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FRANCE: FATAL SHOOTING OF ERIC BENFATIMA BY TARBES POLICE OFFICER

Amnesty International is concerned at the fatal shooting of Eric Benfatima by an officer of the *Brigade anticriminalité* (BAC, Anti-Crime Brigade) in Tarbes (Hautes-Pyrénées) in August 1998. Eric Benfatima, a 31-year-old unemployed father of two children, was unarmed at the time of the shooting. Administrative and judicial inquiries have reportedly been opened. The police officer has been placed in preventive detention and is under investigation on a charge of murder. Amnesty International is seeking information from the French authorities about the progress and eventual outcome of the investigation into Eric Benfatima's death, and of any further judicial or administrative proceedings arising from it.

The following account is based on newspaper reports.

On the evening of 31 August 1998 Eric Benfatima was outside a tobacconist's in rue du Régiment-de-Bigorre, a busy street in the centre of Tarbes, asking for cigarettes from passers-by. At approximately 8.45pm a man parked his motorbike nearby and entered the tobacconist's. The man, a BAC sergeant, was in civilian clothing and was on his way to work at Tarbes police station. A heated argument broke out between the two men when Eric Benfatima, who had approached the off-duty police officer as he came out the shop to ask for a cigarette, was told to move on after being informed that "begging [was] forbidden in Tarbes"¹. The man also informed Eric Benfatima that he was a police officer. The verbal altercation escalated and became physical, both men grabbing each other by the collar. A crowd had by now gathered. It was reported that some onlookers were becoming increasingly agitated while others were appealing for calm.

The tobacconist was reportedly ordered by the officer to telephone the police station to call for reinforcements; the officer reportedly intended to take Eric Benfatima to the police station for questioning. While waiting for police back-up, the police officer attempted to immobilise Eric Benfatima who, with the assistance of friends, broke free and ran down a side street a short distance away, pursued by the officer. Eric Benfatima then came to a halt. According to his colleagues, the police officer is reported as saying to them later that evening that Eric Benfatima had turned round to face him and was waving his arms about in a brusque fashion.

The precise circumstances of the shooting are as yet unclear.² However, according to reports, the officer ordered Eric Benfatima to raise his arms in the air and, using his service weapon, a revolver 357, fired once to the right and once to the left of Eric Benfatima, before ordering him to keep still. According to the same reports, Eric Benfatima then made a sudden movement and a third shot was fired. It has been suggested that as many as four shots were fired. Eric Benfatima died soon after being struck by three bullets, one in the abdomen and two in the lower limbs.

¹«La mendicité est interdite à Tarbes», *Libération*, 3 September 1998.

²All the facts of the killing will not be known until the closure of the investigation by the judicial authorities and at the time of writing the investigation was protected by rules designed to guarantee the secrecy of instruction.

Immediately following the shooting tensions were high. Scuffles broke out between members of the public and police who had arrived at the scene of the shooting, and the sergeant's motorbike was set on fire. Shortly after the incident, friends of Eric Benfatima gathered outside the town hall at Tarbes, holding banners reading "Three bullets for one cigarette"³. A march of about 300 people was held on 4 September 1998, from the scene of the fatal shooting to the court house (*palais de justice*). The protest was silent, at the request of Eric Benfatima's family.

On 2 September 1998 the police officer, who was reported to have been slightly injured in the incident, was placed under investigation on a charge of murder (*homicide volontaire*) by the judge of instruction attached to Tarbes court and is currently being held in detention. An internal administrative inquiry by the General Inspectorate of the National Police⁴ has also been opened.

Amnesty International is concerned that the police officer appears to have used a firearm against an unarmed person in a situation where there was no clear danger to his life or that of others. Amnesty International considers that, on the basis of the information known, the officer did not attempt to control the situation using minimum force as required by law. The apparent use of excessive force violates both the standards of international and French domestic law.

Article 3 of the UN Code of Conduct for Law Enforcement Officials states: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty". Article 3 (C) notes: "The use of firearms is considered an extreme measure....firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender." Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials further states: "...officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury."

Acts of force causing injury or death are punishable under the relevant articles of the French Penal Code. Article 122-5 of the Penal Code lays down the circumstances in which injuries caused through defence of the person are lawful. This enshrines the jurisprudential principle of proportionality between the act of defence and the gravity of the attack. Article 122-7 of the Penal Code refers to the state of necessity. This recognizes and systemizes different judicial decisions made over many years and establishes three criteria which, if met, mean that there is no penal responsibility: the existence of an actual or imminent danger threatening a person or property; the need to break the law in order to safeguard the person or property; that a proportion exists between the means used and the seriousness of the threat.

³«Trois balles pour une cigarette»

⁴*Inspection générale de la police nationale*, IGPN. The IGPN is responsible for carrying out internal inquiries into complaints against the police.