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FRANCE: THE SHOOTING OF IBRAHIM SY BY GENDARMES NEAR ROUEN

Amnesty International is concerned by the shooting and subsequent death of Ibrahim Sy by gendarmes near Rouen on the night of 26-27 January 1994. It believes that the case falls into a pattern of shootings and killings in which law enforcement officers are using excessive and indeed lethal force in violation of the minimum standards of international law and also, it believes the case is contrary to French law. Amnesty International is also concerned by the time it is taking to complete the preliminary inquiry and urges that the judicial investigation be completed without further delay.

On the night of 26 to 27 January 1994 a patrol car carrying two gendarmes (officers of the Gendarmerie nationale, a paramilitary body responsible to the Minister of Defence) was called to a hotel car park in Val-de-Rueil, near Rouen. The caller complained that cars were being broken into. According to the press the officers claimed that they surprised three youths who were engaged in stealing from cars. The youths, who were not armed, entered a Renault 25, which they had stolen and drove towards the gendarmes stationed at the entrance to the car park. The officers drew their firearms. They claim to have given the customary warning and are reported to have felt under threat. According to early press reports one officer fired two shots at the car which, nevertheless, managed to get away. At approximately 2am the corpse of one of the passengers, Ibrahim Sy, was recovered outside the Oisiel gendarmerie station after being left there by Sy's two companions.

An inquiry was subsequently opened. According to a statement quoted in the French press and attributed to the district headquarters of the gendarmerie (Direction régionale de la gendarmerie) '... there is no doubt at all that the legal conditions for the use of service weapons were met.' (Il ne [faisait] aucun doute que les conditions légales d'utilisation de l'arme de service étaient réunies'). It was also argued that Ibrahim Sy's actual death occurred about 30 minutes after he had been shot, and that if the two friends of Ibrahim Sy had taken him direct to the hospital at Louviers, about five or six kilometres away, instead of leaving him outside the gendarmerie station, they might have saved his life. This point was also considered by a medical expert attached to the Cour d'Appel de Rouen, who felt it was 'not unreasonable' to believe that if Ibrahim Sy had been taken to hospital (and presumably received attention) within 15 minutes of receiving the gunshot, he might well have survived. The argument, however, seems highly speculative in the circumstances.

Ibrahim Sy, an 18-year-old of Senegalese descent, lived in the Sapins district of Rouen in northern France. The news of his death provoked civil disturbances that lasted three days. The prosecutor in Evreux opened a judicial inquiry on a charge of armed assault leading to unintentional death. On 31 January 1994 the family of Ibrahim Sy, acting as a civil party, made a complaint for attempted murder (*tentative de meurtre*).

On 31 January 1994 Ibrahim Sy's two companions gave themselves up to the authorities. In July 1994 they were sentenced to 15 and nine months' imprisonment for theft and concealment of a stolen vehicle. Prior to their conviction, on 1 February 1994, the newspaper *Paris Normandie* published a previously recorded interview with them. The driver of the car claimed that as he drove towards the exit he saw the *gendarmes'* car situated there. One *gendarme* was kneeling on the ground, gun in hand. The driver of the R.25 stated to the press that he decided to drive slowly through the exit to the car park, at an estimated speed of 20-30 kilometres per hour, so that the officer would not fire. However, another *gendarme* then appeared, firearm in hand. The driver said he did not really see what the *gendarmes* were doing because everything happened too quickly. He began to accelerate when he realized that the officer who had been in front of the car was no longer there. At that moment there were gunshots. 'Five, six or seven shots, difficult to count.' The rear and side windows were shattered. Ibrahim Sy, in the front passenger seat, was fatally wounded, saying at the time that he had been hurt in the back. The second passenger, who was in the back seat, added that they then began to panic. They drove onto the motorway and after the exit to Criqueboeuf they stopped to examine Ibrahim Sy's injury. They tried mouth-to-mouth resuscitation but were not successful. 'His heart was no longer beating ... he was dead.' They drove on towards Oissel and waited outside the *gendarmerie*, hooting the car horn, for 10 minutes before two police officers emerged from the station and the body of Ibrahim Sy was carried into the station. The youths then drove off.

To date the investigation, conducted by investigating judge M. Jean Reynaud, is still unfinished. An experts' report on the ballistics, vehicle examination and medical-legal aspects of the case was ordered by the judge for the regional court of Evreux, the *Tribunal de Grande Instance d'Evreux*, on 17 May 1994. The ballistics report concluded, *inter alia*, that a total of eight shots had been fired at the youths' vehicle, two by one *gendarme* and six by the other. It states that the declaration by one *gendarme* that the car was at a distance of 10 metres from him at the moment when he shot his first cartridge is neither compatible nor consistent with the tests that have been carried out on the position of the cartridge cases. ('*La déclaration du gendarme -- où il declare que la voiture se trouvait à 10 metres de lui au moment où il a tiré sa première cartouche n'est pas compatible ni plausible avec les constatations sur l'emplacement des douilles ...*') One of the *gendarmes* was 1.40 metres from the front right hand door, but it was not possible to establish which of the two *gendarmes* had actually fired the fatal shot. There was no sign of any attempt to fire at the tyres of the vehicle in order to disable it and thereby allow the officers to arrest the youths.

In Amnesty International's October 1994 report *France: Shootings, killings and alleged ill-treatment by law enforcement officers* (AI Index: EUR 21/02/94) certain points of concern are noted: 'The law allows an argument of self-defence providing there is no disproportion between the means of defence and the gravity of the attack. Under either version of events described above, the officers could have avoided the oncoming car by stepping aside or behind

their own car. Furthermore, it is difficult to see how shooting and killing the passenger would stop an oncoming car.'

At the time of writing the investigation is still under way. It appears that neither of the two *gendarmes* involved has yet been questioned by the judge as to what happened and that, on the other hand, their lawyers have requested a second expert report. This request has been accepted by the investigating judge and will result in further delay at the very least.

NOTE ON THE GENDARMERIE NATIONALE

The Gendarmerie nationale is an arm of law enforcement which is under military discipline. In consequence it has different ranking, structure, uniforms and weapons from the civilian police force. It derives its authority from different laws and decrees than the civilian police force. The Minister of Defence is responsible for its conduct.

A key law that governs the conduct of the Gendarmerie nationale is Article 174 of the Decree of 20 May 1903, which retains the provisions of the law of 28 Germinal Year VI (Article 231, modified by the law of 22 July 1943).

This law stipulates that gendarmes may only use force:

- when acts of violence are directed against them or when they are threatened by armed individuals;
- when force is the only means of defending their ground, position or persons entrusted to them, or if resistance is such that only force of arms can overcome it;
- when persons who are clearly and repeatedly ordered to stop persist in seeking to escape and can only be forced to stop by use of arms;
- when force is the only means of immobilizing vehicles, etc., that do not obey the order to stop. (See Annex below for full text in French).

Although these provisions fall outside the domain of 'legitimate defence' (see below) they nonetheless restrict the right to fire weapons to a situation in which human life and property is placed under direct threat, and it remains questionable whether they apply to the circumstances of this case.

It should also be noted that officers of the Gendarmerie nationale are in many circumstances responsible under penal law to civilian courts. If the officers in the Ibrahim Sy case choose to justify themselves by pleading that they acted in legitimate defence (*défense légitime*) then they will have to satisfy the court that they are in a state of legitimate defence - briefly:

- that there was an attack on the officer, or someone else, at the time, and without reason;
- that the act of defence was necessary and that its gravity was proportionate to that of the attack.

The law on legitimate defence emphasizes the legal principle of proportionality between the attack and the defence. If this is not observed then the defence can fail in court.¹

¹'N'est pas pénalement responsable la personne qui, devant une atteinte injustifiée envers elle-même ou autrui, accomplit, dans le même temps, un acte commandé par la nécessité de la légitime défense d'elle-même ou d'autrui, sauf s'il y a disproportion entre les moyens de défense employés et la gravité de l'atteinte ...' Art. 122-5 Code Pénal.

ANNEX

Text of Law of 28 Germinal Year VI which is retained by Article 174 of the Decree of 20 May 1903.

LA LOI DU 28 GERMINAL AN VI (Art. 231 modifié par la Loi du 22 juillet 1943 inclus dans le D.O. de 1903, art. 174):

- 'Les officiers, gradés et gendarmes ne peuvent, en l'absence de l'autorité judiciaire ou administrative, déployer la force armée que dans les cas suivants:
 - lorsque des violences ou voies de fait sont exercées contre eux, ou lorsqu'ils sont menacés par des individus armés;
 - lorsqu'ils ne peuvent défendre autrement le terrain qu'ils occupent, les postes ou les personnes qui leur sont confiés, ou, enfin, si la résistance est telle qu'elle ne puisse être vaincue autrement que par la force des armes;
 - lorsque les personnes invitées à s'arrêter par des appels répétés de "HALTE GENDARMERIE", faits à haute voix, cherchent à échapper à leur garde ou à leurs investigations et ne peuvent être contraintes de s'arrêter que par l'usage des armes;
 - lorsqu'ils ne peuvent immobiliser autrement les véhicules, embarcations et autres moyens de transport dont les conducteurs n'obtempèrent pas à l'ordre d'arrêt. Ils sont également autorisés à faire usage de tous engins ou moyens appropriés tels que herses, hérissons, câbles etc. pour immobiliser les moyens de transport quand les conducteurs ne s'arrêtent pas à leurs sommations.'