

# Germany's Stephen Lawrence

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*Abstract:* Campaigners in Germany, protesting at the suspicious death in custody of Oury Jalloh in 2005 and the subsequent cover-up by the criminal justice system, are looking to the Lawrence trial, the Macpherson Report and other British institutional responses to see how Germany could learn from the British experience.

*Keywords:* Mouctar Bah, Oury Jalloh, Stephen Lawrence

At long last, two men in the UK were found guilty of the murder, in 1993, of Stephen Lawrence. This verdict, nineteen years in the making, gave the nation a chance to reflect on the dramatic changes that have resulted from the multiple investigations around the murder, including the groundbreaking Macpherson Report (1999), which brought institutional racism among the police into the national spotlight. The Lawrence campaign and the legislative changes that ensued marked a watershed in UK race relations, dramatically increasing public awareness about institutional racism and modifying the way in which Britain does policing.

On 7 January 2012, just days after the verdict, activists in Germany marched through the streets of Dessau to commemorate the most important and

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*Race & Class*

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controversial death in custody in recent German history. They marched from the central train station to the police station to remember the death, on 7 January 2005, of a man from Sierra Leone named Oury Jalloh. At the time of writing, the trial concerning his death is ongoing. Jalloh burned to death while chained by his hands and feet to a fireproof mattress in a tiled cell in a police station.

Demonstrators this year put flowers on the steps of the police station, with the same questions in their minds as they had seven years ago. Why did the police turn off the smoke alarms? How could Jalloh have physically burned himself? Why were hallway cameras turned away from his cell door? Why did CCTV footage get erased? Why do no officers seem to remember the events of the day, and so on ... ? These, and a long list of other questions,<sup>1</sup> plague not only Jalloh's friends, family, human rights activists and Germany's black community – who feel outrage, shame and exasperation at the official denials – but are also beginning to open up fissures in the consciousness of the nation.

There are two main issues arising from the Oury Jalloh trial that must be considered if the German judicial system is to progress on the related issues of police brutality and institutional racism. The first is the transparency with which courts, police and state prosecutors work to facilitate a *real* investigation into potential murders. The second relates to respect for the civil and political rights of all parties in the sensitive aftermath of a brutal death, in particular the right to critique ineffective state approaches to finding the likely causes of death.

### **Hollow trial**

In Germany, there is no mandatory inquest procedure when a person dies in police custody, as there is in the UK. Additionally, there is no national Independent Police Complaints Commission (IPCC) or regional equivalent in Sachsen-Anhalt, where Jalloh died. For many activists and a growing number of German citizens, the Oury Jalloh trial has been a farce since its inception in 2007. The charges brought initially were of civil negligence, based on the rather eccentric premise that Jalloh, in a drunken state, somewhere during his sudden detention on public disorder charges, hid a lighter from the police (on, or in, some part of his body other than his trouser pockets, which were checked) and, while in four-point restraints, ripped open the robust mattress on which he was lying on his back, set the cotton filling alight and managed not to scream until just before the fire completely engulfed him and destroyed the mattress. Police investigators have failed in their numerous attempts to recreate the speed, temperature and resulting damage of a fire produced in this scenario, given the other factual assertions in the defence. Many people believed that a more common-sense charge would have been murder, which would have allowed the court to investigate other elements. However, with so much evidence missing or destroyed, even that flexibility may not have helped much, since no one is talking.

But the silence in 2012 mirrors the silence in 2005, when the police autopsy did not discover the broken nose and burst eardrum that the community-sponsored independent autopsy found. Jalloh's parents rejected the infamous €5,000 settlement offered to them not to add themselves to the initial lawsuit. Like the brave Lawrence family, Jalloh's family would not be fobbed off; they wanted the truth about how their son died. It is unfortunate, to say the least, that they will not get an explanation from this trial.

### **Suppressing free speech and silencing dissent**

One of Oury Jalloh's best friends is Mouctar Bah, who is leading the Initiative in Remembrance of Oury Jalloh e.V.,<sup>2</sup> which played a critical role in 2007 by: bringing Jalloh's parents from Sierra Leone to add themselves to the state case against the police; informing the German community about the murky circumstances of Jalloh's death; and supporting the 2008 appeal against the acquittal verdict in the first trial. Bah's energy and social advocacy over the last few years have earned him a Carl-von-Ossietzky human rights medal from the International Human Rights League in Berlin. This advocacy has also earned him a significant backlash from the police in Dessau, where he lives. His licence to run an internet café was revoked and reinstated only after a number of years of campaigning. On a trial date hearing in August 2011, when Bah spoke out of turn in the courtroom, police officers physically removed him from the court and forced him to the ground, injuring his arm such that he needed medical care. At a peaceful demonstration on 7 January 2012, Bah, who generally displays impressive patience and serenity, was pepper-sprayed, beaten unconscious by police officers and had to be hospitalised. Imagine the scandal if a member of the Metropolitan Police was to attack someone from the Lawrence family as they marched for justice for their son. Bah was the most seriously injured of any demonstrator, although other prominent African members of the Initiative were also injured by the police.

Police have also attempted to curb the freedom of speech of protesters. In 2011, they issued a memorandum that called for closer regulation of members of the Initiative, characterising them as troublemakers. Immediately after this, they instituted identity checks at the court of this public trial, setting up a photocopier at the door to take copies of identity cards and passports. Before the demonstration in January 2012, police visited Bah in his internet café and informed him that if he or other activists used the slogan 'Oury Jalloh – that was murder!' (the campaign slogan for the last seven years), they would face criminal charges. Legal advisers believe that such criminal defamation charges would not actually hold up in court. As far back as 2006, the regional administrative court of Sachsen-Anhalt issued a decision that forbidding the slogan violated free speech. Nevertheless, the police tried, for an hour, to prevent this January's demonstration on the grounds that the slogan was criminal, ripping signs and banners from the hands of the activists and blocking their way. This intimidation certainly illustrates the competing interests of some officers in a trial that is clearly already

a stain on the region and its respect for due process. The German interior minister, Holger Stahlknecht, has since expressed his disagreement with the order to confiscate the signs and has had the police chief in charge of Dessau moved to another district.<sup>3</sup>

### Learning from the UK

The Oury Jalloh murder, like the Stephen Lawrence murder, has been tragic not only for the victim's friends and families, but also for German and British society in general. The difference is that the Lawrence family, with the help of certain sections of civil society and important legal changes, have managed to push the criminal justice system in the UK to recognise its failings. This is an achievement that cannot be overstated, although it took a long time. The Macpherson Report came seven years after the death of Lawrence, and seven years have already elapsed in the German case. What German society cannot afford to do is to let slip the opportunity to use Jalloh's misfortune to reshape the way that Germany deals with institutional racism and police brutality.

The Jalloh case is a particularly horrific one, and one that gripped the imagination of thousands of people in 2005. However, his death should not be seen as an isolated event, but, rather, as one of a number of unresolved fatalities and violent incidents involving the system of law enforcement working in tandem with related institutions. For example, in 2000, Ndeye Mareame Sarr was shot through the chest in Aschaffenburg by a police officer in what seems, by most accounts, to have been a disproportionate action, yet the officer was subsequently acquitted.<sup>4</sup> And, in May 2011, Christy Schwundek, a Nigerian German woman, was fatally shot in a job centre in Frankfurt-am-Main after an argument with one of the centre's employees. Police say that she was armed with a knife and that shooting her was an act of self-defence.<sup>5</sup> These fatal instances of police violence are mirrored by those in the UK, including the death not only of Stephen Lawrence, but also those of Joy Gardner, suffocated by police in London in 1993 while allegedly resisting arrest, and Ibrahima Sey, who died from exposure to, and ingestion of, close-range police-administered CS gas.<sup>6</sup> The Institute of Race Relations, which is researching deaths in police 'custody' in the UK, estimates that at least forty-one cases involving members of BME communities have taken place in the ten years between 1993 and 2003.

Social activist reactions to UK deaths have led to wider recognition of systemic violence, institutional reform around such violence and police racism. Similarly, institutional police violence is being documented with a growing sense of urgency by activist groups and concerned residents in Germany, not least the members of the Initiative in Remembrance of Oury Jalloh. The Initiative was founded in 2005, once it became clear that the death of Jalloh would not be handled judicially or socially with the amount of attention or seriousness that the circumstances required. A similar initiative began last year in Frankfurt, demanding clarity about the circumstances, and accountability by the state,

regarding the death of Christy Schwundek.<sup>7</sup> So, while the formal trial on Jalloh's death will soon come to an end, the larger movement to recognise, document and combat institutional racism and police brutality is gaining momentum, due to the frequency and intensity with which this systematic violence continues to occur.

First, what seems essential is that the rest of Germany and Europe should be made aware of the institutional dimensions of Jalloh's story and of similar stories committed to public memory. By establishing that patterns exist, a report can be compiled at a policy level that describes police brutality and institutional racism, including not only physical violence and deaths in custody, but also intimidation, suppression of free speech and police behaviour. This is not to say that the Macpherson Report or the IPCC will be directly transferable to the German context, but they do provide a measured approach to identifying and tackling the problem of institutional racism and police violence, the effects of which bear striking similarities.

Second, Germany could certainly benefit from an inquest procedure for deaths, particularly custodial deaths. Inquests are mandatory in the UK for deaths in custody, and the procedures, while not uncontroversial and by no means perfect, do offer more flexibility for evidentiary findings because the purpose of an inquest is to ascertain the cause and circumstances of a death. Proving the guilt or innocence of a third party is a secondary issue, albeit a highly relevant one. If this were the focus of the Oury Jalloh trial, it would have been nonsensical to simply assume that the deceased committed suicide.

These issues are important not only because they acknowledge institutional racism and hold law enforcement agencies and the judiciary to account, but because they would also help hold the federal government to account in terms of its responsibilities under Articles 2 and 3 of the European Convention on Human Rights, which provide for the right to life and the right to be free of torture and inhuman treatment. These issues may disproportionately affect certain groups, given ingrained prejudices and a lack of political power. But, on a broader scale, they affect everyone. The general public in Germany should be highly concerned with this case, and the rest of Europe cannot afford to look away.<sup>8</sup>

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## Postscript

Sadly, Oury Jalloh's mother, Mariama Djombo Diallo, passed away on 23 June 2012 in Guinea. Recent scrutiny of forensic evidence has raised new doubts regarding the thesis that the fire was ignited by a lighter. The trial is set to continue until at least December 2012.

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