

dem gemeinsamen Scheitern von Recht und Subjekt, noch durch einen Souverän verdeckt oder auf den Kriegszustand verschoben werden, haben sich die Tore der Lager seitdem geöffnet und das ‚heilige Leben‘ erscheint heute als gewöhnliches ‚Ereignis‘ auf dem Globus. Auch ohne diese mancherorts als apokalyptisch empfundene Stoßrichtung *Agambens* Argumentationsstrategie zu teilen, lohnt sich die Lektüre dieses Buchs, weil es in sich geschlossen den Ausnahmezustand als theoretisches, wie praktisches Paradigma von Politik und Recht in der Moderne behandelt und es darüber hinaus auf das weitere und breitere Werk von *Agamben* Bezug nimmt. In diesem dünnen Band verliert der Autor weder den roten Faden, den ihm der Titel seines Buches vorgibt, noch dessen überspannenden Bezug zur Reihe aus den Augen und daher schafft er es, die paradoxale Ausnahmebeziehung des Bannes zwischen Souverän und Homo sacer in „Ausnahmezustand“ zu Ende zu denken.

Angefügt sei die Empfehlung an den Leser, die Übersetzungshinweise am Ende des Buches gründlich zu lesen, um sich hernach auf *Giorgio Agambens* Denkexperiment einzulassen. So kann aus „Ausnahmezustand“ ein wegweisendes Handbuch für die politische Theorie der Gegenwart werden.

M. Müller

- 1 G. Agamben: Idee der Prosa [1985]. Aus dem Italienischen von D. Leupold und Clemens-Carl Härle. Frankfurt a. M. 2003, S. 153.
- 2 G. Agamben: Homo sacer. Die souveräne Macht und das nackte Leben [1995]. Frankfurt a. M. 2002.
- 3 G. Agamben: Was von Auschwitz bleibt. Das Archiv und der Zeuge

[1998], Frankfurt a. M. 2003, S. 129.

- 4 W. Sofsky: Die Ordnung des Terrors. Frankfurt a. M. 1993.
- 5 „Der Gewahrsam. Ausnahmezustand als Weltordnung“, FAZ vom 19.4. 2003; „Körper ohne Worte. Gegen die biopolitische Tätowierung“, SZ vom 10./11.1.2004.
- 6 Interview in der SZ Nr. 81 vom 6.4.2004 mit Ulrich Raulff.
- 7 Homo sacer III, S. 128.

**Jedrzej Georg Frynas: Oil in Nigeria. Conflict and Litigation Between Oil Companies and Village Communities, Transaction Publishers, LIT-Verlag, Münster/Hamburg/London 2000, 263 S.**

This book, developed out of a doctoral thesis at the Department of Economics, St. Andrews University, UK, analyses the conflicts between oil companies and village communities in the Niger Delta by focusing on litigation. The author defines a village community as the local people affected by oil operations on the ground. Membership of a village community is defined both in terms of physical residence in a village and in terms of subscription to village social norms. The conflicts between oil companies and village communities have persisted for decades, but they escalated further and received international media coverage during the 1990s. Much of that coverage focused on anti-Shell protests by the Movement for the Survival of the Ogoni People (MOSOP), which led to Shell's withdrawals from the Ogoni area in 1993.

The aims of the book are threefold: Firstly, it aims to study litigation as a window to understanding the social conflicts between village communities

analysis of the nature of legal disputes between oil companies and village communities in Nigeria given the dynamic processes of legal change in developing societies. Finally, the book aims to make a contribution to the research and debate on the role of multinational companies in developing countries as well as the day-to-day operations of African legal systems.

Chapter Two provides the reader with the history of Nigeria's oil industry and the Nigerian State. The author explores the link between political decision-making and community conflicts in the oil producing areas. He describes the symbiotic relationship between the State and the oil companies, in which the State provides the latter with financial incentives, and the appropriate licensing and regulatory instruments that define the terms and conditions of their operations. In return, oil companies provide the Nigerian State with the much needed revenue and rents.

The author points out the significance of a sympathetic system of oil licensing and a business-conducive legal framework from the colonial times through to the present. This arrangement has enabled the multi-national oil companies to invest heavily in the Nigerian oil-driven economy. However, the author observes that the commitment by the successive Nigerian Governments to the oil companies in providing a conducive business environment has been at the expense of village communities in oil producing areas.

The key demand by the local people in the oil producing areas is that a significant proportion of Nigeria's oil revenues should be retained at the local level. However, this would result in fewer funds for non-oil producing areas.

The failure of the Nigerian state to channel a significant amount of financial resources to the oil producing areas has resulted in protests against the state and oil companies. The author notes that while throughout Nigeria's history, protests against the government and oil companies have been peaceful, in the last decade or so, ethnic groups in the oil producing areas have become more militant in their demands as they come to realize that the State is not interested in uplifting their standards of living through investment driven by revenues from oil extracted from their land.

The Nigerian government has responded to anti-oil protests in two ways: by granting concessions to oil producing areas and by violent state response to the 'Ogoni uprising' in the 1990s.

In Chapter Three, the author discusses Nigeria's formal legal system and oil-related statute law. Chapter Four discusses the practical operations of the legal system using results of a survey of 154 Nigerian legal practitioners by use of a questionnaire reproduced as an appendix to the book. The survey was aimed at evaluating the opportunities and constraints faced by potential and actual litigants in oil related litigation. The survey does not address all correlates of legal disputes such as socio-economic and political factors including the marginalisation of ethnic minorities in the oil producing areas. Central to the chapter is the question of access to courts by potential litigants.

The results of the survey indicate that most potential litigants do not seek legal redress for the following reasons: (i) Financial difficulties; (ii) Lack of general education and ignorance of legal rights; (iii) Delay in the disposal of



cases; (iv) Intimidation by public bodies; (v) Intimidation by tortfeasors; and (vi) Uncertainty about the potential success of a suit.

The author posits that although the financial burden of litigants in oil related cases has eased, the lack of funds remains the most important problem of access to courts in Nigeria. Plaintiffs often lack funds to pay for expert evidence. This favours oil companies, which can afford to hire some of the country's best scientific experts. Other than financial difficulties, litigants also face problems once they have filed suit due to the deficiencies in the daily operations of the judiciary and legal system. Such impediments include interference from the executive branch of government and under-funding. The author concludes that the Nigerian legal system as a whole and not merely statute law and the structural character of the legal system, favours the interest of oil companies.

Chapter Five discusses the environmental and social impact of oil operations on village communities using court cases as factual evidence of the impact on the concerned communities. In placing reliance on court cases to meet these objectives, the author cautions that the courts rely on the interpretation presented by legal counsel and witnesses in court. It is therefore for courts to establish the processes that have resulted in oil-related environmental damage.

The Penultimate Chapter discusses compensation claims in oil-related litigation. He notes that there has been an increase in oil-related litigation, not only as a result of expansion of oil operations, but also the perceived possibility of success and higher compensation

for litigating village communities. The author concludes in his final chapter that an adequate investigation of litigation cannot be undertaken without reference to the social context. By and large, the relationship between oil companies and village communities is an unequal one as oil companies have greater political support and economic muscle. The State appears to be biased in favour of oil companies as evidenced by the structure of the formal legal system and supported by the survey of legal practitioners. The extensive case law cited by the author is evidence of the myriad oil-related conflicts between oil companies and village communities. It is noteworthy that the higher compensation payments to village communities reflect a greater appreciation of the plight of village communities in the oil producing areas.

While the author has done a commendable job in providing a greater understanding of the social conflicts between oil companies and village communities, and the legal dynamics in settling the disputes, the author fails to suggest an affirmative and unequivocal position on the way forward to concretely address the underlying and ever simmering conflicts and disputes between oil companies and the village communities in oil producing areas. One would have expected recommendations for legal, political, military and public service reforms to address the concerns of access to, control and management of oil resources by local communities.

The author concedes that the findings are based on a questionnaire that was targeted 154 legal practitioners. While this is laudable, the initiative fails to target the key players in the oil-related

disputes, namely, the oil companies and the village communities in oil producing areas. While good arguments are given for not developing a questionnaire targeting the village communities, other qualitative methods such as Focus Group Discussions or face-to-face interviews among members of the village communities or key informal interviews would have been resorted to with considerable results.

Using litigation to identify what ails society is a rather narrow window. Litigation, as the author admits, is limited to what comes before the courts. Courts do not act *suo moto*, on their own motion. They must be moved! The author correctly appreciates the problems posed by the formal dispute settlement mechanisms resorted to in oil disputes. This reinforces the need for a methodical approach that would have given the reader the input of the village communities, who perceive the courts as alien, expensive, complicated and biased against them, as they do not appreciate their African Customary Law and dispute settlement mechanisms.

At the beginning of the book, the author promised that unlike previous literature on the subject, the book would pay attention to the effects of oil operations on village communities and the role of the legal system as mediator and adjudicator. It offers to be a social-legal study. A socio-anthropological field study of village communities in the oil producing areas was therefore inevitable, but is omitted.

Another key omission in the book is international litigation arising from the disputes between the oil companies and village communities in oil producing areas. The case of *SERAC Vs. the Federal Republic of Nigeria* is instructive in this regard. The *SERAC* case arose from

a claim by the Ogoni people to the African Commission on Human and Peoples Rights, established pursuant to the African Charter on Human and People's Rights. In this case, the Ogoni successfully petitioned the Republic of Nigeria for the private acts of the private company, Shell. The Commission declared the acts of Shell as a non-state entity as amounting to acts of the Federal Republic of Nigeria. The Federal Republic was said to have abrogated its duty to house its people – the Ogonis –, and failed to ensure a safe and healthy environment for the population. This is certainly an instructive case in oil disputes and enforcement of socio-economic rights. It would have been very useful if a pique into such litigation arising from Nigerian courts landing in international tribunals would be offered to show the growing jurisprudence in the area beyond Nigeria. – On the whole, the author provides a lot of additional information on the Nigerian State and the socio-economic political and military aspects of the most populous African nation. The book is very well written and makes excellent reading. For anyone seeking to gain a socio-economic and political understanding of the conflicts between oil companies and village communities in oil producing areas in the Niger Delta, this book is a must read!

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