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Soft law enforcement in the Nigérien gendarmerie: How a case is born

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Police work is often described as oscillating between law enforcement and peace keeping, work by the book or inspired by practical norms, depending on the police officers' discretionary use of the law. Already Egon Bittner, one of the first and still most relevant social science police scholars, argued that police officers actually do enforce criminal law 'with the frequency located somewhere between virtually never and very rarely' (1974: 23). But what when they do?

Enforcing the law means working a case. But there are several necessary steps before gendarmes could work a case. In the beginning, there needed to be, as Bittner famously put it, 'something-that-ought-not-to-be-happening-and-about-which-somebody-had-better-do-something-now' (1974: 31). 'Un événement s'est produit' was how the gendarmes in Niger put it. But gendarmes needed to first gain knowledge of such an event. There were three ways this could happen: they observed an offense on their own and *in flagranti* – which they rarely, if ever, did;[1] they received such information from informants, which also hardly ever happened (informants were more important when it came to investigating an offense); or, as in most cases, they were informed by complainants. Then gendarmes still needed to accept the complaint and turn it into a case. This depended on how they qualified the alleged offense. Whether police officers or gendarmes do or do not enforce the law – that is, produce a case – has always been discussed by scholars of policing as a matter of police discretion, a

[1] Only those on traffic control duty, who were out on the streets checking vehicles, drivers, cargo and passengers, regularly did observe offenses, but mostly breaches of the highway code (*code de la route*)

necessary principle of police work everywhere.[2] But little has been said about the subtleties underlying this complex phenomenon. Remarkable exceptions are the articles of Jeffrey Martin (2007) and Jan Beek (2011). They both take a close look at the police officers' decision making and reflect the complex rationalities involved in it. This chapter adopts a similar perspective but sets in a couple of steps prior to the gendarmes' decision making: when people perceive 'something' as a problematic event and turn it into a complaint that is to be presented to the gendarmes. In other words, this paper follows a chain of translation (see Latour 1994: 32), with the 'mutual enrollment and the interlocking of interests' (Mosse & David 2006: 13) of gendarmes and civilians: the translation of 'something' into a problematic event, then into a complaint, and finally into a case.

When 'something' turns into a problematic event

It all has to start with 'someone seeing something, classifying it as problematic in some way, and noting that something must be done about it,' , as Joanna Shapland and Jon Vagg (1988: 66) argue (quite remindful of Egon Bittner). In other words, somebody must recognize and isolate 'something' from the unremarkable and undifferentiated flow of time (see Wender 2008: 3) and classify it as problematic. When the two girls in K. had gone into the bush with a small flock of goats and sheep, there was nothing to recognize, contemplate, isolate, and problematize. When they had not come home in the evening their family got worried that 'something' might have happened. When, two days later, they found the girls' dead bodies, the hollow 'something' turned into a concrete event: the murder of the two girls.

It starts with an event, that is, an act, a sequence of acts, also speech acts, that are singled out, objectified, and given particular significance – in the case of problematic events: harm caused. At the same time the event lacks signification: something has happened that challenges our usual frames of reference (Bensa & Fassin 2002: 11; their reflections are mostly based on Deleuze 1969). But then we turn to other options of sense-making and thus responding to a given event (Bensa & Fassin 2002: 19).

When people thus enter into what Laura Nader and Harry F. Todd describe as the 'grievance stage' in the disputing process, 'a circumstance or condition which one person (or group) perceives to be unjust, and the grounds for resentment or complaint' (1978: 14), a number of possible responses are available. The one most frequently used in Niger is to confront the person or group whose act was the cause of the grievance; in Nader's and Todd's terms, they enter the 'conflict stage' (1978: 15). If this is not an option, for example when the author of the problematic event is not known, as was the case in K., or if he is feared, the grieving party enters what Nader and Todd (1978: 15) call the 'dispute stage', here – since it is not only

[2] see Bittner 1974: 22; Feest & Blankenburg 1972: 19; Goldstein 1960; Ignatieff 1979: 445; Kemp et al. 1992; Monjardet 1994: 394; Monjardet 1996: 38; Mouhanna 2001: 33; Reemtsma 2003: 16; Reiner 2000: 19; Waddington 1999: 38.

disputes that are brought to the gendarmes' attention – probably better termed the 'complaint stage': the matter is made public, meaning that a third party is involved. In K., the first response to the perceived 'something' was the father sending a group of men to search for the girls. Only when the horror of the girls' killing was discovered – in other words: the hollow something was translated into the objectified event – the canton chief was informed, the highest available authority in K.

In many places, as in K., gendarmes were not an available option. The reason for this could be either the distance to the next gendarmerie post or the gendarmes' unwillingness to respond. In K. the reason was that the canton chief had had his marabout *brandir le coran* (literally: 'brandish the Qur'an'): he made it publicly known that any of his *administrés* who would go to or call the gendarmes without passing by him, would bring great suffering upon himself and his family. As a result, the gendarmes basically never received calls from K. – except from the chief himself. According to the gendarmes, the canton chief had done this because he wanted absolute control over his subjects and his circumscription – and because he wanted to 'eat' the money his subjects would bring to him in the course of the disputing process. The gendarmes were aware of that, but there was nothing they could do about it, they said. When Chef Issaka,[3] the interim brigade commander, received the call from the K. canton chief, it was therefore clear to everybody that something terrible must have happened – something to which the canton chief had no response. Also Boubacar, my watchman, housemate and friend, who knew K. quite well, having spent a couple of years there as a teenager, immediately supposed that the canton chief had called because he and his men could not find the murderer. 'Why did they call the gendarmes?' he asked. 'They couldn't catch them on their own, could they?'[4]

The decision to report an offense to the police or the gendarmerie is only one of many options. As I described in an article on security and policing in Niamey (Göpfert 2012), responses to problematic events can be given by private security agents, vigilante groups, circles of young men gathering on the streets, the so-called *fada*, spontaneous gatherings often pejoratively called 'the mob' (see Baker 2005: 35-6), but also by traditional authority figures like imams and chiefs, influential neighbours, or simply concerned individuals (see Jensen 2007: 51-2). Who will eventually be called to respond to a given event – in Shapera's terms: who is 'entitled' to do so (1972: 390) – depends on the type of transgression perceived, who committed it, and who the victims are – the world of law and policing, in its broadest sense, is and has always been, in Niger and anywhere else, a pluralized one.[5]

According to widespread explanations, civilians only report an offence to the gendarmerie or police when alternative responses do not exist or have failed to achieve the wished-for

[3] All names used in this article are pseudonyms.

[4] 'Dommi sun kira jendarmomi? Basu iya kama musu, ko?'

[5] see Benda-Beckmann & Benda-Beckmann 2006; 2009: 4; Hills 2009: 19; Hills 2012; Jensen 2007: 49; Loader 2000; Pratten 2008: 4; Reiner 2000: 4-6; Santos 1987: 297-8.

results. This is also represented in large portions of popular discourses about this issue in Niger. Elhadji Badji, a Fulani *chef de groupement* in G. explained: 'It's like, if you have a problem, you come and tell it to me. If he is a Fulani, we will arrange it here. If he's not a Fulani, we will go and tell his chief. But, you know, if his wrongdoing is small, we can arrange for him; if it is big, it is imperative that we bring him to the gendarmerie.'[6]

The stronger the control of the chief (or other authorities) over their subjects and thus over the flow of information to gendarmes, the truer the explanation of the gendarmerie as the last resort. In places where the chief had no such power, more people came directly to the gendarmerie brigade, without having consulted their chiefs before. The decision to circumvent one's chief could have two major reasons. One day a man in his sixties came to the brigade to file a complaint and the gendarmes asked him why he had not brought his neighbourhood chief with him. 'I am an ancient soldier', he replied in Hausa. 'What I do is none of the chief's business!'[7] The reason he – like many others – circumvented his chief, was that he did not recognize the chief's authority over him. Others came directly to the gendarmes because they were looking for something different than what their chief had to offer. They made a strategic evaluation of different options available to them – they engaged in the often cited 'forum shopping' (Benda-Beckmann 1981) – and chose the gendarmes because they were looking not so much for uncertain and often indefinite reconciliation (which civil judges and chiefs were renowned for), but for a rather quick and decisive judgment (see Roberts 2005: 16-7, 232) – for example that the opponent was, through the gendarmes' vigour, forced to compensate the victim for the damages caused, or that somebody received an additional punishment for his wrongdoings.

When a problematic event turns into a complaint

A complaint was born as soon as people came to the brigade and brought their grievance to the gendarmes' attention. Whether an event was translated into a complaint depended on the willingness of the complainant. Whether a complaint was turned into a case, an *affaire*, as gendarmes called it, depended on the willingness of the gendarmes.[8] When people decided to bring a matter to the gendarmes, they thus needed to make sure that the gendarmes took over that matter, in other words, that they turned the event into an 'affair'.

People who decided to call on the gendarmes' help either came to the brigade alone, with their chief, one of his representatives, the so-called *barouma*, or any other supporting party. Those who came alone were mostly habitants of the town or village in which the

[6] 'Kaman, aka samu wane massala. Za'a zo a gaya mini. In aka samu da wane fulani, zaa gyara nan. In ba fulani ba ne, muna tahi mun gaya ma sarkinshi. Amma, ka sani, in laihinshi yana karami, muna iya mun gyara shi. In ya yi girma, dolé an kaishi gendarmerie.' (interview, Elh. Badji 2010)

[7] 'Sohon soja ne! Abinda nike yi, ba ruwan sarki ba ne!'

[8] This is also true for other queries brought to the gendarmerie or police, for example about a research permit (see Beek & Göpfert 2011).

gendarmerie brigade was installed. According to the gendarmes, these people, sharing neighbourhoods with the gendarmes, had no particular qualms about approaching them, as opposed to people from remote villages who only knew the repressive image of gendarmes and other uniformed state personnel. And yet, most of those who approached the brigade were extremely respectful and reticent: they laid their long sticks, swords or daggers beside the tree standing some 15 meters in front of the brigade, men took off their turbans, they slackened their pace, before they approached the gendarmes who were sitting on their benches under the thatched roof they took off their shoes, and then, stopping a couple of meters in front of them, they timidly greeted the gendarmes 'as-salamu alaykum.' The gendarmes interrupted their conversation, greeted friendly back, 'wa alaykum as-salam,' and then generally continued their discussion. The complainants then either stood there and waited or sat down on a mat a couple of meters off the gendarmes, where other complainants, suspects, witnesses, and detainees were sitting and laying in the shade, waiting for their turn.

Those who had at some point already had contact with the gendarmes were a bit more confident and directly addressed one of the gendarmes sitting there, and often they aimed at the most senior one. Since most civilians didn't know the meaning of the stripes on the gendarmes' shoulders, and thus who was the highest ranking gendarme, they often addressed the oldest or most corpulent one. After the greetings, they said 'ina son in kai k'ara', 'I want to bring a complaint', or 'convocation nike so', 'I want a summons', since they knew this was the usual way gendarmes started a case: to hand the complainant the summons for the alleged wrongdoer. This was the formal opening of a criminal case and it was the only way to gain the gendarmes' ear. As the most corpulent or oldest one was not the highest ranking gendarme, often not even a noncommissioned officer, the complainants were usually asked to be patient and wait for a superior to listen to them.

Still others wanted to speak directly to the brigade commander. Having met or heard of him before they knew that it was he who would in any case make the decision to take over a case or not. They greeted the gendarmes and directly asked whether the brigade commander was around and whether he was with somebody in his office. Gendarmes would usually tell them that he was occupied and would take care of them shortly. They would offer them a seat on a bench standing a bit off the gendarmes, 'ka zamna, ka yi hankuri kadan', 'take a seat, have a little patience.' Others greeted the gendarmes only in passing and directly entered the brigade building; some merely threw a casual 'yana ciki?', 'is he inside?' in the gendarmes' direction. In this case the gendarmes would call them back and rebuke them: they should at first greet them, tell them what they want; then the gendarmes would, if necessary, inform the brigade commander. 'You do not enter the office just like that', the gendarmes usually said. They would then have to sit and wait on the bench or on the mat like everybody else.

When people had first gone to their chief with their problem and he could not find a solution to it, as Elhadji Baji said, the chief himself or, as in most cases, his representative or *barouma* would go with them to the gendarmes. The *barouma* are the chiefs' intermediaries between his own traditional office and state administrations, such as hospitals, the mayor's office, the prefect's office, forestry and custom services, and the gendarmerie. They knew where to go with what kind of problem and they were experienced in negotiating with state officials. When *barouma* came, the reception at the brigade was slightly different. Idi, Elhadji Badji's representative, was a well-known guest at the gendarmerie brigade. He came there almost every other day. He greeted all the gendarmes with a handshake, knew everybody by name, and sat down on the gendarmes' benches, where no other civilians were allowed to sit. The reception was similarly warm-hearted, when the complainants were accompanied by other influential supporters, like local politicians, trade union leaders, members of the national guard or other state officials, or even gendarmes. Even I was asked several times to help a neighbour (or a friend's friend…) to bring his or her issue before the gendarmes.

To file a complaint is the first step in the legal funnel described by Thomas Bierschenk (2008: 118-9) with regards to the Beninese legal system. Everybody tries to avoid falling into the funnel, that is, the legal system, which, in most people's perspective, 'seems like a vacuum cleaner which functions on the basis of obscure mechanisms and which, once it aims its hose at the target group of a legal norm, threatens to suck it up in a vortex leading to the unknown' (Bierschenk 2008: 119), with the last step being unpredictable convictions and sanctions. On the one hand, legal professionals as well as gendarmes try to install filters to 'ensure that the funnel does not become blocked with too many cases' (Bierschenk 2008: 119). Gendarmes were often reluctant to take over new cases – to limit their workload – and complainants had to make a strong case for themselves. On the other hand, most complainants did not want the opposing party to be sucked into the legal funnel either; they merely wanted compensation for the damages caused. In this ambivalent situation – wanting that a case is taken over by the gendarmes but not in the most rigorous way – supporters were an important advantage. When accompanied by Idi or other supporters who knew how to talk to the gendarmes, for complainants the legal funnel seemed less threatening and the outcome less unpredictable. Their effect was to reduce the uncertainty in dealing with the gendarmes and the law, and to minimize the chance of being sent away. Those who came without any supporters did not enjoy this advantage. They minimized their uncertainty by maximizing the gendarmes' sympathy and benevolence through extreme respectfulness and deference; thus grew the chance for a complaint to be accepted (see Black 1970: 742-4).

In a few cases, civilians came to the brigade who had already reported their complaint to the public prosecutor. The latter then sent them to the gendarmes, with a small piece of paper indicating 'See Monsieur CB [*commandant de brigade*] of G. for compiling the procedure of…',[9] with a red stamp on the back: 'Tribunal d'Instances [district court] de G., le Président', no

[9] 'Voir M. le CB de G. pour dresser procédure de…'

signature. In this case, the gendarmes had little leeway – the case was already established, the translation from a complaint into a case already completed. The prosecutor had already qualified the offense and as their superior in judicial matters he has given them the task to investigate the case and compile the *procès-verbal*. With all other complaints the gendarmes themselves had to decide what to do.

When a complaint turns into a case

Not all complaints turned into cases. The gendarmes first qualified what it was the complainant brought to them; and in order to do so, as banal as it may seem, gendarmes needed to listen to the complainant. As I mentioned earlier, the latter would be either standing or sitting a bit off the gendarmes waiting to be addressed. When the gendarmes' conversation drew to an end, one of them would turn to the civilian and ask him or her, 'lahiya?', 'are you alright?', 'me ya faru?', 'what happened?', 'mine ne?', 'what is it?', or simply 'Oui?' Then the civilian would come a few steps closer, often squat down in front of the gendarme who, sitting on the bench, had addressed him and begin explaining what brought him or her here. Rank and file gendarmes would then report this to one of the noncommissioned officers, the *chefs*, who were mostly in one of the offices. These would then rehear the complainant. In cases they considered 'de grande envergure', very serious, like cases of fraud of several millions of Franc CFA, burglary under aggravated circumstances, homicides, and what had happened in K., they would directly go and see the brigade commander, who would then, again, listen to the complainant and eventually, after consultation with the public prosecutor over the phone, decide on how to proceed.

Often during my stay at the brigades, complainants were forgotten on the mat.[10] And complainants would usually not insist on talking to the gendarmes and willingly waited for somebody to approach them. The gendarmes were chatting, drinking tea, and from time to time the brigade commander would step out of his office and into the courtyard and see sometimes a good dozen of people sitting there, waiting to be addressed. 'Who are these people?' Adjudant-chef Souley often harshly asked his gendarmes. 'Hey orderly, this woman, why is she here? Why do you look at her? What are you waiting for to listen to her? Do I always have to remind you?!'[11] Then one of the gendarmes would get up from the bench, walk towards the people on the mat and ask them what brought them here. Other complainants would directly get up and approach the brigade commander. 'Ni ne CB,' 'I am the brigade commander. But you haven't killed somebody, have you?' Souley jokingly replied. He knew that a lot of complainants were afraid of going to, not to mention talk to,

[10] Beek (2012: 556) describes a similar routine in the Ghanaian police as a discretionary strategy to not produce cases.

[11] 'Qui sont les gens-là? Hé planton! La femme-là, elle fait quoi? Pourquoi vous la regardez? Qu'est-ce que vous attendez pour l'écouter?! Est-ce qu'il faut toujours qu'on vous rappelle?!'

the gendarmes; with his joking, often building on joking relationships between ethnic groups, he wanted to break the ice, he told me, make complainants a bit more at ease.[12]

The second step was to check the validity of a complaint. Technically, for a complaint to turn into a case, gendarmes had to identify three formal elements constituting a criminal offense (*éléments constitutifs de l'infraction*; see Bauer & Pérez 2009: 97): the legal, material, and moral elements. The legal element is the breach of a law; the material element the materialization of the offense through the execution of an act or acts by its author; the moral element describes that the offending act or acts are the consequence of the authors' intention (or of a fault committed by person conscious of his acts). If only one of these elements was missing, there was no offense, there was no valid complaint, and the gendarmes had no legal mandate to engage, that is, turn it into a case. If all but the legal element were found, it was a civil complaint, most of which were matters of land-conflict, heritage disputes, marriage disputes, adultery, issues of debt, and allegations of sorcery. Technically they had to be blocked and the complainants sent away to the civil judge (or to traditional or religious authorities). The complaint was thus translated into a case, but not one the gendarmes were supposed to deal with. However, whether a law of the *Code Pénal* has been broken or not, was at this point the gendarmes' least interest; this legal question was often even unspoken and became important only in the writing of the final report.

Gendarmes treated such cases anyhow, even though they knew that they had no protection whatsoever, neither from their superiors, nor from the prosecutor.[13] There were several reasons for this: first, gendarmes had financial interests. All cases dealt with, both criminal and civil, were a potential source of additional income, either through unofficial fees (for example for a summons) or through gifts from civilians in response to the gendarmes' having done a good job. And since the prosecutor was not involved and because not the legal procedure but an informal arrangement (perhaps accompanied by simple tickets) was the result, these cases presented larger opportunities for additional income. Second, gendarmes had the sincere ambition to help people who had been caused harm, even if the codified state law, which they often felt inapt to apply to local contexts, had no sanctions – or in their view only inappropriate sanctions – available for this type of wrongdoing. In the end, it was a question of how gendarmes qualified the gravity of the harm caused.

Qualifying the gravity of an act, the gendarmes paid particular attention to the material dimension, that is, the damages caused. Such an act could be physical with an impact on the

[12] His intentions notwithstanding, as de Vienne (2012: 184) shows, joking is always characterized by inescapable moral and functional ambivalence; it is always built upon and reproduces uncertainty.

[13] A key incident often referred to by gendarmes was in the early 2000s, when a handcuffed detainee lost his hand after a wound on his wrist had become infected. He was detained illegally but, according to all gendarmes who told me this story, legitimately. But it was no criminal case. Human rights associations then filed a complaint at the public prosecutor's, and the gendarme on duty was severely punished and brought to trial. Superior officers of the gendarmerie then explicitly forbid the engagement in civil matters.

complainant's body or property. In this case, it was rather simple for gendarmes to measure the material gravity of an offense: How large is the field of crops that has been trampled down by a herder's cattle? How much worth are the stolen goods? How much did the treatment of injuries cost? How long is the victim's temporary disability?[14]

The offending act could also be a speech act (see Searle 1969, 1979) that, through its social validity, had an immediate impact on the victim's social self. Such were usually acts of slander. When it came to such non-corporeal damage, the problem of defining the gravity of an act, or in other words, the problem of quantification, was more complicated, since gendarmes could neither see nor put a precise number to the damage. However, gendarmes were extremely cautious when it came to such 'soft' damage. In one case, a woman had filed a complaint against another woman who had spread the rumour that the first had aids. For Chef Issaka, at that time interim brigade commander, this was a futility and he sent the woman away – he refused to translate the complaint into a case; Chef Bizo, the second in command, and all the other gendarmes did not agree with Issaka and this led to a heated debate, almost to a brawl between Issaka and Bizo. Chef Bizo explained afterwards: 'This is a very delicate affair. Everywhere in town they sullied her name, and if you don't intervene in cases like this, soon there will be chaos! People will start tearing each other to pieces!'[15] The relevant category, also put forward by the public prosecutor, was 'public disorder' (*trouble à l'ordre public*). 'Any offense', the prosecutor explained, 'is a societal problem. And any societal problem can incite societal disorder.'[16] The harm caused was always considered to go beyond the personal damages caused to the complainant and to pose a threat to peaceful coexistence at large.

The moral dimension was the second aspect gendarmes paid attention to. As an element of an offense it refers to the intention behind the offensive act: was an act committed by pure accident, by slight or gross negligence, or by criminal intent? But when qualifying the gravity of an act, the gendarmes took the moral dimension much wider than the textbook definition (see Bauer & Pérez 2009: 97). Adjucant-chef Souley explained to me what the moral dimension was all about:

> 'You can commit a serious act in a tolerable situation. And you can commit a less serious act, a simple act, but in the spirit… in the spirit of a rogue. Or you can mock people, or show them that you are better than they are… or you want to show that you don't respect the law, or you want to show that you refuse to admit that the law is there. … In this case, even if it's a very small thing, I repress it even more than a serious fault in a spirit… without intention. This is what I find important. Because

[14] 'incapacité temporaire de travail'

[15] 'C'est une affaire très délicate. Partout dans la ville on a sali son nom, et si on n'intervient pas dans des cas pareils, bientôt ça serait le chaos ! Les gens vont se taper dessus!' (intervew, Chef Bizo 2010)

[16] 'Toute infraction est un problème sociétal. Et tout problème sociétal peut provoquer du trouble à l'ordre public.' (interview, prosecutor 2010).

> there are rogue people, there are people who are incorrigible. At worst they have, they think they have somebody who can always protect them. Malicious spirits like that I do not tolerate. And whoever the guy is, in these cases I am stone cold. A thief, for example… You'll see somebody who steels four to five ewes. Among these five ewes is one that is somebody's only ewe. And the guy who stole it, when you go to his place you will see that his father has 50, perhaps even 200 cows. And he, this guy, he comes into a village and steels somebody's only ewe?! Now the victim will ask the price for a big ewe. Or he will have a good ewe, a beautiful ewe, without discussing the price. He will compensate him for the search, for the suffering that he has caused, and we too will tax him. We will impose him a big ticket… to take or to leave and go to prison.' (interview, 2010)[17]

Qualifying an offense was not only about what somebody has done and whether he has intentionally done it; it was also a deeply moral question. Who has done it and in which spirit and in what kind of situation – in other words, where did his intention to commit this act come from, what drove him to act in such a way? When a rich guy stole from a poor guy, when somebody made no sign of feeling guilty, or did not show any respect of the law (and those supposed to protect it), the wrong became even *wronger* in the gendarmes' eyes, and thus shrunk their inclination to find an alternative solution to the dispute (see Nader 2003: 65).[18] Put the other way round: the chances of strict law enforcement grew with the alleged offender's disrespect of common social values, of the law, and of the gendarmes.

In cases where the material and moral dimensions of the offense were so striking, in cases where the harm caused was so obvious to the gendarmes, the legal element was secondary, and gendarmes took over the case. This was possible because of the softness of the different categories that qualify a case.

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[17] 'Vous pouvez commettre un acte grave dans une situation tolérable. Et vous pouvez commettre un acte moins grave, un acte simple, mais dans un esprit… un esprit de voyou. Ou tu peux te moquer des gens ou montrer aux gens que tu es meilleur... ou tu veux montrer que tu ne respectes pas la loi, ou tu veux montrer que tu refuses même d'admettre que la loi est là. ... Là, que ça soit minime, moi je le réprime plus que celui qui a fait une faute grave dans un esprit... sans intention. C'est ça qui importe chez moi. Parce qu'il y a des gens qui sont voyou, il y a des gens qui sont... incorrigible. Au pire ils ont, ils pensent qu'ils ont quelqu'un qui peut toujours les protéger. Ça, des esprits malins comme ça-là, je ne tolère les pas. Et qui que le gars soit, je suis caillé là-dessus. Un voleur par exemple… Donc vous allez voir quelqu'un qui va voler quatre à cinq brebis. Parmi les cinq brebis il y a une brebis qui est la seule brebis de quelqu'un. Et le gars qui a volé ça, quand on va chez lui, on voit que son père peut avoir 50 vaches, même 200 vaches. Et lui le gars, il vient dans un village voler l'unique brebis de quelqu'un ?! Maintenant la victime va demander le prix d'une grosse brebis. Ou il va avoir une bonne brebis, belle brebis, sans discuter le prix. Il va lui dédommager pour les traces, les souffrances qu'il l'a fait endurer, et là nous aussi on va le taxer. On lui inflige une forte amende... à prendre ou aller partir en prison.' (interview, A/C Souley 2010)

[18] This is contrary to the widespread argument that police organizations mainly serve the interests of the privileged (see for example Corsianos 2001).

And what kind of a case is it?

'Technically, this is a civil affair', gendarmes often said when they heard a complaint.[19] And technically gendarmes were not supposed to deal with civil cases. But the line between civil and criminal matters was a thin one, as Adjudant-chef Ali explained:

> 'Almost all civil affairs can turn into criminal affairs. For example in an affair about debt: How has he taken on this debt? And as soon as you penetrate just a little bit you will notice that there were some deceptive manoeuvres, or he has breached his confidence, or he defrauded him, and so on. So it's a breach of confidence [*abus de confiance*] or fraud [*escroquerie*]. So it's a criminal affair.' (interview, 2012).[20]

In cases that involved some form of debt, like a simple loan, one could easily find some legal element in it, if it has not been repaid after the agreed upon period. Thus the civil matter turned into a criminal matter, a loan into a breach of trust, and allowed the gendarmes to become active. The problem was, according to Chef Moussa, that complainants had a clear interest in stressing, overemphasizing, or even inventing fraudulent manoeuvres in their narration, in order to transform a civil into a criminal affair and have the gendarmes take over the case, and have them work it in their favour. 'And this pushes us into ambiguity', Chef Moussa explained.[21] And ambiguity was for him not only inacceptable in the gendarmes' work, it was also dangerous. If in the end it turns out that there was no legal reason whatsoever for the gendarmes' engagement, there could be negative repercussions like counter complaints, interventions from influential personalities, reprimands from their superiors, or even punishments. 'This is why you have to be very careful!' Chef Moussa told his gendarmes again and again and again.[22]

To be on the safe side – and not push back complainants completely – gendarmes would in most cases send the complainants to the public prosecutor or simply call him and ask his opinion. Some brigade commanders did not even try to qualify the complaint in advance. One of these was Adjudant-chef Ali:

> 'When I come across an affair, be it civil or not civil, I don't even decide. I send the person directly to the prosecutor. And it's the prosecutor who will make the choice. If he sees that it's civil, he sends him to the civil judge. If he sees that it is a criminal affair, thus one that I can treat, then he gives the complainant a piece of paper "see

[19] 'En principe c'est une affaire civile…'

[20] 'Presque toutes les affaires civiles se transforment en affaire pénale. Par exemple dans une affaire de dette : comment est-ce qu'il a pris la dette ? Et dès qu'on pénètre un tout petit peu, tout suite on constate qu'il y avait des manœuvres frauduleux, ou il a abusé de sa confiance, ou bien il l'a escroqué ainsi de suite. Donc c'est abus de confiance ou escroquerie. Donc c'est une affaire pénale.' (interview, A/C Ali 2012)

[21] 'Et cela nous rentre dans l'ambiguité'

[22] 'C'est pour ça qu'il faut être très très vigilant!'

> the CB in this affair", and he comes here and we then have all the powers to investigate. Then we have no obstacle.' (interview, 2012).[23]

And there was no questioning what the prosecutor said. Even affairs that most obviously were civil matters, when somebody brought a note written by the prosecutor, gendarmes dealt with it. 'Without the piece of paper, it's civil. But with the piece of paper from the prosecutor it's criminal. BOOM!! And we have our hands free.'[24] The note from the prosecutor not only translated the complaint into a case, it also defined what kind of a case it was and it protected the gendarmes from interventions from their superiors, politicians, and so on.

Due to the softness of the civil/criminal categories, not only could civil cases turn into criminal ones; also criminal cases could turn into civil ones. 'Take a breach of confidence [*abus de confiance*], for example. You can extract an element, one of the characteristic elements that constitute the breach of confidence. You can extract one element and you will directly say that it's a civil affair. It's the same for fraud. Because there is really nothing concrete in deceit' (interview, A/C Ali 2012).[25] This practice was particularly relevant when gendarmes aimed at an arrangement, an informal settlement.

If gendarmes took over a criminal case, they still needed to qualify it. If it was a criminal offense, then what kind of offense was it? The corresponding legal categories were *crime*, *délit*, and *contravention* (Code Pénal, Article 1; Bauer & Pérez 2009: 97-9).[26] A *crime* is a serious offense punishable by death or prolonged imprisonment, a *délit* a less serious offense punishable by a short prison sentence or a fine, and a *contravention* a minor offense that is punished by a simple fine – a ticket. Only in *crimes* and *délits* the public prosecutor is involved; tickets for a *contravention* are handed out directly by the gendarmes. These categories reflect the distinction gendarmes drew between 'grandes affaires' on the one hand, and 'petites affaires' or 'affaires courantes' on the other (see Jeanjean 1991: 84-5). *Contraventions* and small *délits*, 'les affairs courantes', could be instructed by

[23] 'Si une affaire tombe sur moi ici, qu'elle soit civile ou pas civile, je ne décide même pas. J'envoie la personne directement auprès du procureur. Et le procureur, c'est lui qui fait le tri. S'il constate que c'est civile, il l'envoi au juge civil. S'il constat que c'est une affaire pénale, donc que je peux traiter, là il donne un bout de papier au plaignant „voir le CB pour telle affaire", il vient ici et puis on a tous les pouvoirs pour mener l'enquête. Et là nous n'avons aucun obstacle.' (interview, A/C Ali 2012)

[24] 'Sans le papier, c'est civil. Mais avec ce bout de papier qui vient du procureur c'est pénal... BOOM!! Et on a les mains libres.'

[25] 'L'abus de confiance, par exemple. On peut soutirer un élément, un des éléments caractéristiques qui forment l'abus de confiance. On peut soutirer un élément, et directement on va dire que c'est une affaire civile. Pour l'escroquerie c'est la même chose. Parce que dans la tromperie il n'y a pas vraiment du concret.' (interview, A/C Ali 2012)

[26] Since these categories can only inappropriately be translated into felony, misdemeanor, and minor offenses, I will stick to the French terminology.

noncommissioned officers directly. Big affairs, important *délits* and *crimes*, needed always to be brought to the brigade commanders' attention, who would then inform the prosecutor.

These categories were, however, similarly to 'civil' and 'criminal', not neatly separated and could, except from serious crime, be transformed one into the other. When a *délit* was transformed into a *contravention*, this meant that the public prosecutor was not involved and the gendarmes had large leeway as to how to proceed. In the case of assault, for example, gendarmes made use of the dividing line between a *délit* and a *contravention*, which in their eyes was fixed at ten days of temporary disability of the victim (although the legal article gendarmes mentioned referred to unintentional harm; see Code Pénal, Art. 272); and when consulting the doctor, who was a good friend of Adjudant-chef Souley, the number of days could be subject to negotiations. The transformation of a *délit* into a *contravention* was usually part of the gendarmes' efforts to allow for an arrangement and not to further contribute to the prison overcrowding, and not need to write a report. This can be described as one of the filters to keep the legal funnel from being blocked (Bierschenk 2008: 119).

Most gendarmes were tired of working on such everyday affairs. Not so with *l'Affaire*, a case that represented for the gendarmes a rupture in the unremarkable flow of routine activities (see Jeanjean 1991). *L'Affarire* stands out, is interesting, promising, and mobilizes gendarmes, whose, as Bittner put it, 'vocational ear is *permanently and specifically attuned* to such calls' (1974: 28), as opposed to the boring everyday 'affaires courantes', which most gendarmes preferred not to deal with. In the case of a crime, a translation into a *délit* or even *contravention* was impossible. And the bigger the crime, the more restricted was the gendarmes' leeway, particularly because of their superiors' rising interest in such cases. All homicides, like those in K., almost automatically turned into what David Simon, writing about the Baltimore Homicide Unit called 'red ball-cases', that is, cases 'that matter' and that 'can mean twenty-four hour days and constant reports to the entire chain of command' (Simon 2009[1991]: 20-1). If the scale went even beyond that of a red ball, particularly because of its political importance, the case was even withdrawn from the brigade commander's authority. Adjudant-chef Ali explained this in an interview:

> 'They send us somebody, an officer, a politician, the Libyans, but we only detain them here; we don't lead the investigation. We don't treat these big affairs here; we only treat small stuff. Everybody thinks that everything comes through here, but we merely execute… For example HALCIA [High Authority of the Fight against Corruption and Related Offenses], they are the big guys. It's true, in order to find intelligence, they need to necessarily involve the brigade. But we are a mere complement. We don't directly treat the big affairs, but we help these people in terms

> of intelligence. And then it's not me but the *commandant de groupement* or even the *commandant de légion* who leads the investigation.' (interview, A/C Ali, 8/3/2012)[27]

Conclusion

Law enforcement, the production of cases, is often described as a matter of police discretion. What is neglected, is the complainants' discretion or, to put it differently, the definition of a problematic event and its translation into a complaint to be brought to the police officers' or gendarmes' attention. Law enforcement depends, first of all, on the flow of information from civilians to those who are supposed to enforce the law. Whether a complaint was filed or not was always the result of the strategic choice of somebody who felt that he had been caused harm; it depended on the availability of different possible 'remedy agents' (Nader & Todd 1978: 1); and it depended on who controlled, and to which extent, the flow of information to gendarmes. Then, whether a complaint was translated into a case or not depended on the gendarmes' strategic evaluation, particularly with regards to additional income and possible repercussions, on whether they were told to do so by their superiors or the prosecutor, but also, and decisively so, on whether their 'vocational ear' (Bittner 1978: 28) was attuned to a particular complaint.[28] And when qualifying a complaint and the problematic event it is based on, the gendarmes' ear was more attuned to the material and moral gravity of an offense than to the legal element in it. Considering the invisibility of the law at this stage, it appears that the binary categories of state law – 'civil' and 'criminal' – are not only problematic as analytical concepts (see Comaroff & Comaroff 2004: 189; Nader 2003: 58); they are, due to their 'softness', also subject to the law enforcers' interpretation. A crime was a crime not so much because it broke the law and thus offended the sovereignty of the state (see Dubber 2006: 118); a crime was a crime because it undercut and imperilled what the gendarmes deemed fundamental values of social life (see Buur 2006: 754).[29] In other words,

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[27] 'Ils nous envoient quelqu'un, un officier, un politicien, les Libyens, mais nous on les garde seulement ; on ne dirige pas l'enquête. Les grandes affaires, on ne les traite pas ici ; on fait seulement les petits trucs. Les gens pensent que tout passe par ici, mais nous on exécute seulement... Par exemple la HALCIA [Haute Autorité de Lutte contre la Corruption et les Infractions Assimilées], eux c'est les grands. C'est vrai, pour trouver des renseignements, il faut obligatoirement associer la brigade. Mais nous, on n'est qu'un complément. Nous ne traitons pas directement les grosses affaires, mais nous apportons notre aide à ces gens-là, en termes de renseignement. Et puis, ce n'est plus moi mais le commandant de groupement, ou bien le commandant de légion qui dirige l'enquête.' (interview, A/C Ali 2012)

[28] In an article on police violence (Beek & Göpfert 2013), we describe this as a framework of multiple and often conflicting moral discourses, of which the legal discourse is but one, and in which police officers and gendarmes have to position themselves and their actions. Continuing in this sense, here the question is: which discourse was the gendarmes' vocational ear attuned to?

[29] I thus do not fully agree with Satnam Choongh's pessimistic vision on police work according to which '[t]he language of "crime" … is used as a cover to validate an illegal system in which individuals are harassed and punished' (1998: 237-8).

gendarmes worked on the basis of a social rather than legal definition of crime (see Nader 2003: 65).

At this stage of the law enforcement process, gendarmes did invoke the law only when the material and moral dimensions of an alleged offense were too weak – too weak for the gendarmes to appear as legitimate remedy agents – or when their intervention was not launched by a complaint and a remedy was not sought for. Typically this happened when the gendarmes were on traffic control duty and handed out tickets for breaches of the Highway Code (*code de la route*) (see Beek 2011: 210-1). But in cases of theft, assault, murder, or slander, social and moral norms, were the reference, not the law – the reference upon which depended the translation an event into a case. Just like harm and crime have a 'contingent rather than necessary connection' (Lasslett 2010: 2), so do problematic events, complaints and cases. There is no unique reference upon which the translation is based, and law is only of minor relevance. And just as contingent are the references upon which depended the continuation of this chain of translation from a case into facts and also, eventually, into a written file (*procès-verbal*).[30]

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[30] For the meaning of references in chains of translation see Latour 1996: 239. For the writing of *procès-verbaux* see Göpfert 2013 (in press).

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