides that “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes...”

10 In 2006, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions narrowed the interpretation of “most serious crimes” by defining them as “cases where it can be shown that there was an intention to kill, which resulted in the loss of life. See UN Doc. A/HRC/4/20, 29 January 2007, paragraphs 39-53 and 65. Guidance for the classification of crimes as “most serious crimes” has also been provided by the Human Rights Committee in its General Comment 6 (7) on the right to life, adopted on 30 April 1982.

The death row prisoners told Amnesty International that they all appealed the death sentences imposed on them. Only two prisoners reported that their death sentences were confirmed by an appellate court. The others stated that they did not know what had happened to their appeals due to their inability to pay for the services of a lawyer.

The men told Amnesty International that they had been informed that they would not be executed but were confused and anxious because their death sentences have not been officially commuted. Some of the prisoners said that even if they were not going to be executed, they expected to die in prison due to the poor prison conditions and a lack of adequate medical care.

The Minister of Justice of Benin has given assurances to Amnesty International that the 14 death row prisoners will not be executed and that Benin is committed to its obligations under the ICCPR-OP2 not to carry out executions.<sup>11</sup> However, he also said that the executive arm of government in Benin does not have the power to commute death sentences and that commutation of death sentences can only be done by a judge or through legislation of the National Assembly.

The inability of the executive to commute death sentences in Benin severely limits the right of the death row prisoners to seek commutation of their death sentences. Benin has an obligation to ensure that the death row prisoners are able to seek pardon and commutations,<sup>12</sup> and must act to deliver on this obligation urgently.

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<sup>11</sup> Meeting with Amnesty International in Cotonou, 31 May 2016.

<sup>12</sup> Article 6(4) of the International Covenant on Civil and Political Rights, to which Benin is a party, provides that "anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

# 3. LEGAL STATUS OF THE DEATH PENALTY IN BENIN

**“The only thing I did was to offer accommodation to the people who committed the robbery. I did not touch the money... I want to take care of my family. I have been away for too long. My wives have died, my children need me.”**

Sokenou Xavier Watchinou, Akpro-Misséréte Prison, 30 May 2016

In 2012, Benin acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolishing the death penalty (ICCPR-OP2).<sup>13</sup> Article 1 of the treaty provides:

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Since Benin’s accession to the ICCPR-OP2, the Constitutional Court has passed two landmark judgments on the death penalty in the country. On 4 August 2012 the Constitutional Court declared that, due to Benin’s ratification of the ICCPR-OP2, “no legal provision can now mention the death penalty” in Benin.<sup>14</sup> The decision led to the removal of death penalty provisions from the Criminal Procedure Code by the National Assembly on 17 December 2012.<sup>15</sup>

Following accession to ICCPR-OP2 and the August 2012 judgement, some concluded that Benin had in fact abolished the death penalty beyond the legal provision of the Criminal Procedure Code.<sup>16</sup> Following the judgement, the National

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13 Benin’s instruments of ratification were deposited with the United Nations on 5 July 2012 and the Protocol entered into force three months after the date of deposit, on 5 October 2012. Prior to this, Law No. 2011-11 of 25 August 2011 was passed by the Benin National Assembly authorizing the ratification of ICCPR-OP2. Benin is also a State Party to the International Covenant on Civil and Political Rights and the International Covenant of Economic Social Cultural Rights.

14 The Constitutional Court made the declaration while considering whether the provisions of Law No. 2012-15 on the Code of Criminal Procedure, adopted by the National Assembly on 30 March 2012, were compliant with the Constitution. The Constitutional Court held that Article 685(2) and 793 Code of Criminal Procedure, which provide for the death penalty, were in conflict with Article 147 of the Constitution, which effectively gave the ICCPR-OP2 supremacy over the Code of Criminal Procedure. Article 147 of the Benin Constitution provides that “Regularly ratified treaties or agreements have, from the moment of their publication, greater authority than laws”.

15. Benin Constitutional Court Decision DCC 12-153.

16 See., for example, African Commission on Human and Peoples’ Rights, Working Group on The Death Penalty in Africa, Activity Report 2012, available at <http://www.achpr.org/sessions/52nd/intersession-activity-reports/death-penalty/>; R. Hood and C. Hoyle, *The Death Penalty – A Worldwide Perspective*, 5th ed. 2015, p. 504; Hands Off Cain, <http://www.handsoffcain.info/bancadati/index.php?tipotema=arg&idtema=19305159>; DITSHWANELO, the Botswana Centre for Human Right <http://www.ohchr.org/Lists/MeetingsNY/Attachments/52/Moving-Away-from-the-Death-Penalty.pdf>, p.156; FIDH, *Continental Conference on the death penalty in Africa: A decisive step towards an abolitionist continent*, <https://www.fidh.org/en/international->

Assembly removed death penalty provisions from the Criminal Procedure Code, however provisions for the death penalty remained in the Criminal Code.

In another, landmark case, the Constitutional Court on 21 January 2016 determined unambiguously that the entry into force of the ICCPR-OP2 and its ratification by the Republic of Benin, “now renders inoperative all legal provisions [including those of the Criminal Code] stipulating the death penalty as a punishment”.<sup>17</sup> The Constitutional Court found that “no legal provision contained in the internal legal order can any longer mention the death penalty; that, likewise, no criminal prosecution undertaken by any jurisdiction can have as its legal basis a provision stipulating capital punishment as the punishment for the offence committed, such that no one can now be sentenced to capital punishment in Benin.”<sup>18</sup> This ruling effectively abolishes the death penalty for all crimes in Benin.

A bill seeking to revise the Criminal Code and expressly remove death penalty provisions completely is pending at the National Assembly.

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[advocacy/african-union/african-commission-on-human-and-peoples-rights/15713-continental-conference-on-the-death-penalty-in-africa-a-decisive-step#nh1](#)

<sup>17</sup> Benin Constitutional Court Decision DCC 16-020.

<sup>18</sup> Benin Constitutional Court Decision DCC 16-020.

# 4. CONCLUSION AND RECOMMENDATIONS

**“I have not committed the crime of which I am being punished... I just want to go out and see my child, he was four when I was arrested... I want to go out for a normal life after all these years. ”**

Issa Soulé Ogbon, Akpro-Misséréké Prison, 30 May 2016

Benin made great strides towards abolition of the death penalty when it acceded to the ICCPR-OP2 four years ago. The Constitutional Court's progressive judgments on the death penalty have also entrenched the ICCPR-OP2 in Beninese law and now made it impossible for the courts to impose death sentences for any crime, thereby effectively abolishing the death penalty in Benin. The government's commitment not to carry out executions is in line with the state's first obligation under the ICCPR-OP2.

However, it now needs to show its full commitment to the abolition of the death penalty by ensuring that the judgement of the Constitutional Court of January 2016 on abolition is enshrined into legislation. This task is made particularly urgent by the plight of the 14 men living in limbo on death row. The failure of the Beninese authorities to commute the death sentences of the 14 death row prisoners despite the remarkable progress made on the death penalty contradicts Benin's commitment on the abolition of the punishment. The uncertainty that hangs over the 14 death row prisoners must now be resolved.

A majority of states worldwide, 104 countries, have now abolished the death penalty for all crimes. As a new member of this global majority, Benin must ensure that all remaining elements of the death penalty in its legal framework are completely consigned to history. Such a move would allow Benin to become a leading nation in the global move towards the abolition of the death penalty.

## 4.1 RECOMMENDATIONS

Amnesty International calls on the government of Benin to:

- Ensure national legislation is reviewed and reformed in order to abolish all provisions pertaining to the death penalty in all relevant laws, for all crimes, in addition to commuting the death sentences of all death row prisoners, taking into account the number of years already spent in prison;
- Include a provision expressly abolishing the death penalty in any future amendment to the Constitution;
- Provide all death row prisoners with legal aid to pursue any outstanding appeals or seek judicial review against their convictions and for their death sentences to be commuted; and

- Ensure that all death row prisoners are treated in accordance with the UN Nelson Mandela Rules for the standard minimum treatment of prisoners and in particular that they are provided with adequate food and medical care.

Amnesty International calls on the Benin National Assembly to:

- Adopt the necessary legislation that abolish the death penalty and commute the death sentences of all death row prisoners, taking into account the number of years already spent in prison.

# ANNEX

## THE 14 DEATH ROW PRISONERS IN BENIN

Details provided to Amnesty International by the Beninese authorities.

NAME	NATIONALITY	DATE OF JUDGEMENT
AGBOTON A. Christophe	Beninese	02/08/98
KAMBOU Sansan Jean	Ivorian	31/07/1998
OGBON Issa Soulé	Beninese	06/10/98
ELEGBEDE Ganiou	Nigerian	06/10/98
HONVOU Anago Emmanuel	Beninese	14/08/98
KOÏ Firmin	Beninese	14/08/98
ADJAMA Osséni Inoussa	Togolese	24/07/99
OYEDELE Nouréni	Nigerian	03/10/98
WATCHINOU Sokenou Xavier	Beninese	03/10/98
BANKOLE Fataï	Beninese	03/10/98
LATIFOU Saïbou	Beninese	03/10/98
DEDEWANOU Yédénou	Beninese	03/10/98
ZINSOU Jules Hohoutou	Beninese	03/10/98
AZONHITO Yaovi Christophe	Beninese	03/10/98

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# LIVING IN LIMBO

## BENIN'S LAST DEATH ROW PRISONERS

In the last three decades Benin has made important progress on the abolition of the death penalty. The last known execution in Benin was carried out in 1987 and in 2012 the country acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolishing the death penalty. The Constitutional Court has passed two progressive judgments on the death penalty which entrenched the treaty in Beninese law and made it impossible for the courts to impose death sentences for any crime, thereby effectively abolishing the death penalty in Benin. Despite the remarkable progress made by Benin on the abolition of the death penalty 14 people are languishing on death row with an uncertain future. Benin is committed not to execute them yet it has not commuted their death sentences. The uncertainty that hangs over the 14 death row prisoners needs to be resolved urgently through the commutation of their death sentences.