

# **UNITED KINGDOM @Unlawful Killing of Asylum-Seeker Omasese Lumumba**

Amnesty International is concerned about the ill-treatment and the resulting death in custody of asylum-seeker Omasese Lumumba.

Omasese Lumumba was killed on 8 October 1991, while detained by immigration authorities pending a decision on his asylum claim. An inquest jury found that he was unlawfully killed, as a result of "use of improper methods and excessive force in the process of control and restraint"<sup>1</sup> by staff at the Pentonville Prison in London.

Omasese Lumumba was the nephew of Patrice Lumumba, the elected Prime Minister of what is now Zaire, who was assassinated in 1961 shortly after Zaire gained independence from Belgium. After the murder of Patrice Lumumba, members of the Lumumba family were subjected to imprisonment, torture, or death in Zaire; Omasese Lumumba was imprisoned without charge or trial for approximately 18 months and ill-treated, allegedly on the basis of his family name. He then fled to Switzerland, where he married a Swiss national and lived for 10 years. Omasese Lumumba left Switzerland following the break-up of his marriage; he apparently believed that he no longer had the right to remain there.

In September 1991, Omasese Lumumba arrived in England, where he sought asylum. On 15 September 1991, he was arrested in Catford (on the outskirts of London) on suspicion of stealing a child's bicycle, an accusation which he denied and for which charges were never brought. Upon being brought to the Catford Police Station, it was discovered that Omasese Lumumba wished to seek asylum in the United Kingdom. The Catford Police therefore called the Immigration Service, who sent an Immigration Officer to interview Omasese Lumumba. During the interview with the Immigration Officer, several of Omasese

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<sup>1</sup> An inquest into the death of Omasese Lumumba was convened in the St Pancras Coroner's Court in London in February 1993. Testimony was taken over the course of six days. The inquest was adjourned at the request of counsel for Lumumba's next of kin, pending a High Court challenge to the Coroner's refusal to instruct the jury that they might find, as a possible verdict, that Omasese Lumumba was unlawfully killed. The High Court ruled in favour of the Lumumba family. Following the ruling of the High Court, the jury was reinstructed and, on 27 July 1993, rendered its verdict of unlawful killing.

Lumumba's answers to the Immigration Officer's questions indicated that he was then in distress. In response to a question about whether he suffered from mental illness, Omasese Lumumba confirmed that he had suffered from mental illness in the past. The Immigration Officer, presumably due to inadequate training, was not familiar with the significance of Omasese Lumumba's family background, or the significance of his statements that several family members had been persecuted or killed in Zaire; he did, however, determine that Omasese Lumumba had entered the United Kingdom on a false passport.

Following the initial interview on 15 September 1991, the Immigration Officer decided to detain rather than release Omasese Lumumba, pending a determination of his asylum claim. This decision was later approved by the Home Office Asylum Division.

Omasese Lumumba was held in a cell in the Catford Police Station for four days, during which time he refused to eat most meals. On the night of 19 September 1991, he was brought to Pentonville Prison in London. Prior to his transfer, no Immigration Officer or interpreter went to the police station to inform Omasese Lumumba that he was being detained or to explain what was going to happen. He received no documents in either Lingala (his mother tongue) or French, his second language, explaining the procedures or his rights; this was in violation of international standards which require that all persons in detention be informed of their rights<sup>2</sup> and, if required, receive the assistance of an interpreter<sup>3</sup>.

At Pentonville Prison, from 19 September until he was killed on 8 October, Omasese Lumumba was locked in a cell for more than 20 hours each day. He was allowed out of the cell each day only to collect two meals and for a 30-minute period of exercise. Other prisoners and prison staff have stated and prison records indicate that Omasese Lumumba was depressed and anxious. He was described as frequently holding his head in his hands repeating over and over again in French that he could not understand why he was being held in prison. He rarely ate prison food, and complained frequently of headaches. On a prison doctor's recommendation, he was moved from a cell by himself into a cell with another Zairian, with whom he could speak. (Although he spoke some limited English, prison records indicate that prison staff had difficulty communicating with and understanding him.) The prison doctor did not then or later assess Omasese Lumumba to be a suicide risk.

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<sup>2</sup> Principle 13 of the United Nations (UN) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles); Article 9(2) of the International Covenant on Civil and Political Rights (ICCPR); and Article 5(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention).

<sup>3</sup> Principle 14 of the Body of Principles.

His cellmate, however, complained to prison authorities that Omasese Lumumba's behaviour was disturbing. He was unable to sleep at night and spent many nights walking back and forth in the cell, muttering and ringing the bell to summon prison officers. As a result of these complaints, on 7 October 1991, the day before he was killed, the prison authorities informed the Immigration Service that Omasese Lumumba was "not compatible" with the prison environment, "has bazaar [sic] behaviour" and that they were having "trouble controlling him". According to prison records, the Immigration Service told the prison authorities that "there was no likelihood of [Lumumba's] imminent release or transfer from Pentonville". Rather, the Immigration Service suggested that he be seen once again by the prison doctor.

By early the next morning, two prison doctors had decided that Omasese Lumumba should be transferred to the prison hospital. However, when he was released from his cell in the morning of 8 October 1991 to collect a meal, he went to the door leading to the outdoor recreation area, stating that he wanted to go outdoors. (He had previously complained to a prison doctor that he was used to activity, exercise and wide open spaces, and could not bear being locked up.) When he refused an order to return to his cell, he was taken to the segregation unit (comprised of single isolation cells) where, after being searched, he was locked up alone in a cell. The prison doctor, who had earlier requested that Omasese Lumumba be moved to the prison hospital, reported that he was surprised to see him in a segregation cell, when he made his morning rounds of the segregation unit. He explained to Omasese Lumumba that he would be transferred to the prison hospital.

Thirty minutes to an hour later when he was being taken by prison officers to the prison hospital, Omasese Lumumba stopped in the central area of the prison, refusing to move. In response, three or four prison officers held his arms behind his back and his head down (using a method called "Control and Restraint 1") and led him back to the segregation unit. All concur that, at this stage, Omasese Lumumba offered little if any resistance. Upon arriving back in the segregation unit they put him in cell 22, from which all of the furniture had been removed.<sup>4</sup> Between six and eight prison officers entered the cell with Omasese Lumumba. They told him to get down on his knees, which he did, and they then proceeded to lay him on the floor of the cell, face down on his stomach. Some officers pinned his arms against the floor. Others held his legs down, and another held his head down, sideways against the floor of the cell.

Thereupon, the officers attempted to strip him of his clothing, though the prison regulations state "A prisoner may be deprived of normal clothes only if, in the light of the

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<sup>4</sup> Prison Authority Standing Order 3E, Section B 3(1) states that unfurnished cells may be used for the temporary confinement of a violent or refractory prisoner only if "the use of such accommodation is necessary to prevent the prisoner causing self-injury, injuring another prisoner or staff, or damaging property or creating a serious disturbance...". Subparagraph 2 provides in part "No prisoner shall be confined in a [such a cell] as punishment..".

individual case, this is considered essential to prevent self-injury or injury to others".<sup>5</sup> Some prison officers have testified<sup>6</sup> that they could see no good reason to strip him other than that they thought it was "normal procedure" in the segregation block. However, they could offer no justification in the prison rules or regulations for this belief.

All officers agreed that when they started to strip him, Omasese Lumumba struggled violently and that they used force to remove all of his clothing except his underpants. Some of his clothes were cut off him by a female officer using scissors. During the struggle, which is reported to have lasted between 10-15 minutes, it was decided to call the prison doctor, with the intent that the doctor would give Omasese Lumumba a tranquillizing injection.<sup>7</sup>

The prison doctor testified that, when he arrived at cell 22, Omasese Lumumba was lying face down diagonally across the cell floor, dressed only in his underpants, with five to seven officers restraining him: one holding his head, one holding each of his arms and legs and two at his sides. According to a prison "Control and Restraint" instructor, who gave a demonstration of "Control and Restraint 1" to the inquest jury, however, no more than a team of four trained officers are to be used when applying this type of "Control and Restraint". When the doctor then approached to examine him, he found that Omasese Lumumba was dead. He testified that the officers continued to restrain Omasese Lumumba even though his body had gone limp and he was unconscious. The doctor ordered the officers to turn Omasese Lumumba onto his back, but efforts to resuscitate him were ineffective. Omasese Lumumba was pronounced dead by the prison doctor at 11:08 a.m. on 8 October 1991.

As in the case of every death in custody in England, a coroner's inquest was convened and a jury was summoned to hear evidence and determine "how, where and when" Omasese Lumumba came to his death. An inquest is generally the only public inquiry into the death of a person in custody in England, as civil proceedings are rarely instituted. The inquest thus represents the only occasion most bereaved families have to inquire into the circumstances of their relative's death. While members of the family of the deceased are allowed to attend the inquest and question witnesses following their examination by the coroner, the system of legal aid in the United Kingdom does not provide free legal representation at the inquest hearing to the family of the deceased.<sup>8</sup> In addition, a Coroner has no express power to

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<sup>5</sup> Prison Standing Order 3E, paragraph 24(3), December 1990.

<sup>6</sup> This testimony was taken at the coroner's inquest. See Footnote 1.

<sup>7</sup> The prison doctor testified that he would not have given Omasese Lumumba an injection, as to have done so would have constituted an assault.

<sup>8</sup> Omasese Lumumba's family was, however, represented at the inquest hearing by a barrister, Tim Owen, who acted voluntarily on their behalf. Tim Owen was instructed by Matthew Davies, Solicitor, of Wilson & Co.,

disclose to families or other interested parties evidence which he or she receives in investigating a death. Coupled with the Home Office and police and prison authorities' view that they will not make public documents which might prejudice the fairness of the inquest, documents including autopsy reports, prison records and witness statements are rarely disclosed to the family and/or their representative prior to the inquest. Thus, the family of the deceased and/or their representative are unable to do any useful preparation in advance of the inquest.<sup>9</sup>

Following six days of testimony and an Order of the High Court requiring the Coroner to instruct the jury that they might find that Omasese Lumumba was unlawfully killed, on 27 July 1993 the inquest jury found that Omasese Lumumba had been unlawfully killed on 8 October 1991 while in custody at Pentonville Prison as a result of the "use of improper methods and excessive force in the process of control and restraint" by prison staff.

Notwithstanding the inquest verdict, and an internal investigation conducted by the prison authorities<sup>10</sup>, no disciplinary charges have been brought against the prison staff responsible for the death of Omasese Lumumba. Amnesty International has been informed that following the inquest verdict, the Crown Prosecution Service is reviewing the case again, to determine whether any criminal charges will be brought.

### ***INTERNATIONAL STANDARDS AND PRACTICES IN THE UNITED KINGDOM***

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Solicitors. Both Tim Owen and Matthew Davies work with the Lawyers Group of the London-based organization called "INQUEST", which is a campaigning group and advice service concerned with deaths in custody and coroners' courts.

The family's Solicitor was able to locate an inmate who had witnessed the ill-treatment of Omasese Lumumba in cell 22. This witness was the only "independent" witness to testify at the inquest about the events leading up to Omasese Lumumba's death. This witness was not interviewed during the course of the prison's internal inquiry. His evidence contradicted the evidence of the prison officers.

<sup>9</sup> The failure of the prison authorities to provide the family of a person who has died while in custody in prison with documents in advance of an inquest has been criticized by the government appointed Chief Inspector of Prisons, Judge Stephen Tumim. A report by Judge Tumim criticized the Home Office for failing to communicate with the families of those who die while in prison, stating that they should enter the inquest with the same amount of information as the Prison Service. Moreover, Principle 16 of the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions provides in part: "Families of the deceased and their legal representatives shall be informed of, and have access to any hearing as well as all information relevant to the investigation, and shall be entitled to present evidence." The problem remains, however, that prison authorities continue to refuse to disclose records to the bereaved next of kin in advance of the inquest, and a coroner is powerless to do so without approval of the Home Office.

<sup>10</sup> The results of the internal prison inquiry into the death of Omasese Lumumba have not been made public.

International standards provide that the detention of asylum-seekers should normally be avoided and that, if they are to be detained, asylum-seekers should be able to challenge the lawfulness of their detention promptly before a court or other competent authority. The intergovernmental Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR)<sup>11</sup> has stated that:

"...in view of the hardship it involves, detention should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order;

and that:

"...detention measures taken in respect of refugees and asylum-seekers should be subject to judicial or administrative review."<sup>12</sup>

Article 9(4) of the International Covenant on Civil and Political Rights (ICCPR), to which the United Kingdom is a State Party and with which it is therefore bound to comply, provides that: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." Article 5(4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) and Principle 32 of the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Body of Principles) contain similar guarantees.

When a person is charged with a crime in the United Kingdom, a decision to detain is reviewed by a court, as is the question of release on bail. However, a decision to detain an asylum-seeker under the provisions of the 1971 Immigration Act is not subject to review by a judicial or other independent, impartial authority to determine whether the detention is both "necessary" and for one of the reasons recognized by international standards<sup>13</sup>. Furthermore,

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<sup>11</sup> The United Kingdom is a part of this Committee.

<sup>12</sup> Conclusion 44 (XXXVII) adopted by consensus in 1986.

<sup>13</sup> Although technically a detained asylum seeker may apply to the High Court for review of the decision to detain him or her, this protection has been shown to be ineffective, as the High Court does not review either the "necessity" for the detention or whether the decision to detain is for one of the reasons specified as permissible by international standards. The review focuses not on the substance of the decision to detain, but rather on whether prescribed procedures have been followed. Furthermore, the High Court has ruled that it will overrule the Home Office's exercise of its discretion to detain an asylum-seeker only in cases of gross unfairness or upon evidence of

unlike in a criminal case, having entered the United Kingdom without authorization, Omasese Lumumba had no right or opportunity to request bail. Thus, though not charged with a crime, Omasese Lumumba, an asylum-seeker, was detained without recourse to a substantive review of this decision before a judicial or other authority; this was in violation of international standards.

Most asylum-seekers who are detained in the United Kingdom are sent to special detention centres where they sleep in dormitories and have greater access to visitors and greater opportunities to associate with each other than people detained on criminal charges. However, some asylum-seekers have been held in cells in police stations and in prisons, despite international standards which provide that insofar as detention of asylum-seekers occurs, detainees should be held in humane conditions and wherever possible, should not be held with criminal prisoners.<sup>14</sup> Amnesty International notes that the Board of Visitors and the Governor of Pentonville Prison have repeatedly questioned the appropriateness of detaining asylum-seekers in the prison.

### ***AMNESTY INTERNATIONAL'S RECOMMENDATIONS***

Amnesty International opposes the detention of asylum-seekers unless they have been charged with a recognizably criminal offence, or unless the authorities can demonstrate in each individual case that the detention is necessary and for one of the reasons recognized by international standards. The organization calls for each asylum-seeker who is detained to be brought promptly before a judicial or similar authority where the authorities must prove that his or her detention is both necessary and for one of the reasons recognized as legitimate by international standards.

Amnesty International also opposes the torture, or other cruel, inhuman or degrading treatment of detained or imprisoned persons, as well as the death penalty and extrajudicial executions.

Amnesty International has, on several occasions, raised its concerns with the Government of the United Kingdom that the handling of asylum claims and its detention of asylum-seekers do not meet international standards. In May 1991, five months before the death of Omasese Lumumba, the organization published a report, **United Kingdom, Deficient Policy & Practice for the Protection of Asylum Seekers**<sup>15</sup>. This report reviewed

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malice on the part of the decision maker. *See, Gurinder Singh Dhillon v. Home Secretary*, 1987 Immigration Appeals Report 222.

<sup>14</sup> Conclusion 44 (XXXVII) of the Executive Committee of the UNHCR.

<sup>15</sup> AI ref: AIBS/RO/2/91. This report was issued by the British Section of Amnesty International. In accordance with the principle that the protection of human rights is an international responsibility and in order to preserve the impartiality of its work, Amnesty International's national sections may not work on cases of torture, "disappearance",

the practice and procedure of the handling of asylum cases in the United Kingdom in light of the applicable international standards, and made specific recommendations for change. The report also examined the detention of asylum-seekers in the United Kingdom. In the report, Amnesty International called on the Government of the United Kingdom to ensure, among other things, that:

detention of asylum-seekers is resorted to only for reasons recognized as legitimate under international standards and only when other measures short of detention can not be used;

decisions to detain asylum-seekers are made by the Home Office Asylum Division rather than an Immigration Officer;

a detained asylum-seeker is given a written statement of reasons for his or her detention and allowed access to counsel and afforded the opportunity to prepare and pursue his or her claim for asylum effectively;

the decision to detain an asylum-seeker is reviewed as to its necessity and compliance with international standards by an independent, impartial and competent authority within seven days of the initial decision to detain and each 14 days thereafter, during which review the detainee and his or her representative be permitted to be present and make representations.

Regrettably, to date, none of these recommendations have been put into practice. Following the concerns raised by the killing of Omasese Lumumba in custody, Amnesty International reiterates these recommendations.

In addition, Amnesty International calls on the government to initiate an independent, impartial public inquiry into the death in custody of Omasese Lumumba, which should also examine the use of force and restraint on imprisoned and detained people.

Amnesty International believes that the death of Omasese Lumumba illustrates serious deficiencies in the procedures applied to asylum-seekers in the United Kingdom. Accordingly the organization calls on the Government of the United Kingdom to revise these procedures to ensure that all asylum-seekers, including those who are detained, are treated in accordance with international standards. Such revisions should include provisions which ensure that:

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extra-judicial execution or the imprisonment of prisoners of conscience or unfair trials of political prisoners which occur in their own country; this work is done by the organization's sections in other countries and its International Secretariat. But Amnesty International's sections may work on behalf of refugees and asylum-seekers in their own countries.



all asylum-seekers are advised, in a language which they fully understand, of the procedures to be followed and their rights within that procedure;

all asylum-seekers are given access to a lawyer, their families, the UNHCR and any other appropriate agencies, and that asylum-seekers be given all necessary facilities to enable communication with them;

each asylum-seeker is given, at an early stage, a complete and personal interview by the Home Office Asylum Division official who will be responsible for the examination and initial determination of his or her application for asylum:

such officials should be trained and provided with comprehensive written instructions on procedures to be followed, and on the methods to be applied when determining refugee status. Such procedures, training and instructions should incorporate the UNHCR Executive Committee's *Conclusions on the International Protection of Refugees*, and the UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (UNHCR Handbook);

all officials examining asylum claims should be specially and regularly trained in international human rights standards, including those relating to the protection of refugees, and have access to and make use of independent and up-to-date information on all relevant aspects of the human rights situation in the asylum-seeker's country of origin;

such officials should also be specially trained to gain the confidence of the asylum-seeker in order to assist him or her to fully put forward his or her case, and assess the asylum-seeker's claim in a spirit of justice and understanding<sup>16</sup>. They must be trained to take into consideration the special situation of asylum-seekers, who might experience language or other difficulties and whose past experience may cause them to be apprehensive of authority, to be afraid to speak freely, or otherwise to be unable or reluctant to give a full and accurate account of their case;

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<sup>16</sup> UNHCR *Handbook*, paras. 200 and 203.

asylum-seekers should not be detained unless they have been charged with a recognizably criminal offence, or unless the authorities can demonstrate in each individual case that the detention is both **necessary** and for one of the **specific reasons** recognized by international standards;

any asylum-seeker who is detained should be brought promptly before a judicial or other independent impartial body who will examine whether the detention is in accordance with international standards - in particular that it is **necessary** and that it is for one of the **specific reasons** which those standards recognize as legitimate. The government should maintain the burden of proof during such hearings, which should be repeated regularly. This should occur at least every 14 days after the initial proceeding;

in the exceptional event that an asylum-seeker is detained, the conditions of detention must be humane, and the asylum-seeker should be held in special facilities, not with people who have been accused or convicted of criminal offences.

With respect to all detainees, Amnesty International calls on the Government of the United Kingdom to:

ensure that no detainee is subjected to torture, or other cruel, inhuman or degrading treatment or punishment;

promptly carry out independent and impartial investigations of all deaths in custody, making all relevant documents promptly available to next of kin of the victim and/or their representatives, as is required by international standards;

provide free legal assistance to next of kin of those who die in custody for the purposes of being represented at the inquest hearing and ensure that they are informed and given access to all hearings and information related to the investigation of the death in custody, and that they be entitled to present evidence;

bring those responsible for the death of a person in custody to justice and in appropriate cases pay compensation to the surviving next of kin of the victim.

Amnesty International believes that if the foregoing recommendations are implemented, tragedies like the death in custody of Omasese Lumumba will not be repeated.

