

2007

Assessing Baxi's Thesis on the Emergence of a Trade-Related Market-Friendly Human Rights Paradigm: Recent Evidence from Nigerian Labour-Led Struggles

Obiora Chinedu Okafor

Osgoode Hall Law School of York University, ookafor@osgoode.yorku.ca

Follow this and additional works at: http://digitalcommons.osgoode.yorku.ca/scholarly_works



Part of the [African Studies Commons](#), and the [Human Rights Law Commons](#)

Recommended Citation

Okafor, Obiora Chinedu "Assessing Baxi's Thesis on the Emergence of a Trade-Related Market-Friendly Human Rights Paradigm: Recent Evidence from Nigerian Labour-Led Struggles." *Law, Social Justice and Global Development*. 10 (2007): 1-16.

This Commentary is brought to you for free and open access by the Faculty Scholarship at Osgoode Digital Commons. It has been accepted for inclusion in Articles & Book Chapters by an authorized administrator of Osgoode Digital Commons.



Law, Social Justice & Global Development
(An Electronic Law Journal)

**Assessing Baxi's Thesis on an Emergent Trade-Related
Market-Friendly Human Rights Paradigm: Recent Evidence
from Nigerian Labour-led Struggles**

Obiora Chinedu Okafor,
Associate Professor at the Osgoode Hall Law School,
Faculty Associate at the Centre for Refugee Studies,
York University, Toronto

ookafor@osgoode.yorku.ca

This is a **commentary** published on: 6 December 2007

Citation: Okafor, O, 'Assessing Baxi's Thesis on an Emergent Trade-Related Market-Friendly Human Rights Paradigm: Evidence from Nigerian Labour-led Struggles,' 2007 (1) Law, Social Justice & Global Development Journal (LGD). <http://www.go.warwick.ac.uk/elj/lgd/2007_1/okafor>

Abstract

The objective of the article is to assess some of the sub-claims that emerge from Baxi's thesis on an emergent trade-related market-friendly human rights paradigm in the light of the available evidence regarding the intense contestations and confrontations that have occurred between Nigeria's politically and economically transitional Obasanjo regime and a local labour-led coalition. The piece sets out to ascertain the contextual and localised validity of these 'Baxian' sub-claims, within the wider context of the government vs. labour confrontations in Nigeria during the neo-liberal socio-economic reforms undertaken in that country between 1999 and 2005.

Keywords:

Baxi, Bretton Woods Institutions, Human Rights, Neoliberal Socio-Economic Reforms, Nigerian Labour Movements, Resistance.

Authors Note:

This paper is part of a much larger on-going study of the place of the Nigerian labour movement in human rights activism in Nigeria. As such, parts of this paper may cover the similar material as may be published in other fora. For the generous funds that made the overall study and this particular paper possible, I am grateful to the Social Science and Humanities Research Council of Canada (SSHRC) and to York University. I should also thank Michelle Dagnino, Chinedu Idike, Tony Ceaser Okeke, Pius Okoronkwo, Helen Tewolde, and several field assistants in Nigeria for their research assistance. I would also like to express my gratitude to Abdul Paliwala for kindly inviting the paper; Celine Tan for arranging my participation in the conference at which this paper was first presented; and Sammy Adelman, Patrick Bond, Sundya Pahuja, Balakrishnan Rajagopal, for finding the time to engage with me on various aspects of the paper. Special thanks to my wonderful wife, Atugonza, and my two lovely children, Ojiako and Mbabazi, for their love, patience, and understanding while I put in the long hours. And finally, this paper is dedicated to Upendra Baxi, on his retirement. One the most insightful and knowledgeable human rights and global justice thinkers of all time, Professor Baxi's work has deeply influenced generations of scholars, including myself. Upen (as you prefer to be called), words cannot fully convey my respect, admiration, and gratitude to you for your brilliant, untiring, selfless, and enduring intellectual guidance and mentorship all these years.

1. Introduction

In *The Future of Human Rights*,¹ Upendra Baxi developed a germinal thesis on the steady supplanting in our time of the paradigm of the Universal Declaration of Human Rights (UDH) by an emergent trade-related market-friendly human rights (TREMFM) paradigm. In a subsequent contribution, Baxi ably applied this thesis to his analysis of the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights Norms formulated under the auspices of the (now defunct?) UN Sub-Commission on the Promotion and Protection of Human Rights.² As stated by Baxi himself, his overarching TREMFM thesis is that:

‘The paradigm of the Universal Declaration of Human Rights is being steadily, but surely, *supplanted* by that of trade-related, market-friendly human rights. This new paradigm seeks to reverse the notion that universal human rights are designed for the attainment of dignity and well-being of human beings and for enhancing the security and well being of socially, economically and civilisationally vulnerable peoples and communities.’³

In my own view, a number of related sub-claims are embedded in Baxi's overarching thesis. These sub-claims will be isolated and discussed in the next section.

The objective of the present enquiry is to assess some of these sub-claims in the light of the available evidence regarding the intense contestations and confrontations that have occurred between Nigeria's politically and economically transitional Obasanjo regime and a local labour-led coalition (between 1999 and 2005). The paper is organised into four main segments; this introduction, section 2, which provides a more detailed explication of the particular sub-claims of Baxi's "TREMFM thesis" with which we are concerned in this paper. Section 3 provides a description and analysis of the character of the contestations and confrontations over socio-economic reforms that have characterised government/labour relations during Nigeria's post-1999 economic and political transition. And to conclude, section 4 offers an assessment of the explanatory power of the Baxian thesis in relation to the Nigerian evidence.

This will of course not be the first work to directly draw upon and benefit from Baxi's influential work on the relationship between the current iteration of globalisation, and human rights. Baxi's thesis has already been applied most notably by Anthony Anghie in his own important historical work on globalisation, human rights and the third world.⁴ However, this paper seeks to make a modest contribution to the relevant debates by applying Baxi's TREMFM thesis to a specific Nigerian context that is in many ways allegorical of government/activist relations within most third world countries.

2. On the Nature of the Baxian TREMFM Thesis

In the course of fleshing out his thought-provoking TREMFM thesis, Baxi developed a number of distinguishable but intimately related sub-claims. Only some of these sub-claims concern us here. The first such sub-claim is that the emergent TREMFM paradigm (unlike the UDH paradigm) insists on promoting and protecting the collective *human* rights of various formations of global capital mostly at the direct

expense of human beings and communities.⁵ The distinctive quality here is Baxi's notion of the assignment of *human* (as opposed to ordinary legal) rights to various formations of global capital. To Baxi, the UDH paradigm differs from the TREMF paradigm in this way because although the UDH did make provision for a right to property that can be read to benefit any person (including presumably corporations and business associations), in the end the notion of property in the UDH is itself left substantially unsettled.⁶ On the other hand, the TREMF paradigm makes the protection of the property interests of various formations of global capital central to its conception of the global social order. What is more, none of the two legally binding human rights covenants (the international covenant on civil and political rights and its sister covenant on economic, social and cultural rights), which – alongside the UDH – constitute the so-called international bill of rights, make provision for property rights.⁷ Thus, to Baxi, “to say that the [TREMF paradigm]...is just an unfoldment of the potential of [the] UDHR is plainly incorrect.”⁸

The second sub-claim is that, much more than in the past, the progressive state – or at least the progressive ‘Third World’ state – is now conceived as one that is a good host state to global capital; as one that protects global capital against political instability and market failure, usually at a significant cost to the most vulnerable among its own citizens; and as one that is in reality more accountable to the International Monetary Fund (IMF) and the World Bank (WB) than to its own citizens. According to this TREMF mindset, progressive states are those states that are much more soft than hard toward global capital.⁹

The third Baxian sub-claim is that the new global order also requires the reproduction of a core of internal hardness within these same generally soft states. Thus, to paraphrase Baxi, a progressive state is also conceived under the TREMF paradigm as a state that is market efficient in suppressing and de-legitimizing the human rights-based practices of resistance of its own citizens and that is also capable of unleashing (and, when necessary, does in fact unleash) a reign of terror on some of its citizens, especially those of them that actively oppose its excessive softness toward global capital.

The fourth such sub-claim is that unlike the UDH paradigm, the TREMF paradigm denies a significant redistributive role to the state.¹⁰ In fleshing out this fourth sub-claim, Baxi argues that the UDH paradigm which ‘assigned human responsibilities to states...to construct, progressively and within the community of states, a just social order, national and global, that will at least meet the basic needs of human beings,’ is being pushed aside to a worrisome extent by a TREMF paradigm that in contrast ‘denies any significant redistributive role to the state; calls upon the state [and world order] to free as many spaces for capital as possible, initially by pursuing the three-Ds of contemporary globalization: deregulation, denationalization, and disinvestment.’¹¹

These are the sub-claims the contextual and localised validity of which will to some extent be ascertained in this paper. This will be done through a case study of recent government/labour confrontations over socio-economic reforms in Nigeria (1999-2005). To this end, the next section will focus on describing and analysing the nature of this government/labour confrontation. Emphasis will be placed on a discussion of the nature of the controversial reforms; the labour-led mass resistance to a key aspect of these reforms; the government's heightened repressive stance toward such

resistance efforts; and the relative acquiescence – or at least studied ignorance – of key international actors in relation to the government's repressive behaviour. Following this next section, the TREMF thesis will be situated within this specific Nigerian context and evaluated for its explanatory power in relation to that environment.

3. The Government/Labour Confrontation in Nigeria (1999-2005)

3.1. Neo-Liberal Socio-Economic Reform and Massive Fuel Price Hikes

Substantially in line with the earlier structural adjustment programs (SAPs) that had been implemented in Nigeria and pursuant to the requirements of its latest IMF, WB and USA/EU inspired and backed socio-economic reform plan, the Obasanjo-led Nigerian government has since 1999 embarked on a program of state deregulation, denationalisation and disinvestment.¹² Sold as a 'home grown' set of policies,¹³ the main thrust of the current reform program was the removal of 'subsidies' on petroleum products (leading inexorably to massive fuel price increases), the retrenchment of about 40 percent of the staff of the federal civil service (euphemistically referred to as 'rightsizing'), and the privatisation of state controlled enterprises (leading in most cases to denationalisation and the creation of an economic bonanza for a tiny cabal).¹⁴ This reform program is most notably stated (or perhaps re-stated) in the so-called NEEDS Document.¹⁵ In line with the dominant orthodoxy, this reform program has often been touted by the Obasanjo regime and its international backers as the solution to Nigeria's socio-economic woes.

While several contentious issues can be discerned from the above description of the Nigerian government's reform program, the main focus of this government/labour confrontation during the 1999 to 2005 period under examination has been the rapid skyrocketing of motor vehicle fuel prices in Nigeria.¹⁶ As one of the three central and inextricable components of the government's reform program, cumulatively massive and separately substantial increases in fuel prices have over the last few years been implemented by the Obasanjo regime. Between May 1999 and August 2005, fuel prices were hiked by a steep total margin approaching a whopping 250 percent or so, bringing Nigerian fuel prices virtually in line with the prices that currently apply in many of the far richer developed countries. Yet, by the Obasanjo regime's own acknowledgement, the vast majority of the Nigerian population (over 70 percent by most accounts) now live below the poverty line.¹⁷ What is more, as Lagos State Governor Ahmed Bola Tinubu has said, most Nigerians seemed to be worse off in 2005, after six years of formal democratic rule by the Obasanjo regime, than they were before 1999, when they were ruled by various military juntas. In the Governor's own words:

“...the level of poverty in the country today is...unacceptable ...There is nothing more heart-rending than hearing the teeming masses of our people cry daily that they are worse off economically and socially today than they were before the democratic restoration of 1999.”¹⁸

As such, the fact that the government/labour confrontation that concerns us here has revolved mainly around fuel prices is not surprising given the increasing poverty among a vastly impoverished Nigerian population and the centrality of the price of fuel to their survival within this harsh local economy.

As might reasonably be expected, these massive fuel price hikes have been as vastly unpopular among ordinary Nigerians as they were in the late 1980s and early 1990s when the then ruling military juntas implemented similar hikes at the behest of the IMF and WB.¹⁹ As in that earlier period, the Nigerian labour movement has led the current campaign of mass resistance to the implementation of these hikes. The next sub-section offers a brief analytical expose of the story of this oppositional struggle.

3.2. Labour-led Mass Resistance

Charging, à la Antony Anghie, that the government's reform program has largely had the effect of 'augmenting inequality and impoverishment among the most vulnerable groups',²⁰ a coalition of activist forces that is led by the relatively powerful Nigerian Labour Congress (NLC) has fought a sustained and gallant campaign of mass resistance against these massive fuel price increases. This labour-led struggle against the harshness in the specific Nigerian context of the market logic of these fuel price hikes has mainly taken the form of almost always popular general strikes that have often paralysed the economy and always mobilised intense anti-government sentiment within the polity. Between 1999 and 2005, at least seven such strikes were called by the NLC and supported by a broad array of civil society groups. In a similar vein, one campaign of mass rallies and non-strike mass action was also called for.

While nearly all of their acts of resistance were significant, the most significant of the seven general strikes that were mounted by this labour-led coalition in opposition to fuel price hikes were the June 2000, June 2003, and June 2004 strikes. In response to the first increase of fuel prices announced in June 2000 by the Obasanjo government, the NLC led one of the most crippling and effective general strikes since the end of military rule in Nigeria. Oil workers joined public sector and transportation workers in ensuring the success of the strike.²¹ Nigeria's main seaport in Lagos and many highways were blockaded. International and domestic air flights were disrupted, and all fuel stations were closed.²² Sporadic police and protester violence was reported across the country and two police stations in the federal capital territory, Abuja, were burned down by irate mobs.²³ Similarly, after its call for dialogue with the government was basically ignored by executive branch (though respected by the legislature and supported somewhat by some in the ruling party) the labour-led coalition launched another paralysing strike from 30 June 2003 that eventually lasted eight days. In the same vein, it took a failed NLC/government dialogue session and another three-day strike in June 2004 for the government to reverse that season's fuel price hike.²⁴ All these strikes were relatively effective largely because they enjoyed the support of most Nigerians.

The only non-strike mass campaign that this labour-led coalition has conducted took place in September 2005. In what can be seen as a tentative and measured response to a court ruling that effectively held that the NLC could not organize anti-fuel price hike strikes (since such strikes were, in the court's view, not related to the conditions of service of Nigerian workers),²⁵ the labour-led coalition decided to change its tactics and called for two weeks of rolling mass rallies to symbolise the resistance of the vast majority of the Nigerian people to the government's sharp fuel price hikes; peaceful demonstrations and rallies were held across Nigeria.²⁶ These events were massively attended;²⁷ for example, in Lagos, a mammoth crowd was mobilized which at one point stretched for nearly 3kms.²⁸ NLC President Adams Oshiomole, the Catholic

Archbishop of Lagos Olubunmi Okogie, Nobel prize winner Wole Soyinka and Governor Bola Tinubu of Lagos State all supported and addressed this mass rally.

As shown above, the government's policy of massive fuel price increases (deregulation and disinvestment) in an atmosphere of mass grinding poverty met strong and sustained resistance from the vast majority of the Nigerian people. And it was the labour-led coalition that acted as the vanguard of this resistance campaign. Pressured as it was to fit a straight jacket that was largely tailored according to the familiar IMF/WB design, the Obasanjo government was predictably determined to push through this policy, even while massively alienating most of its citizens. Given the intensity of the local resistance to its objectives and the pressure it felt from the IMF/WB and other powerful global economic actors, this regime all-too-often resorted to tactics that were at best highly undemocratic and at worst brutally repressive; this is briefly explained in the next sub section.

3.3. The Obasanjo Regime's Assault on the Labour-led Coalition and on Labour Rights

Although, it has made some modest concessions as a result of the mass resistance that has been mobilised by the labour-led coalition against its series of massive fuel price hikes – including partially reversing some of the price hikes²⁹ and declaring a time-limited moratorium in late 2005 on further hikes³⁰ – the Obasanjo regime's response to the labour-led resistance to the hikes has, for the most part, been far from democratic. Indeed, it is better described as largely repressive of labour rights and freedoms.

Stung by the vast domestic popularity of the labour-led opposition, and yet under great pressure to fit into the IMF/WB straight jacket, the Obasanjo regime has sought to defuse the negative effects on its already fragile popular legitimacy of the intense labour-led opposition to its fuel price hikes by attempting to limit, contain or stop entirely the general strikes that have been called by the labour-led coalition. It has made use of public appeals, obtained court rulings, and often ordered – or at least largely tolerated – the harassment, assaults, detentions, and killings perpetrated by the Nigerian Police Force on labour and allied activists, as well as on ordinary citizen protesters. While many examples of the kind of brutal repression that this regime resorted to can be offered, two specific ones will serve to illustrate this point. During the January 2002 general strike, Adams Oshiomole (the NLC president) and ten other union activists was arrested and charged to court with 'organizing an illegal strike.'³¹ Approximately twenty and sixteen NLC leaders were arrested and detained in Kaduna and Port Harcourt, respectively.³² The police repeated, and in fact intensified and worsened, this same pattern of brutality and repression during the June 2003 general strike.³³ Over sixteen lives were lost nation-wide at the hands of police officers and the police brutally assaulted dozens of others.³⁴ These two stories exemplify the Obasanjo regime's general reaction to the anti-fuel price hike resistance.

In a formally democratic but still repressive manner, the Obasanjo regime has also pushed through legislation that seeks to significantly weaken the labour-led coalition's capacity to paralyse economic and social activities in the country and thus to reduce the coalition's ability to force the government to abandon or modify its highly unpopular fuel price increases.³⁵ This new legislation amends the Trade Unions Act and other allied legislation.³⁶ Under the new Act, labour unions can only

declare a strike if their grouse with the government or their employer concerns a “dispute of right” (defined as one that arises directly and strictly from a collective agreement).³⁷ As such, strikes against fuel price hikes are presumably now outlawed under the new Act. Also health, education and other ‘essential workers’ (as defined under the Trade Disputes Act³⁸) are now barred from ever declaring a strike.³⁹ Again, no labour union can declare a strike unless a simple majority of *all union members* (not simply a majority of those who are present and voting) vote in favour of that course of action.⁴⁰

As anti-Labour this legislation may seem, the original Bill submitted to the National Assembly by the Obasanjo regime⁴¹ was even more draconian. However, under pressure from the labour-led coalition and vocal sections of the Nigerian public, the National Assembly watered down significantly that Bill's much harsher proposals. The three major but highly consequential amendments that the National Assembly made to the original Bill was to expunge the government's proposal to ban strikes altogether, reduce the number of votes required for a union to declare a strike from a two-third to a simple majority, and expunge the mandate imposed on the Registrar of Trade Unions to de-register the NLC as the only central labour organization in Nigeria.

Overall though, it must be noted that the pattern of right's curtailment and repression that is noticeable from the above account fits seamlessly into a broader picture of semi-autocratic rule and generally poor human rights performance under the current Obasanjo regime. This disappointing record included a failed campaign to amend the Nigerian Constitution so as to allow President Obasanjo to enjoy a third term in office.⁴² Given the fact that the Obasanjo regime has exhibited a broad semi-autocratic bent, it becomes apparent that the labour-led popular struggle against its reform project did *not* cause or create the autocratic instincts or behaviour of this regime. However, the activities of this labour-led resistance to its IMF/WB inspired and supported fuel price hikes led to the *intensification and accentuation* of particular forms of government repression targeted at those who launched street protests and general strikes against the regime's highly unpopular policies and actions. It is only logical that the regime singled out labour rights and freedoms for curtailment and targeted the labour movement for weakening. It had to get tough in this repressive manner in order to push the TREMF paradigm firmly through the obstacles erected by a predominantly resistant Nigerian population.

3.4. The Western (Non)Reaction: Studied Ignorance or Wilful Acceptance?

Although the Obasanjo regime is definitely not a ‘bare knuckle’ dictatorship of the Abacha kind,⁴³ given its visibly poor human rights record and in the light of Nigeria's very visible stature both in Africa and in international relations, it is difficult to understand why this regime has received a relative pass in the international community. Why, one can ask, is the Obasanjo regime's suppression of labour rights and labour movements in Nigeria any better or more benign than similar actions in Mugabe's Zimbabwe? Why has US President George Bush claimed in a manner that exemplifies the favourable international view of the Obasanjo regime that ‘because of [Obasanjo's] forthrightness and...style and...commitment...I'm honoured to be here with you’?⁴⁴ Why did the then IMF resident representative in Nigeria laud President Obasanjo for his ‘efforts to provide a brighter future for all Nigerians.’⁴⁵ Does this

international behaviour signify their studied ignorance or wilful acceptance of the crackdown on the labour-led coalition?

One of the most important of many reasons that can be identified for this troubling Western/international attitude is that the Obasanjo regime has on the whole been a strategic and key economic and political partner of the particular formations of global capital that have been most engaged with the Nigerian state, namely the key Western interests involved – be they the IMF/WB, the US/British governments, or US/British investors. A dimension of this specific reason may be the fact that this regime has faithfully implemented the key aspects of the reform agenda favoured by the IMF/WB and these key Western governments. Such reforms (especially the complete deregulation of the already largely denationalised petroleum sector) have or will likely partly ensure benefit to many Western corporations, bankers, traders, investors, and even citizens. These actors often benefit tremendously from increased access to local markets, the sale of local refineries, and increases in the prices of fuel sold locally by the oil marketing multinationals.

The above evidence shows that substantive elements influenced the steady shift toward the TREMF paradigm and organised the Nigerian Government's thinking in their dogged implementation over time of a highly unpopular set of massive fuel price hikes. They also shaped the regime's desperately harsh reaction to the labour-led mass resistance to those hikes; and the evidence explains in significant measure the seeming international acceptance (or at least tolerance) of the supposedly democratic Obasanjo regime's repression of labour rights and movements.

4. Assessing the Baxian TREMF Thesis

The focus of this section is to provide an analytical assessment of the possible explanatory power of the TREMF thesis in relation to the evidence that was discussed in the preceding section regarding the character of the government/labour confrontations over a key aspect of the government's reform program, and the seeming studied ignorance or acceptance of the government's repressive behaviour by the international community. This evaluation will be conducted in the first instance through a consideration of each of the four sub-claims of the TREMF thesis that were isolated and discussed briefly in section two above. Following this discussion a few other related insights will be offered.

Sub-Claim one of the TREMF thesis which posits that the emergent TREMF paradigm protects the collective *human* rights of "global capital" at the expense of human beings is in my own view proven to *some extent* by the discussion in section three. To the extent that the praxis of the Obasanjo regime has gone to great lengths and taken serious political legitimacy risks in order to assign important property rights to elements of global capital (through the relative deregulation and denationalisation of the petroleum sector), its behaviour seems to support this particular sub-claim to a large extent. But I do reserve judgement for now as to the wisdom or otherwise of referring to the kind of entrenchment of property rights in favour of global capital that is being witnessed in the Nigerian context as the assignment of "human" as opposed to ordinary "legal" rights. I do agree with Baxi that since many others have long appropriated the language of rights to the benefit of differing formations of global capital, the genie is already out of the discursive bottle. But to what extent must we re-inscribe this discursive move? Is a refusal to name these TREMF rights "human" in

any sense an act of resistance? Of course, Baxi's thesis is at one level only descriptive as to the reality of the on-going paradigmatic shift toward TREMF. It is, in that descriptive sense, unassailable in my own view.

Sub-claim two insists that the emergent TREMF paradigm requires the (mostly Third World) states that want to earn a "progressive" label to become good hosts (or – a *lá Baxi* – good hostages) to the particular formations of global capital with which these states are engaged. This sub-claim is in my view proven by the discussion in section three. To the extent that the Obasanjo regime has gone to great lengths since 1999 to severely constrain labour rights in Nigeria and weaken Nigerian labour movements so as to make the country more hospitable to particular formations of global capital (such as the much sought after foreign investors), including via a single minded pursuit of its massive fuel price hike policies in the face of massive disenchantment and resistance, there is proof positive of the explanatory power of Baxi's TREMF thesis in this Nigerian context. The Obasanjo regime has sought to make Nigeria more hospitable to these elements of global capital by encouraging them to acquire very valuable property rights in the increasingly deregulated petroleum industry, undertaking massive fuel price hikes to ensure that these property rights in the petroleum industry become even more valuable as a result of the increased profits that accrue from investing in them, and seeking to ban, or at least tame, the general strikes and labour movements that in the government's view creates the kind of political instability that makes global capital averse to investing in the country. The regime has also sought to make the Nigerian state much more soft than hard toward the IMF/WB by faithfully adopting most of their demands for reform and being commended for so doing by these bodies, while all the while conveniently pretending that its key socio-economic reform policies are 'home grown.'⁴⁶

As we have seen already, sub-claim three posits that the emergent TREMF paradigm *in effect* constructs the ideal (Third World) state as one that effectively implements the usually unpopular IMF/WB-style reform policies, and if necessary uses undemocratic, rough, or even repressive tactics that overwhelm the frequent popular resistance to these policies. These are the kinds of states that often attract IMF/WB commendations.⁴⁷ This sub-claim is clearly supported by the evidence from Nigeria that is discussed in this paper. As shown in section three, the Obasanjo regime has repeatedly and doggedly buried its fangs into the flesh of the coalition that has led the mass resistance to its massive fuel price hikes. And as we have also seen, this has earned this regime the thinly veiled commendations (or at the very least, the acquiescence) of various elements of global capital and their key promoters.

Sub-claim four, which argues that the emergent TREMF paradigm denies a significant redistributive role to the (Third World) state while favouring more and more disinvestment and denationalisation on the part of states is also demonstrated by the evidence discussed in section three. In doggedly implementing its fuel price hike policy and justifying it as its attempt to remove and gradually end the policy of subsidizing the cost of fuel to an already vastly impoverished Nigerian public, the Obasanjo regime accepts this aspect of the TREMF paradigm almost lock, stock and barrel. Thus, in my own view, the 'living law' of human rights (rooted as it must be in empirical evidence of social struggle/repression, social experience/propaganda, and thus of socio-legalities and counter-legalities) essentially grounds and supports Baxi's overall TREMF thesis. The Nigerian government's repressive behaviour, the studied

silence or acquiescence of many in the West who know or ought to know about this regime's excesses in defence of its TREMF-style organising ideology, and the fact of this regime's very public and all-too-frequent endorsements by key elements and promoters of global capital lends much credence to Baxi's germinal insight into the TREMF paradigm's rapid concretisation in our time as the dominant official frame of reference, even in the context of human rights questions.

It can of course be argued with much justification that the kind of solid paradigmatic shift toward TREMF that is observable within Nigeria is more present at the official level than at the level of mass social movements or popular civil society actors (such as many elements within the Nigerian labour-led coalition). This case study itself shows a solid movement in a direction other than the official one; one that challenges and rejects the dominant shift toward TREMF and offers a solid, if non-dominant, subaltern counter-normativity that can under certain conditions constrain the dominant TREMF norm to a modest extent (as witness Obasanjo's frequent modest retreats in the face of mass action by the labour-led coalition in Nigeria). Baxi is of course aware of the value of what he himself describes in another context as 'switching perspectives'⁴⁸ and does anticipate this issue when he asks whether:

'...there [are] any more possible ways of social and political struggle that may still ambush, both through the (Gramscian) wars of manoeuvre and position, the 'cunning' of late capital? How may the new [and old?] social movements (say the feminists and ecological) hunt and haunt the habitats of global capital?'⁴⁹

However, it must be understood that as Baxi has suggested, the official (TREMF-loving and TREMF-dominated) discourse does not operate merely and only at the official level, but also breaches the boundaries of the unofficial and the popular in a manner that too often limits the terms of the unofficial anti-reform struggle itself. Baxi captures this point when he claimed toward the end of *The Future of Human Rights* that even the social movements that oppose and resist the turn toward TREMF orthodoxy are themselves doing so on terms set by the official discourse. And what is more, as Baxi himself has suggested, it is the official TREMF discourse and practice that has *largely* constituted and constrained the lived experiences of the Third World subaltern (witness how the Obasanjo regime's retreats without real surrender and its steady comebacks toward an effective 250 percent fuel price hike over five years or so).

It can also be argued that at no time has the UDH paradigm been fully activated; and that the UDH has always contained within it a counter-tendency that is consistent with the TREMF paradigm. I do agree with Baxi that the difference between this counter tendency within the UDH and the TREMF paradigm is a question of scale and intensity, and thus of character. In his words, 'while the appropriation of human rights logic and rhetoric [that is signified by the emergence of the TREMF paradigm] is not a distinctively novel phenomenon, it is the *scale* of reversal now entailed that marks a radical discontinuity.'⁵⁰ It appears then that in one sense, the TREMF human rights paradigm is an intense variant of earlier human rights paradigms. It shares continuities from the UDH era – though not necessarily with the UDH itself – but the discontinuities between them are so many, so enormous, and so intense as to signal the emergence of a new paradigm. Since the UDH paradigm did at one time occupy

far more dominant a place in the imaginary of most governments and social actors than it does today, it is to the gradual but already substantial loss of that dominant position and its many negative implications for human rights that Baxi's germinal work in this area has thankfully alerted us.

In one sense, one of the things that the present paper has attempted to do is to provide further empirical grounding for the somewhat distant possibility of a counter-narrative and counter-normativity, while at the same time recognising that, *for now*, little ground exists for optimism regarding the re-emergence to dominance (not to mere competitive existence) of the UDH paradigm; at least not in the official discourse of the more influential Western governments and of the relevant international economic institutions.

Endnotes

¹ See Baxi, U (2002) *The Future of Human Rights* (Delhi: Oxford University Press) at pp 131-166.

² See Baxi, U (2005) 'Market Fundamentalisms: Business Ethics at the Altar of Human Rights' *Human Rights Law Review* 5, pp 1 - 26.

³ See Baxi, U (2002) *The Future of Human Rights*, p 132.

⁴ For instance, see Anghie, A (2000) 'Time Present and Time Past: Globalization, International Financial Institutions, and the Third World' (2000) *New York University Journal of International Law and Politics* 32, pp 243 - 257.

⁵ Baxi, U (2002) *The Future of Human Rights*

⁶ *Ibid.*, p 144.

⁷ *Ibid.*, p 145.

⁸ *Ibid.*

⁹ *Ibid.*, p 141.

¹⁰ *Ibid.*, p 139.

¹¹ *Ibid.*, p 139. Emphasis supplied.

¹² On the nature of earlier SAPs in Nigeria, see Mosley, P (1992) 'Policy-Making without Facts: A Note on the Assessment of Structural Adjustment Policies in Nigeria, 1985-1990' *African Affairs* 91, pp 227-240 at pp 228-230; and Ihonvbere, J O (1993) 'Economic Crisis, Structural Adjustment and Social Crisis in Nigeria' *World Development* 21, pp 141- 158, at p 143 (hereafter "Economic Crisis"). For the IMF's and WB's inspiration and support of the current reform program, see IMF (2005) 'Semi-Annual Staff Report under Intensified Surveillance: Nigeria' IMF Country Report No. 05/37, <<http://www.imf.org/external/pubs/ft/scr/2005/cr0537.pdf>> 28 November 2007 p 1; and Amadi, S *infra* note 15, pp 12-19.

¹³ Obasanjo, O (2005) 'Briefing to the National Assembly on the Report of the National Political Reform Conference and Recent Debt Relief Granted to Nigeria, 26th July 2005', <<http://www.dawodu.com/obas42.htm>> 3 October 2005.

¹⁴ See WTO (2005) 'Trade Policy Report Review: Report by Nigeria' WT/TPR/G/147, 13 April 2005, <http://www.wto.org/english/tratop_e/tpr_e/g147_e.doc> 28 November 2007, p 12; and *The Guardian* (2003) '40 Per Cent Federal Workers May Lose Job', 21 December 2003 <<http://www.dawodu.com/aluko75.htm>> 26 September 2005.

¹⁵ See the Government of Nigeria (2004) National Economic Empowerment and Development Strategy (NEEDS) <<http://www.nigeria.gov.ng/eGovernment/Needs.PDF>> 26 March 2006. For a critical assessment of the policy thrust of this document, see Amadi, S (2004) 'Contextualizing NEEDS: Political and Economic Development' in Amadi, S and Ogwo, F (eds) *Contextualizing NEEDS: Economic/Political Reform in Nigeria* (Lagos: HURILAWS and CPPR) at p 13.

¹⁶ Hereinafter referred to as 'fuel prices'.

¹⁷ See United Nations Development Programme (UNDP) (2001) '*Nigeria 2000/2001 Human Development Report*' (New York, United Nations) at 65; and Government of Nigeria (2004), *supra* note 15 at 95.

¹⁸ See *The Vanguard* (2005) 15 September 2005, <<http://allafrica.com/stories/printable/200509150166.html>> 19 September 2005.

¹⁹ See Lewis, P (1996) 'From Prebendalism to Predation: The Political Economy of Decline in Nigeria' *The Journal of Modern African Studies* 34, pp 79- 103 at pp 80-85.

²⁰ See Anghie, A supra note 4, at p 252.

²¹ See Woodroffe, J and Ellis-Jones, M (2000) 'World Development Movement Report' <<http://www.wdm.org.uk/campaigns/cambriefs/debt/unrest.pdf>> 3 October 2005 at p 11.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ See Federal Government of Nigeria and Another v. Oshiomole and Nigeria Labour Congress, Suit No. FHC/ABJ/CS/52/2004, Abuja Division of the Federal High Court of Nigeria, 21 September 2004, per R. Ukeje, CJ (on file with the author) at 23-26. Herein after referred to as 'the Ukeje Ruling'.

²⁶ British Broadcasting Corporation (BBC) (2005) 'Nigerian March Against Fuel Hikes' <<http://news.bbc.co.uk/1/hi/world/africa/4244556.stm>> 3 October 2005.

²⁷ Ibid.

²⁸ Ibid.

²⁹ For instance, as a result of the June 2000 general strike, the government was forced to back down from almost all of its announced fuel price increases (that is from 20 Naira to 30 Naira and then back to 22 Naira per litre). See BBC (2000) 'Nigerian Strikers Reject Fuel Offer' <<http://news.bbc.co.uk/1/hi/world/africa/782242.stm>> 3 October 2005. In response to the June 2003 general strike, the government partially rescinded the fuel price increase. However, in line with its determination to implement its IMF/WB backed reforms, the government later raised these prices back to their pre-strike levels. See National Labour Congress (NLC) (2003), 'Report on the Fuel Price Strike 2003' <<http://www.nlcng.org/legislative/reportofthefuelstrike.htm>> 3 October 2005 at p 5.

³⁰ See Obasanjo, O (2005) '2005 Independence Day Speech' <http://www.nigerianmuse.com/important_documents/?u=Obasanjo_independencespeech_October_1_2005.htm> 5 October 2005. In this speech, Obasanjo announced that there would be no further fuel price hikes until the end of 2006 whatever the cost of crude oil or imported fuel in the international market. This is a very significant concession, given that despite Nigeria's status as one of the world's largest oil producing countries, much of refined fuel consumed in Nigeria is now imported, and is most likely to be imported for the next few years.

³¹ Cable News Network (CNN) (2002) 'Nigeria Strike Called Off' <<http://archives.cnn.com/2002/WORLD/africa/01/17/nigeria/>> 3 October 2005.

³² Ibid.

³³ See NLC 'Report on the Fuel Price Strike 2003' supra note 30 at p 6.

³⁴ Ibid.

³⁵ See the Trade Union (Amendment) Act, 2005 <[http://www.nigeria-law.org/TradeUnion\(Amendment\)Act2005.htm](http://www.nigeria-law.org/TradeUnion(Amendment)Act2005.htm)> 23 September 2005. Hereafter referred to as 'the new Act'.

³⁶ See the Trade Unions Act, 1990, Cap 437, Laws of the Federation of Nigeria; Decree No.4 of 1996; and Decree No.26 of 1996.

³⁷ See the Trade Union (Amendment) Act, 2005; supra note 36, at section 6.

³⁸ See the First Schedule of the Trade Disputes Act, 1990, Cap 432, Laws of the Federation of Nigeria.

³⁹ See the Trade Union (Amendment) Act, 2005, supra note 36, at section 6.

⁴⁰ Ibid.

⁴¹ See 'A Bill for an Act to Amend the Trade Unions Act as Amended and for Matters Connected therewith' (on file with the author).

⁴² See Aka, P C (2003) 'Nigeria Since May 1999: Understanding the Paradox of Civil Rule and Human Rights Violations under President Olusegun Obasanjo' *San Diego International Law Journal* 4, pp 209-276 at 211; Human Rights Watch (2005) 'Nigeria: 'Rest in Pieces''

<<http://www.hrw.org/reports/2005/nigeria0705/1.htm>> 26 September 2005; See United States Department of State (2004) 'Country Reports on Human Rights Practices-2004: Nigeria' <<http://www.state.gov/g/drl/rls/hrrpt/2004/41620.htm>> 26 September 2005; United States Department of State (2003) 'Country Reports on Human Rights Practices-2003: Nigeria' <<http://www.state.gov/g/drl/rls/hrrpt/2003/27743.htm>> 26 September 2005; United States Department of State (2002) 'Country Reports on Human Rights Practices-2002: Nigeria' <<http://www.state.gov/g/drl/rls/hrrpt/2002/18220.htm>> 26 September 2005; United States Department of State (2001) 'Country Reports on Human Rights Practices-2001: Nigeria' <<http://www.state.gov/g/drl/rls/hrrpt/2001/af/8397.htm>> 26 September 2005.

- ⁴³ On the nature of the Abacha regime, see Olukotun, A (2002) 'Authoritarian State, Crisis of Democratization and the Underground Media in Nigeria' *African Affairs* 101, pp 317-342.
- ⁴⁴ See <<http://nigeria.usembassy.gov/www/whxaug03f.html>> 2 October 2005.
- ⁴⁵ See Moser, G G 'The IMF and Nigeria, an Enduring Relationship' (on file with the author) at 1.
- ⁴⁶ See Obasanjo, O (2005) 'Briefing to the National Assembly on the Report of the National Political Reform Conference and Recent Debt Relief Granted to Nigeria, 26th July 2005' <<http://www.dawodu.com/obas42.htm>> 3 October 2005.
- ⁴⁷ See IMF (2005) 'Semi-Annual Staff Report under Intensified Surveillance: Nigeria' supra note 12, pp 2, 12, 9-10, and 22; and IMF (2005) 'Nigeria: 2005 Article IV Consultation' IMF Country Report No. 05/302, <<http://www.internationalmonetaryfund.com/external/pubs/ft/scr/2005/cr05302.pdf>> 28 November 2007 at paragraphs 1, 6, 13, and 58 (describing Nigeria's actions in implementing its reform policies as "commendable").
- ⁴⁸ Baxi, U (2002) *The Future of Human Rights*, p 137.
- ⁴⁹ Ibid., p 134.
- ⁵⁰ Ibid., p 155. Emphasis supplied.

References

- Aka, P C (2003) 'Nigeria Since May 1999: Understanding the Paradox of Civil Rule and Human Rights Violations under President Olusegun Obasanjo' *San Diego International Law Journal* 4, pp 209-276.
- Amadi, S and Ogwo, F (eds) (2004) *Contextualizing NEEDS: Economic/Political Reform in Nigeria* (Lagos: HURILAWS and CPPR)
- British Broadcasting Corporation (BBC) (2000) 'Nigerian Strikers Reject Fuel Offer' <<http://news.bbc.co.uk/1/hi/world/africa/782242.stm>> 3 October 2005.
- BBC (2005) 'Nigerian March Against Fuel Hikes' <<http://news.bbc.co.uk/1/hi/world/africa/4244556.stm>> 3 October 2005
- Baxi, U (2002) *The Future of Human Rights* (Delhi: Oxford University Press)
- Baxi, U (2005) 'Market Fundamentalisms: Business Ethics at the Altar of Human Rights' *Human Rights Law Review* 5, pp 1 - 26.
- Cable News Network (CNN) (2002) 'Nigeria Strike Called Off' <<http://archives.cnn.com/2002/WORLD/africa/01/17/nigeria/>> 3 October 2005.
- Government of Nigeria (2004) National Economic Empowerment and Development Strategy (NEEDS) <<http://www.nigeria.gov.ng/eGovernment/Needs.PDF>> 26 March 2006.
- Human Rights Watch (2005) 'Nigeria: 'Rest in Pieces'' <<http://www.hrw.org/reports/2005/nigeria0705/1.htm>> 26 September 2005.
- Ihonvbere, J O (1993) 'Economic Crisis, Structural Adjustment and Social Crisis in Nigeria' *World Development* 21, pp 141- 158.
- IMF (2005) 'Semi-Annual Staff Report under Intensified Surveillance: Nigeria' IMF Country Report No. 05/37, <<http://www.imf.org/external/pubs/ft/scr/2005/cr0537.pdf>> 28 November 2007.
- IMF (2005) 'Nigeria: 2005 Article IV Consultation' IMF Country Report No. 05/302, <<http://www.internationalmonetaryfund.com/external/pubs/ft/scr/2005/cr05302.pdf>> 28 November 2007.

Lewis, P (1996) 'From Prebendalism to Predation: The Political Economy of Decline in Nigeria' *The Journal of Modern African Studies* 34, pp 79- 103.

Moser, G G 'The IMF and Nigeria, an Enduring Relationship' (on file with the author)

Mosley, P (1992) 'Policy-Making without Facts: A Note on the Assessment of Structural Adjustment Policies in Nigeria, 1985-1990' *African Affairs* 91, pp 227-240.

National Labour Congress (NLC) (2003), 'Report on the Fuel Price Strike 2003'
<<http://www.nlcng.org/legislative/reportofthefuelstrike.htm>> 3 October 2005.

Obasanjo, O (2005) '2005 Independence Day Speech'
<http://www.nigerianmuse.com/important_documents/?u=Obasanjo_independencespeech_October_1_2005.htm> 5 October 2005.

Obasanjo, O (2005) 'Briefing to the National Assembly on the Report of the National Political Reform Conference and Recent Debt Relief Granted to Nigeria, 26th July 2005',
<<http://www.dawodu.com/obas42.htm>> 3 October 2005.

Olukotun, A (2002) 'Authoritarian State, Crisis of Democratization and the Underground Media in Nigeria' *African Affairs* 101, pp 317-342.

The Guardian (2003) '40 Per Cent Federal Workers May Lose Job', 21 December 2003
<<http://www.dawodu.com/aluko75.htm>> 26 September 2005.

The Vanguard (2005) 15 September 2005 <<http://allafrica.com/stories/printable/200509150166.html>>
19 September 2005

United Nations Development Programme (UNDP) (2001) '*Nigeria 2000/2001 Human Development Report*' (New York: United Nations)

United States Department of State (2001) 'Country Reports on Human Rights Practices-2001: Nigeria'
<<http://www.state.gov/g/drl/rls/hrrpt/2001/af/8397.htm>> 26 September 2005.

United States Department of State (2002) 'Country Reports on Human Rights Practices-2002: Nigeria'
<<http://www.state.gov/g/drl/rls/hrrpt/2002/18220.htm>> 26 September 2005.

United States Department of State (2003) 'Country Reports on Human Rights Practices-2003: Nigeria'
<<http://www.state.gov/g/drl/rls/hrrpt/2003/27743.htm>> 26 September 2005.

United States Department of State (2004) 'Country Reports on Human Rights Practices-2004: Nigeria'
<<http://www.state.gov/g/drl/rls/hrrpt/2004/41620.htm>> 26 September 2005.

Woodroffe, J and Ellis-Jones, M (2000) 'World Development Movement Report'
<<http://www.wdm.org.uk/campaigns/cambriefs/debt/unrest.pdf>> 3 October 2005.

WTO (2005) 'Trade Policy Report Review: Report by Nigeria' WT/TPR/G/147, 13 April 2005,
<http://www.wto.org/english/tratop_e/tpr_e/g147_e.doc> 28 November 2007.

Cases

Federal Government of Nigeria and Another v. Oshiomole and Nigeria Labour Congress, [2004] Suit No. FHC/ABJ/CS/52/2004, Abuja Division of the Federal High Court of Nigeria, 21 September 2004 (On file with author).

Statutes

'A Bill for an Act to Amend the Trade Unions Act as Amended and for Matters Connected Therewith' (on file with the author)

Decree No.4 of 1996, Laws of the Federation of Nigeria.

Decree No.26 of 1996, Laws of the Federation of Nigeria.

Trade Disputes Act, 1990, Cap 432, Laws of the Federation of Nigeria.

Trade Unions Act, 1990, Cap 437, Laws of the Federation of Nigeria.

Trade Union (Amendment) Act, 2005, Laws of the Federation of Nigeria.