

How much an Actor and under  
which Logics of Action?  
Roles of Parliaments in the Establishment  
of Democratic Control of the Armed Forces  
in Indonesia and Nigeria

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## Preface

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Jürgen Rüländ and Maria Gabriela Manea

## Summary

This paper examines the role parliaments have played in Indonesia and Nigeria, two Third Wave democracies, with regard to the democratization of the armed forces. The key questions asked in the study are: Under what conditions do these two legislatures come to matter as actors and arenas of promoting military reform and curtailing the military's reserved domains? How and to what extent do Indonesian and Nigerian legislatures *de facto* exercise oversight over the armed forces? What strategies do they apply in this process? Analytically, under which logics of action do these parliaments reorganize civil-military relations and what interactive patterns have emerged? Departing from a combination of rationalist and reflexivist theoretical arguments on social interaction, the study explores parliamentary-military interaction from a within-case and between-cases perspective. By tracing the role of parliaments in military reform within several issue-areas and three consecutive phases, the paper identifies several key factors determining parliamentary performance. The first is the mode of regime change. The second is the presence of formal and informal institutional capacities of legislatures to pursue military reform in various issue areas. Finally, we look at ideational dispositions of institutional and individual actors enabling or impairing legislatures from establishing and exercising democratic control of the armed forces. Although the Indonesian legislature has contributed more decisively to military reform than the Nigerian Congress, the empirical evidence is even in this case ambivalent. After a short phase of normative opening enabling the Indonesian legislature to develop actor capacity in the field of military reform, the interaction soon reversed into ideational competition between pro and anti-reformist arguments limiting, in the following phases, both the progress of military reform and parliamentary formal and informal capacity for oversight. An increasing convergence of normative predispositions is finally the outcome of interaction between legislators and the military institution in Indonesia. This is the result of an upsurge of nationalist populism providing the common ground for "normative localization" that means the adaptation of external norms of democratic control of the armed forces to the Indonesian "cognitive prior" and ongoing ideational context. In contrast to the Indonesian case, stagnant military reform in Nigeria and limited actor capacity in interacting with the military by the Nigerian Congress is the outcome of interactive dynamics based on "mimetic adaptation" to external norms. This form of normative isomorphism is responsible for a "thin" adoption of democratic norms of military reform and oversight and to a marginal role for Nigerian legislature in this process. Our findings show that parliaments' capacity to shape reform outcomes and control the military is higher if they were active in the regime change; if they directly participate and even initiate bargaining and discursive processes with the military in the course of transition; and if they have internalized external norms of democratic control of armed forces on both normative and pragmatic grounds.

## Zusammenfassung

Das vorliegende Papier untersucht den Beitrag von Parlamenten zur Militärreform in Indonesien und Nigeria. Bei beiden Staaten handelt es sich um neue Demokratien, die im Rahmen der dritten Demokratisierungswelle entstanden. Zentrale Fragestellungen der Studie sind: Unter welchen Bedingungen spielen Parlamente als Akteure und Arenen eine wichtige Rolle bei der Reform des Militärs und der Beschneidung von „*reserved domains*“ der Streitkräfte. Wie kontrollieren sie das Militär, welche Strategien bedienen sie sich dazu und welche Interaktionsmuster entstehen dabei? Unter welchen Handlungslogiken verändern Parlamente zivil-militärische Beziehungen und welche Interaktionsmuster entstehen dabei? Ausgehend von einer Kombination rationalistischer und reflexiver theoretischer Argumente untersucht die Studie die in beiden Ländern nach der Demokratisierung entstandenen Interaktionsmuster zwischen Parlamenten und dem Militär aus einer diachronen und einer synchronen vergleichenden Perspektive. Sie identifiziert dabei mehrere zentrale, die Performanz der Parlamente bestimmende Faktoren: Die Art und Weise des Regimewechsels, das Vorhandensein formaler und informeller Handlungskompetenzen zur Umsetzung der Militärreform in unterschiedlichen Politikfeldern sowie die kognitiven Dispositionen institutioneller und individueller Akteure, die sich fördernd oder hemmend auf die Parlamente auswirken, das Militär einer demokratischen Kontrolle zu unterziehen. Obwohl das indonesische Parlament einen deutlich sichtbareren Beitrag zur Militärreform leistete, müssen indes auch seine Leistungen in dieser Hinsicht als noch ambivalent bewertet werden. Nach einer kurzen Phase der normativen Öffnung, in der die indonesische Legislative Handlungsmacht in Hinblick auf Militärreform erlangte, degenerierten die Interaktionen zwischen dem Parlament und den Streitkräften in einen Modus der kompetitiven Argumentation, der nur noch partielle Fortschritte bei der Reform des Militärs zuließ und die formalen und informellen Kontrollkompetenzen des Militärs gravierend beschnitt. In einer dritten Phase kam es zu einer zunehmenden kognitiven und normativen Konvergenz zwischen Parlamentariern und dem Militäretablissement. Die ideelle Grundlage dafür bot ein zunehmender nationalistischer Populismus, der das Ergebnis von Normlokalisierung ist. Anders als in Indonesien lassen sich für Nigeria weniger Wandel und deutlich weniger Militärreformen beobachten. Sie sind das Resultat geringer parlamentarischer Handlungsmacht und einer lediglich mimetischen Aneignung externer Normen in Hinblick auf die demokratische Kontrolle des Militärs.

## 1. Introduction: Parliaments and Civil-Military Relations

As the embodiment of people's sovereignty, parliaments are the central political institution of democracies. Not surprisingly, thus, the literature on parliaments in established Western democracies is legion. Much less comprehensive, however, is research on legislatures in non-Western political systems. To some extent this reflects the fact that until the arrival of the Third Wave of Democratization (Diamond & Plattner 1996; Huntington 1991) in the regions of the Global South in the 1980s, the majority of these polities were autocracies. Their parliaments, often denounced in academic studies and the media as rubber stamps and democratic facades, did not seem to be worthy objects for serious research. Puzzling, however, is the fact that even after democratic transition parliaments remained grossly understudied. Political scientists neither paid much attention to their contribution to regime change and the institutionalization of democracy nor to their role in the process of consolidating the new democracies.

But not only transition literature neglected parliaments. Also civil-military relations research largely ignored the role of legislatures in civilizing the military in new democracies (Aguero 1995, Bruneau & McLeod 1986; Linz and Stephan 1996; Obi 2008; Omotola 2009; Pion Berlin 2001; Trinkunas 2005). Especially in "pacted" transitions (that is regime change based on a compromise between elites of the *ancien régime* and reformists), the military is often retarding, diluting and even blocking democratic reforms. Since coups have become internationally discredited as a form of changing the government, and may evoke sanctions by the international community, they are no longer the primary form of military intervention. But while the armed forces may have lost the leverages to restore the *ancien régime*, they are nevertheless tenaciously clinging to their corporate interests and trying to protect the reserved domains they were able to carve out for themselves during the preceding authoritarian order. Recent civil-military relations research is thus less concerned with coups, but more with the new channels the military seeks to exploit for safeguarding its spheres of influence (Croissant, Kühn, Chamber & Wolf 2010; Heiduk 2011; Mietzner 2009, 2011; Croissant & Kühn 2007; Croissant, Kühn & Lorenz 2012). The military's continuing political influence, especially on policy-making – even if exerted informally and behind the scenes – is one major factor why many transition countries have so far failed to consolidate democracy and have become enduring hybrid political systems (Carothers 2002; Levitsky & Way 2002).

However, more recent studies on Southeast Asian parliaments challenge the conventional wisdom that legislatures are largely non-existent as actors in processes of democratic transition and consolidation (Rüland, Jürgenmeyer, Nelson & Ziegenhain 2005; Ziegenhain 2008; Schneier 2009). While we do not contest the conventional wisdom that especially civil society movements have been major catalysts of political change in the process of transition from autocratic to democratic political systems (O'Donnell & Schmitter 1986; Przeworski 1991; Merkel 2010), there is also substantial evidence that legislatures played a greater role in this process than the existing literature suggests. This at least can be concluded from a closer examination of the legislatures of the Philippines, Indonesia and South Korea in the process of regime change (Rüland, Jürgenmeyer, Nelson & Ziegenhain 2005). These studies also suggest that legislatures become increasingly assertive after regime change and seek to establish greater control over the executive. Parliaments' role manifests in several ways: as institutional facilitator of reformist ideas; as institutional arena of interaction enabling argumentative and bargaining processes between societal groups, various political actors and the military; through its formal capacities to legislate, oversee



and make decisions on the budget. Many of the new legislatures hold oversight more than legislation for an important requisite for avoiding the resurgence of dictatorial regimes.

Moreover, such new insights from research on parliaments converge with the shift in the civil-military literature from an older, much broader concept of civilian control (Huntington 1957; Finer 1962; Janowitz 1965) to a more specific approach known as democratic control of the armed forces as it is laid down in the paradigm of Security Sector Reform (SSR) (Beeson & Bellamy 2008: 18; Born, Fluri & Johnson 2003; Cawthra & Luckham 2003; Cottey, Edmunds & Forster 2002). The latter opens the way for the acknowledgement, at least normatively, of a more vital role for parliaments as well as other societal groups in democratizing the military and shaping the process of policy formulation in the defense sector (Bruneau & Matei 2008: 911; Feaver 2005).

Cottey, Edmund and Foster (2000) have argued that establishing democratic control of the armed forces, usually involves two stages: First generation reforms denote the process of establishing the principles and structures for oversight and transparency of military affairs, while second generation reforms seek to entrench and consolidate democratic governance of the military sector (Cottey, Edmunds & Foster 2000). According to this paradigm, parliaments are central institutional actors in both phases of military reform. This study explores under which conditions and how parliaments in two important Third Wave democracies have come to matter as institutional actors promoting military reform and what factors constrain or enable their reformist praxis. In our analysis, we highlight factors and processes that have not been explicitly accounted for in policy blueprints or have been dismissed as “defective” or “perverse” outcomes of transformation processes in academic circles. Not surprisingly, our understanding of the problem at hand is indebted to an historical-constructivist framework that builds upon four assumptions: (a) all processes of institutional change are historical in nature which, for our investigation, means that the extent to which parliaments develop reformist/democratic mindsets and oversight capacity is determined by past institutional structures and the mode of transition; (b) ideas of all kinds, past memories, myths, experiences and cultural beliefs have a significant impact (both constitutive and causal) on how parliaments and military together with other political and societal actors behave and decide with regard to military reform; (c) these ideational resources do not exist in a vacuum but themselves are also historically and spatially contextualized; (d) interaction as an explanatory mechanism is central to understanding how institutional change takes place and where its limits are. It is through interaction that old or new, progressive or anti-reformist ideas as well as structural constraints are bringing about new patterns. Against this background, we seek to answer the following key questions in our research:

- Under what conditions do legislatures come to matter as actors and arenas of promoting military reform and curtailing the military’s reserved domains?
- How and to what extent do they exercise oversight over the armed forces? What strategies do they apply in this process? And
- Under which logics of action do parliaments reorganize civil-military relations and what interactive patterns emerge?

These questions have guided our cross-regional comparative study of two major regional powers, Indonesia and Nigeria. The subsequent overview about the project design and the empirical results will be organized in three major steps. A first step briefly introduces the theoretical and methodological premises of the project. This is followed by a second step in which major research findings will be presented country-wise. In a third and concluding step, we summarize the research findings and formulate several propositions as potential points of departure for more broad-based quantitative and qualitative comparative research.

## 2. Logics of Social Action and Parliamentary-Military Relations

### 2.1. Theorizing Social Action: Strategies Meet Norms and Arguments

In this paper, we distinguish two major explanations of social action based on instrumental and normative rationalities. They are identical with a rationalist agenda and a constructivist perspective. The rationalist research agenda rests on a “consequentialist” logic of action (March & Olsen 1989). Based on this logic, actors have fixed interests and act strategically in order to realize their preferences. Rational choice is utility and efficiency driven, purposive and focusing on the outcome of action. Actors bargain with each other in order to maximize their gains at the least possible costs.

The normative rationality departs from the observation that actors do not exclusively act as utility maximizers but may also be conditioned by ideational factors such as rules, norms, identities and social knowledge following a logic of “appropriateness” that manifests in “norm-based action” (March & Olsen 1989). Not only material factors, but also ideational factors are thus regarded as constitutive for the interests and identity of actors. Moreover, many constructivists also stress that preferences and identities are not fixed and exogenously given, but created intersubjectively in a mutually constitutive process between social structure and agency. This means that, on the one hand, human agents do not act independently from their social environment and its collectively shared system of meanings. On the other hand, it means that human agency reproduces and creates culture through daily practices, discourse and social learning (Jepperson, Wendt & Katzenstein 1996; Risse 2000). This leads constructivist literature to further differentiate between the resilient nature of the logic of “appropriateness” (Sending 2002) and the transformative potential of the logic of “arguing” (Risse 2000). While deep cognitive structures, normative commitments and social identities are the background for the logic of “appropriateness,” these factors do not encourage institutional change, identity change or adaptation but rather overemphasize the stability of social structures. When actors follow this logic, it is unlikely that they reflexively or pragmatically reframe their interests and identities but behave in conformity with the latter, thereby reproducing them. For change to happen, actors have to challenge deeply internalized “intersubjective” structures which is possible by following the logic of “arguing.” The latter manifests in “communicative action” and denotes a process of truth-seeking, in which actors challenge validity claims of causal statements and seek to “find a communicative consensus about their understanding of a situation as well as justifications for the principles and norms guiding their action” (Risse 2000: 7). “Arguing” is thus a deliberative process in search of the better argument. It is “as goal-oriented as strategic interaction, but the goal is not to attain one’s fixed preferences, but to seek a reasoned consensus” (ibid.: 7). It implies a two-sided process of persuasion in which both protagonists are prepared to change their worldviews, beliefs, interests and identities. “Arguing,” however, is highly conditional. Actors tend to engage in “arguing” in times of great insecurity, when all existing truths are at stake. Moreover, “arguing” presupposes an ideal speech situation, that is, a common life world including a modicum of shared meanings and symbols, the absence of hegemony, an ability to empathize and to recognize the other as equal (ibid.: 9).

“Rhetorical action” is another mode of interaction which builds upon both the strategic rationality of actors and their argumentative and persuasive capacity. By “rhetorical action” actors seek to persuade others to change their beliefs, interests and identities without being prepared to be persuaded themselves by better arguments of others

(Schimmelfennig 2003: 199-206). The use of arguments in “rhetorical action” is thus instrumental, aiming at maximizing actors’ goals within a strategic mode of communication. It emphasizes the capacity of actors to argue and persuade each other not necessarily on normative but rather on pragmatic, instrumental grounds (Giddens 1984). Thus, political actors can behave argumentatively though still following the logic of consequentialism.

Rhetorical action can take three forms: “Competitive argumentation,” “controversial argumentation” and “pseudo-competitive argumentation.” “Competitive argumentation” is conditional upon the existence of a consensus between actors about the “kinds of grounds” or “warrants” while the grounds themselves are in dispute. “Competitive argumentation” presupposes purposive action as it relies upon the existence of conflicts of interest expressed in different argumentative positions and persuasion strategies that compete against each other in defining the problems and the solutions. However, in our view a consensus over warrants presupposes the existence of a basic normative agreement among actors. “Controversial argumentation” denotes an interaction in which actors basically disagree about everything, their claims, grounds and principles. Finally, a third type brings about “pseudo-competitive argumentation” when the parties appear to agree over their warrants but by attributing them different meaning actors fail finding a consensus (Schimmelfennig 2003: 211).

The logics of “consequentialism” and “arguing” are fruitfully synergized in the concept of “rhetorical action.” Due to this greater analytical compatibility with our overarching argument that stresses an historical-constructivist approach to legislative-military relations, we will thus consider the instrumental aspects of action by adopting the concept of “rhetorical action” and not relying on a purely rationalist notion of “bargaining” or “strategic action”.

We further argue that the way as well as the sequencing in which “rhetorical,” “norm-based” and “communicative” types of action interact with one another may explain different institutional paths and depths of military reforms in Indonesia and Nigeria and varying degrees to which parliaments played in it.

## **2.2. How does interaction shape legislature-military relations?**

In the following, we stress four interactive mechanisms explaining either change or stalemate in legislative-military relations leading to the establishment of democratic control of the armed forces through parliaments or limiting the latter.

### **Challenging old grounds through “communicative action”**

The first path to change occurs when severe crises and situations of great insecurity open the space for actors to contest established “intersubjective structures” facilitating processes of “communicative action.” The latter may result in a new normative agreement, one which is believed to cope better with the challenges a society faces. (Liberal) democracy and military reform are usually major elements of the new normative consensus in processes of political transition. But in most cases the new normative order is preliminary and up to probation, especially if the new norms are alien and propagated by foreign norm entrepreneurs. The new democratic norms only consolidate if they meet the expectations associated with them (Legro 2000). As transformative processes generated by crises are usually turbulent, we do not expect “communicative action” to lead to an immediate wholesale ideational and institutional transformation, but rather to a lengthy process with uncer-

tain outcome and junctures which either accelerate or impair democratic consolidation. Although political actors may have reached a new normative agreement in an episode of “communicative action,” the turbulences concomitant to political transformation indicate that disagreement prevails over the institutional arrangements in the new order. Such disagreements represent power struggles in the emerging democracy. Competing elites strive for institutional arrangements conducive to them, pitting against each other political actors representing a reformist agenda and conservatives seeking to preserve their privileges. As a result, they subsequently become engaged in a process of “rhetorical action” that indicates a shift in the scope of argumentation from moral claims to pragmatic decisions on institutional reforms and new rules.

### **Transforming old structures through “competitive argumentation”**

If “communicative action” is followed by “competitive argumentation” over the institutional arrangements of the new democracy and the scope and depth of military reform, several transformative processes are possible. Under favorable conditions “competitive argumentation” may evolve into an identity change of actors and even wholesale ideational transformation. Favorable conditions for such a development exist if the new democracy performs well,<sup>1</sup> in other words, meets the expectations associated with it, and in the process strengthens reformist forces.

But “competitive argumentation” may also end in stalemate. A stalemate occurs if concessions between the contending reformist and conservative forces over institutional arrangements are exhausted. We do not disregard that the stalemate may be broken and evolve into a renewed process of “competitive argumentation” with the prospect of further reforms at a later stage. But this is a highly conditional process and thus a rather unlikely path of change. It presupposes that favorable conditions for reformist processes re-emerge: Notable performance improvements of the new democracy which create new win-win situations and the appearance of new, more compromising actors on both sides of the game. However, if the momentum for “communicative action” was short, weak and minimalist, if spoilers persistently question the fragile new normative consensus and if the emerging new normative order does not meet the expectations associated with it, then new democracies cannot consolidate and the stalemate in legislative-military relations with regard to the military reforms may degenerate into “controversial” or “pseudo-competitive argumentation.”

### **Re-legitimizing old grounds through “constitutive localization”**

Yet, such a development may result in long-term political instability. Given the high costs of such an outcome, we assume that it is rational for actors to avoid it. This leads to alternative (hybrid) paths of interaction. One of them is the creation of a new normative consensus by fusing elements of the competing old, locally established norms and the new set of norms often originating abroad. In this process of “constitutive localization” (Acharya 2004, 2009) previously competing actors construct a new normative third, a hybrid normative order which presumably is closer to the “cognitive prior” (ibid.) than to the new (externally propagated) set of norms. The authors’ interpretation of the concept of “constitutive localization,” originally proposed and empirically used by Amitav Acharya in a somewhat differ-

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1 “Performing well” does not only mean that the new democracy performs economically well or is less corrupt than the authoritarian predecessor government. It also meets expectations if it provides adequate avenues for the citizenry to criticize governmental mal-performance and thereby induce political decision-makers to credibly amend governance deficiencies.

ent vein, is a process which in fact modernizes and, coincidentally, legitimizes the old (locally accepted) norms by associating them with the new norms. This is done through a strategic process of framing the new norms, grafting and pruning them in an open public discourse so that they become compatible with the “cognitive prior” (ibid.).

Localization thus entails a limited change of identity among actors, which finds its expression in some institutional change which deviates from the “cognitive prior.” But as “localization” in the first place legitimizes the stalemate which ended “competitive argumentation” on the basis of a new normative consensus favoring the “cognitive prior,” no further reformist progress may be expected. In terms of military reform this means that the democracy norm is localized by local actors and agreement exists that the level of military reform achieved so far fits the localized form of democracy (or degree of democratization) and, hence, does not need to be driven further. In fact, future behavior of actors is primarily norm-based, but newly abiding norms acquired a locally defined content and scope.

By drawing from Snyder’s elite persuasion hypothesis (Snyder 2000), we argue that especially nationalism may create a discursive context by which alien norms of liberal democracy, including military reform, are grafted in a way that the latter will be eventually stalled. According to Snyder, new democracies are often characterized by intense jockeying for political power between old and reformist elites. As a “doctrine for the people, but not necessarily by the people” (Snyder 2000: 36) nationalism is attractive especially for old elites, because it allows them to respond to the opening of the political space without fully granting civic rights (ibid). In the absence of strong and mature democratic institutions, and due to strong historical and ideational legacies closely associated with the process of decolonization and state-building, even reformist forces have no alternative but to resort to nationalist populism in order to mobilize popular support. The ideology of nationalism may thus re-value and re-produce ideas about the military’s exceptionalist role in the process of state-building and thereby strengthen beliefs that fundamental military reform is tantamount to weakening the nation’s resilience. The consequence is a very limited political space and a reluctant quest by reformists for enforcing full-fledged democratic oversight over the armed forces.

While localization may offer an exit from a stalemated process of “competitive argumentation,” it may also be a direct response by local actors to external normative pressures. This is the case where “communicative action” is leap-frogged due to a deeply entrenched “cognitive prior,” where crisis does not decisively shatter the expectations associated with the old normative order, where conservative elites have an edge over reformists, but where at the same time the political order is open enough to enable public discourse over the normative underpinnings of society.

### **Persistence of old structures through “isomorphic behaviour”**

A final possible response to external norm pressures combining strategic and cognitive aspects is isomorphic behavior. The latter entails the mimetic adaptation to new (mostly alien) norms by local actors (Meyer & Rowan 1977; DiMaggio & Powell 1991; Meyer 2005; Scott 2008). This means that the actors representing the pre-existing set of ideas merely mimic institutional change by only adapting the latter’s rhetoric but leaving the normative orthodoxy virtually untouched. The likelihood of isomorphic behavior increases if the new (alien) ideas do not find local advocates who vocally champion them. This is often the case in an autocratic environment or where in hybrid political systems public debate is muzzled due to restrictive regulations and/or where civil society is weak (Bruneau & Trinkunas 2008; Clunan 2008:31). Isomorphic behavior is a direct outcome of political transition, but

theoretically may also follow a stalemated process of “competitive argumentation,” if the “cognitive prior” is still very strong and the normative consensus preceding “competitive argumentation” was only a very thin veneer cast over the pre-existing set of norms. Mere rhetorical adaptation and instrumental adaptation prevents any reflexive and argumentative dynamics over the new norms. No willingness or cognitive ability to genuinely change the old cognitive structure by local actors is possible in this case. As a result, isomorphic behavior is often characterized by a notable rhetoric-action gap. We expect that military reform is highly superficial in this case and not prone to major changes.

By analyzing and contrasting the empirical dynamics of Indonesia and Nigeria against these theoretical reflections, we could identify in the following study that different modes of interaction have been at work in Indonesia and Nigeria between legislatures and the military institution. Distinct logics of action and sequencing of interaction account for variation in the capacity of legislatures to act as agents of change. Consequently, this led to different patterns of parliament-military relations in each country along with manifestations of unequal strength and *actorness* of legislatures in pursuing military reform and oversight. In the case of Indonesia, we can trace a sequence of interactions which starts with a moment of “communicative action,” to be followed by “competitive argumentation.” When “competitive argumentation” ended in a stalemate, legislators and military officers created a new normative foundation through “localization.” This explains why Indonesian military reform has progressed to a certain extent, but in the end remained a half-way house. In Nigeria, political transition was not the result of a process of “communicative action,” however short and partial, but merely the result of isomorphic behavior. A parliament did not exist at the time of regime change and when it was re-established, it was only able to contribute peripherally to a rather limited reformation of the military institution.

### 3. Case Selection and Comparative Approach

This study was designed as a cross-regional small-n qualitative study on the basis of most similar case with different outcome (MSDO) design (Berg-Schlosser 1999). Indonesia and Nigeria share a number of salient structural similarities which qualify the two cases for MSDO. Both countries underwent regime change at virtually the same time in 1998, in both cases regime change was “pacted,” both are presidential political systems, both have an entrenched military sector with strong corporate interests, both are resource-rich countries and both are multi-ethnic societies with Islam and Christianity as the two major religious denominations.<sup>2</sup> That Indonesia and Nigeria are also major regional powers with potential influence on their neighbors, also qualifies them as “most important cases” (Friedrich & Kratochwil 2010). Variance exists with regard to the progress of military reform which has been considered more advanced in Indonesia than in Nigeria. Moreover, we expected similar variation to exist with regard to the actorness of parliaments in the process of military reform and democratic control of the armed forces. In order to explain different processes of causation leading, in one case, to more and, in the other case, to significantly less actor capacity on the part of legislatures, we chose to focus on *interaction as crucial causal mechanism*. In that, we highlighted several factors shaping the interaction process: the mode of regime change; the presence of formal and informal institutional capacities of legislatures to pursue military reform in various issue areas, and, finally, ideational dispositions of institutional and individual actors enabling or impairing legislatures from establishing and exercising democratic control of the armed forces.

Our synchronic (between-cases) comparative small-n study is complemented by a diachronic comparison (within-cases) that distinguishes three time sequences within the two countries under study: one, the phase of regime change; second, the phase of institutionalizing democracy and first attempts at reforming the military; and three, the phase of democratic consolidation with the objective of exercising full parliamentary control over the armed forces. In our view, diachronic comparison provides a more differentiated insight into the causation process that MSDO alone obscures. Moreover, we adopted an “abductive” research strategy (Friedrich & Kratochwil 2010) and relied on process tracing. The study designed thirteen issues which facilitate analysis of the complex interaction between the legislature and the military across the three time sequences in the two countries. These fields of interaction also enabled us to examine what kind of formal and informal institutional capacities legislatures have had or have acquired in the process of transition in order to trigger military reform and exercise democratic control of the armed forces. The choice of the issue-areas has been derived from the literature on civil-military relations, but the initial selection has been inductively corrected and adapted to the findings of our empirical research. They include: military’s political representation, constitutional amendments, military reform legislation, oversight practices, military organizational structure (TNI territorial structure), military business (or involvement in economic or developmental activities), human rights impunity and military justice system. . Finally, the cognitive prior to the reform process has been discussed in both cases while we examined how local and foreign ideas, norms and ideologies have affected the interaction process throughout the three time phases and thirteen case studies and ultimately shaped the outcome of interaction.

The authors conducted field work in Indonesia between February and April 2008 and May and August 2009, in Nigeria in August and September 2008 and February and March

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<sup>2</sup> However, with 88 percent of the population compared to only about 10 percent for Christianity, Islam is clearly the dominant religion in Indonesia. In Nigeria, Islam (51 percent) and Christianity (48 percent) have an almost equal share of the population.

2009. Additional final information for this research report was gathered by one of the authors in March and April 2010 in Indonesia. In the course of field work we interviewed eighty-nine legislators, active and retired military officers, civil society representatives, journalists and members of academia.

Apart from a careful reading of the published and unpublished academic literature, other important sources of information included a thorough content analysis of opinion-leading newspapers in both countries. In Indonesia this was facilitated through easily accessible internet archives of dailies such as *The Jakarta Post*, *The Jakarta Globe*, *Kompas*, *Suara Pembaruan* and *Media Indonesia* as well as political magazines such as *Tempo* and *Gatra*. The Nigerian newspapers and political magazines analyzed included *This Day*, *The Guardian*, *Vanguard*, *The Punch*, *The Abuja Inquirer*, *Leadership*, *The Independent*, as well as *Tell* and *Newswatch* magazines. In both countries, we were provided with access to public parliamentary documents such as the hansards (minutes of plenary sessions) and committee reports and minutes. We supplemented these sources of information by an analysis of the websites of the Indonesian and the Nigerian legislature.



## 4. The Legislature and Military Reform in Indonesia

The following empirical analysis rests on the theoretical premise that the interactions between the legislature and the military are driven by both cognitive as well as rationalist logics. This means that in the majority of cases the outcome of strategic interactions cannot be completely dissociated from the actors' normative dispositions. The latter is usually shaped by a "cognitive prior," that is, beliefs entrenched in the collective memory (Assmann 2007) about what is considered appropriate behavior in a given social context. Before examining the interactions between the legislature and the military, we thus briefly sketch the normative foundation on which Indonesian regimes prior to the 1998 transition rested.

### 4.1. The Indonesian "Cognitive Prior"

Indonesia's "cognitive prior" is largely shaped by the nationalist movement which in the 1920s began searching for an Indonesian "*Staatsidee*" that can be derived from local ideational sources (Reeve 1985; Simantunjak 1989; Bourchier 1999). The nationalists found them in the organicist underpinnings of local customary law (*adat*) and Javanese political elite culture which was strongly influenced by pre-colonial Hindu-Brahmanic court rules. That these ideational foundations were collectivist and anti-liberal was hardly surprising. Liberalism was closely associated with Dutch colonialism and collectivism was strengthening national cohesion in the struggle against the Dutch. From *adat* nationalists derived norms such as familism (*kekeluargaan*), harmony, consensus, unity of leaders and followers (*persatuan kawulo dan gusti*) (Magnis-Suseno 1997). These ideas were strengthened through local elite constructions such as a Javanese concept of power which – unlike Western concepts – was believed to be indivisible, concentrating all power in the ruler (Anderson 1972). Local collectivist ideas tallied well with nineteenth and early twentieth century European organic state theory and corporatism which nationalist leaders imported from Europe in an attempt to modernize and legitimize ancient local collectivist ideas (MacIntyre 1994; Bourchier 1999). Given the deep roots of these ideas in local elite culture, it was hardly surprising that after independence parliamentary democracy (1950-1957) remained a short interlude (Feith 1964; Ricklefs 1993). During President Sukarno's "Guided Democracy" (1957-1966) and, to a much greater extent, Suharto's New Order regime (1966-1998), organicism and corporatism experienced a powerful revival and henceforth became the ideological foundation of the Indonesian state (King 1992; MacIntyre 1994). With their fervently nationalist ideological orientation, the Indonesian armed forces (Angkatan Bersenjata Republik Indonesia, ABRI) became a major bearer of this cognitive prior in the pre-1998 period.

Javanese concepts of power and kingship accorded pivotal functions to the military. The warriors (*ksatria*) were the protectors of the palace and society, a notion which the Indonesian armed forces could persuasively cultivate due to their vanguard role in the independence struggle against the Dutch and their role in safeguarding the state against numerous separatist rebellions and other armed challenges (Noer 2005:173; Hendra 2007:106; Nainggolan 2010). In the Suharto era, the cognitive lineage of the soldiers' elevated position in Indonesian society found its most prominent expression in the *dwi fungsi* doctrine which accorded to the armed forces both a defense function and a social role. The *ksatria* ideal became a dominant trait of societal organization: As Mangunwijaya observed, "uniforms, marching, parades, mass sport and entertainment with typical militaristic ceremo-

nies of glamour and national pride” were pervasive at the time (Mangunwijaya 1994:84). Even after regime change the socially deeply rooted military mindset survived in the form of the ubiquitous para-military formations of political parties (*satgas*) and a broad range of militias (*laskars*) (Ziv 2001:83). The separation of the military from politics, an apolitical, professional military force was thus viewed by many Indonesians as an alien, imported norm.

Indonesia’s organicist cognitive prior and the elevated role it accorded to the military were strongly challenged by the Asian financial crisis of 1997/1998. The crisis was the external shock which, as theoretical literature argues (Legro 2000), erodes public trust in the existing regime and its ideological foundations. The Asian financial crisis shattered the entrenched expectations associated with President Suharto’s New Order regime and its ideological foundations, which promised political stability and robust economic growth. As Indonesia’s economy faltered, with the government paralyzed and social and ethnic restiveness mounting, a rapidly growing reform movement did not only question President Suharto’s leadership style and economic policy failure. It also rejected the organicist conception of statehood that placed the military in a privileged position within the Indonesian state and demanded a comprehensive reform of the Indonesian political system and civil-military relations on new ideational grounds. Due to its repressive role during the New Order period and flagrant human rights violations, the military was regarded as a major obstacle for political reform. The following case studies detail in which way and to what extent parliament became an actor and an arena in the unfolding process of political transition and the concomitant attempts to bring the military under civilian democratic control.

#### **4.2. Contesting Old Normative Grounds through “Communicative Action”: Legislature-Military Interaction during Regime Change (May 1998-1999)**

In the following, we show that the Indonesian Parliament was a central institutional actor and, even more so, the most crucial institutional arena of action, apart from Jakarta’s streets, in bringing about the downfall of Suharto and initiating political liberalization. The fusion of massive public protests against Suharto’s regime and parliamentary mobilization as mediator in the leadership crisis during May 1998 created optimum conditions for legislature-military relations to experience a short but important phase of “communicative” interaction. But what were the factors conducive to a short-lived “communicative action” and enabling the Indonesian parliament to play a decisive role in future military reform and to establish a level of democratic control over TNI?

##### **The Limits and Consequences of “Communicative Action”**

The Indonesian legislature played a more pivotal role in the process of regime change than is usually acknowledged in the theoretical transition literature. Often derided as a rubber stamp, with the function of providing a democratic façade to Suharto’s authoritarian regime, the DPR’s creeping emancipation in the 1990s went largely unnoticed by the majority of observers. Ironically, the DPR began to shed its reputation of a subaltern body at a time when the Speaker was a retired general who belonged to the military faction in the House of Representatives (Dewan Perwakilan Rakyat, DPR) which at the time held seventy-five of the House’s 500 seats. Speaker Wahono was close to circles in the officer corps who felt increasingly alienated by the indiscriminate and increasingly frequent interventions of President Suharto into military promotions which served no other purpose than to pre-empt military challenges to his rule (Honna 2003). These officers clandestinely discussed

reforms with the objective of re-professionalizing the armed forces years before Suharto was forced to step down (Honna 2003; Sebastian 2006).

This constellation set the stage for a moment of “communicative action” between the civilian student-led reform movement, the legislature and major factions in the armed forces who realized that the Asian financial crisis had severely weakened the legitimacy of the Suharto regime and that the post-crisis Indonesian state needs to be built on a new normative foundation. A dialogue between the leadership of the armed forces, the student protesters and the legislature came in motion, after military units close to Suharto’s son-in-law, Lt.-Gen. Prabowo had opened fire on demonstrating students in front of Trisakti University on 12 May 1998 and after the massive riots of 13 and 14 May 1998 in Jakarta which are widely believed to have been masterminded by Prabowo and his supporters in the military (O’Rourke 2002; Honna 2003). The subsequent occupation of the premises of the DPR by some 2,000 student protesters further spurred the dialogue between groups which for much of the previous time were at odds with each other. In the legislature, which after the 1997 parliamentary elections was more than ever dominated by Suharto’s Golkar Party, especially the intra-parliamentary opposition of the pro-Islamic United Development Party (Partai Persatuan Pembangunan, PPP) and the Democratic Party of Indonesia (Partai Demokrasi Indonesia, PDI) shared with the students the perception that the crisis was a “blessing” as it offered a chance to correct the “huge imbalance in [the country’s] power distribution.”<sup>3</sup> While behind the scenes Commander-in-Chief General Wiranto pressured President Suharto to resign, DPR Speaker Harmoko, a long-time close ally of Suharto, publicly defected from the regime. At this point, Suharto was left with no other choice than to step down, a decision he announced on 22 May 1998 (Ufen 2002; Ziegenhain 2008).

Yet, it would go too far to characterize the broad-based anti-Suharto alliance as a full-fledged process of “communicative action.” First of all, there was no level playing field between the armed forces, the legislature and the *reformasi* movement. The latter’s activities including the takeover of the Indonesian legislature by student protesters was largely dependent on toleration by the armed forces. And second, the armed forces neither treated the student-led reform movement nor the legislators as equal partners, as a communicative mode of interaction would have required. Rather they perceived them as short-term allies to resolve a rapidly deteriorating political crisis by forcing the country’s embattled president to resign. Moreover, while there was agreement that the country’s political system must be reformed, the new normative consensus was thin and fragile as it did not go beyond rather diffuse ideas about a more democratic order. With the new President Bacharuddin Habibie’s decision to unilaterally usher in far-reaching democratic reforms such as reinstating freedom of speech, assembly, and of the press, the liberty to form political parties, the release of political prisoners, a bold decentralization program and the announcement of free elections soon after coming to power, it became clear that for the immediate future there was no way back to the ideational *status quo ante*. Habibie’s decision to democratize the Indonesian polity may have been strongly guided by tactical considerations to beef up his fragile presidency, but it certainly reaffirmed the newly forged consensus that the post-Suharto state would rest on democratic norms.

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3 The Jakarta Post, 9 May 1998.

## From “Communicative Action” to “Competitive Argumentation”

Suharto’s resignation ushered in a protracted and highly contested process of political reforms. The episode of “communicative action” which brought together military soft liners, student protesters, civil society and the more progressive elements in the legislature in a tacit, albeit short-lived alliance in the final days of the New Order ended soon after Suharto resigned and was replaced by Vice President Habibie. What concrete form a post-Suharto political order should take was subsequently fiercely debated and became an object of “*competitive argumentation*” in which the protagonists mobilized the streets and even reverted to violence. Rhetorical competition led to the achievement of several political reforms that strengthened the political stature of the DPR and set the stage for first generation military reforms.

In the process the military initially sought to protect its corporate interests by embarking on a tactical retreat. In a document entitled *Paradigma Baru* (New Paradigm), it announced the withdrawal of the armed forces from active politics by transforming ABRI’s sociopolitical staff into territorial staff. Military officers holding positions in the civilian bureaucracy were asked to resign from the military, the police and military were separated, the military’s ties with Golkar Party were severed in order to ensure neutrality in the legislative elections scheduled for June 1999 and the name of ABRI was changed into Tentara Nasional Indonesia (TNI) (Hafidz 2006: 118-119).

Yet, for the reformist movement the military’s internal reforms were only a beginning. The ensuing “competitive argumentation” between reformists and the military increasingly took the form of a power struggle centering on the new polity’s institutional arrangements. That the legislature became a major player in this process must be attributed to two factors. First, one of the major issues at stake was the military’s continued representation in the House of Representatives (DPR) as well as the country’s supreme political body, the Consultative People’s Assembly (Majlis Permusyawaratan Rakyat, MPR). And, second, at the time of the breakdown of the *ancien régime*, a functioning legislature existed which, even though dominated by legislators beholden to the *ancien régime*, had achieved a certain degree of political autonomy and contributed to the dictator’s downfall. It had a proven committee structure, working routines based on established rules of procedure (*peraturan tata tertib*), a secretariat and the core of an expert staff and parliamentary services (Ziegenhain 2008; Sherlock 2010).

The military’s representation in the country’s legislatures became an issue immediately after the Habibie administration announced parliamentary elections. The elections required a new election law that would ensure free and fair polls. Amid intense agitation by reformists and conservatives inside and outside the military and massive street violence in Jakarta (known as Semanggi I incident), the first round of this contest ended with an uneasy compromise. Law No. 3/1999 on the composition of the MPR, DPR and regional representative bodies (DPRDs) retained military representation in legislative bodies, but reduced military seats in the DPR from seventy-five to thirty-eight and to 10 percent in the local legislatures (Dewan Perwakilan Rakyat Daerah, DPRD) (Honna 2003:165). The MPR’s seats were reduced to 700. It was henceforth composed of the 500 legislators of the DPR, 135 functional and sixty-five regional representatives.

The deliberation of two further bills – Law on Freedom of Expression and Law on State Security – were additional legislative battlegrounds in the process of “competitive argumentation” between the legislature and the military. In the first case, the DPR under massive pressure from civil society substantially revised the government drafted bill that, in its

initial form, curtailed the freedom of expression.<sup>4</sup> The second bill drafted by the military and submitted to the House shortly before DPR resumed session in September 1999, led to violent street confrontation between 2,000 students and the military.<sup>5</sup> Protestors and observers feared that the law is nothing more than a legal instrument to silence the demands of the reform movement challenging the government in the upcoming MPR session and to empower the military to take political control.<sup>6</sup> A Special Commission of the DPR met with Gen. Wiranto to discuss revision proposals but the latter rejected them. The DPR failed this time to exert its legislative capacity in favor of the reform agenda and instead approved the law on 23 September 1999 which led to new violent street protests. In the face of unabated criticism of the law and the military's brutality, the government eventually decided to delay the ratification of the State Security Law.<sup>7</sup>

### **4.3. Transforming Old Structures through "Competitive Argumentation:" Legislature-Military Interaction under Democratic Transition (1999-2004)**

After the June 1999 parliamentary elections institutionalization of Indonesia's new democracy entered a new stage. Between 1999 and 2002, the MPR negotiated four major amendments of the country's 1945 Constitution. The decision to amend the existing constitution instead of writing a new one reflected a societal consensus that the 1945 Constitution should be retained as a national symbol, but at the same time transforming it into an institutional framework which would allow the new democracy to consolidate. In the unfolding "competitive argumentation" over constitutional amendments and legislation defining civil-military relations in the post-Suharto era, the DPR became a key actor. We further trace the dynamics of "competitive argumentation" within three case studies illustrating DPR-TNI interaction: constitutional change, military legislation and legislative supervision.

#### **Constitutional Change and the Military's Political Role**

With the momentum on the side of the reformist movement, it was hardly surprising that the compromise of Law No. 3 about the military's representation in legislatures did not last long. The issue soon resurfaced in the debate about constitutional amendments where it became an object of intense argumentative competition between progressive legislators supported by civil society groups and the military. Amid renewed street violence (known as Semanggi II incident), covert activities of rogue military elements instigating violence in provincial flashpoints such as Aceh, East Java, the Moluccas and Central Kalimantan (O'Rourke 2002), and intense behind the scenes wheeling and dealing, the MPR in its October 1999 session agreed to withdraw its representatives from the DPR by the end of the legislative term in 2004,<sup>8</sup> but insisted to retain its seats in the MPR until 2009.

The military's bargaining position strengthened markedly when Habibie's successor, President Abdurrahman Wahid, became increasingly entangled in a power struggle with the legislature. In the process, both Wahid as well as the legislature sought the support of the military establishment. Wahid, who after coming to power had aligned himself with a reformist military faction led by Maj. Gen. Agus Wirahadikusumah, had to backpedal and in a tactical move to placate the military supported the rise of a group of highly conservative

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4 *The Jakarta Post*, 30 July 1998 and 21 October 1998.

5 *The Jakarta Post*, 26 August 1999, 1 and 18 September 1999.

6 *The Jakarta Post*, 22 September 1999.

7 *The Jakarta Post*, 25 September 1999.

8 *The Jakarta Post*, 26 February 2000.

officers to the helm of the military institution, while the DPR sought military backing in its moves to impeach President Wahid. In the MPR's annual session in August 2000, the TNI leadership was thus able to reject a *quid pro quo* which would have ended military presence in the MPR in exchange of voting rights for soldiers<sup>9</sup> and to retain military presence in the MPR until 2009. Making things worse, by stipulating that the TNI is responsible to the president and not to the minister of defense, the MPR granted a special role to the military untypical for consolidated democracies.<sup>10</sup>

The TNI justified its position by referring to the instability of the country, an instability to which it had itself contributed by attempts to destabilize the Wahid administration through covert operations instigating violence in several parts of the country (O'Rourke 2002). The securitization of Indonesia's constitutional debate resonated well especially among nationalist parties such as the PDI-P and Golkar.<sup>11</sup> It enabled them to vent their frustration over Wahid's repeated Cabinet reshuffles which cut them off from political patronage. Some House leaders openly shared the military's position, obviously motivated by an attempt to secure military support for their presidential ambitions in the dawning post-Wahid period (Salim 2006:231). Political parties thus sacrificed an early exit of the TNI from the MPR for the prospect of an alliance with the conservative mainstream in the armed forces in their struggle against the country's civilian president.

However, in the face of unabated strong public criticism the issue of TNI representation once more climaxed dramatically in the August 2002 MPR session due to the blackmailing tactics chosen by the military leadership. TNI chief Endriartono Sutarto's demand to return to the 1945 Constitution (Ziegenhain 2008:157) was a thinly veiled threat to derail the ongoing constitutional amendment process in the very last minute.<sup>12</sup> In a tense atmosphere of competitive argumentation and amid coup rumors (Schuck 2003:166), the TNI finally gave in to reform pressures inside and outside the legislature and the MPR eventually decided by majority vote to end TNI representation in the MPR by 2004.<sup>13</sup>

### Reforming Military Legislation

Despite a power shift in favor of the military as a result of the conflict between President Wahid and the legislature and the rise of conservative officers to the TNI leadership, the constitutional debates kept reform pressures on the military alive. Unabated reform pressures led the military to substantially revise its internal reform concept from 1998, renaming it *Paradigma Baru*, First Phase. While the First Phase considered civil-military relations as power sharing under *dwifungsi*, the Second Phase defined the roles and authority of TNI under civilian supremacy (Hafidz 2006: 152-153). This shows that by this time the military has adopted a new definition of its political role more in tune with the new democratic order. Important new points on the military agenda were the implementation of the Joint Service Doctrine, the restructuring of the army's territorial structure (which parallels the civilian bureaucracy), the implementation of protection and promotion of human rights principles in all military actions, giving up the attitude and mindset as the "guardian of the nation" and transformation of the curricula of the Military Academy concerning teaching on socio-political issues.<sup>14</sup>

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9 *The Jakarta Post*, 17 June 2002.

10 *The Jakarta Post*, 11 October 2001, 11 February 2004, 24 June 2004, 12 July 2004, 10 January 2007.

11 *The Jakarta Post*, 19 August 2000.

12 *The Jakarta Post*, 26 December 2002.

13 *The Jakarta Post*, 11 August 2002

14 See also Implementasi Paradigma Baru TNI Dalam Berbagai Keadaan Mutakhir, Jakarta: Markas Besar TNI 2001, pp. 22-25 and Abad XXI, Redefinisi, Reposisi, Dan Reaktualisasi Peran TNI Dalam Kehidupan Bangsa, pp. 14-15.

The fact that the military strongly relied on internal reforms as a means to adjust to the new democratic order shows that it was ill prepared to sacrifice much of its autonomy. This explains why the “competitive argumentation” between the legislature and civil society, on the one hand, and the armed forces, on the other, over military reform legislation took a quite acrimonious form. Crucial in this respect was Law No. 3/2002 which, in tandem with Law No. 2/2002, determined the roles of the National Police and the Armed Forces after their separation in 1999. The second major piece of legislation was the Military Law No. 34/2004 which regulated internal organization and functions of the military. At stake in these laws was the issue of how much civilian and parliamentary control over TNI should be built into the legal framework. The TNI instrumentalized the negotiations of two draft bills to regain some of the ground it had given up under the auspices of the *Paradigma Baru*. In the end, however, the TNI achieved its objectives only partially. Both laws represented compromises between the armed forces and the legislature. Crucial for achieving these compromises which, on the one hand, retained the special role of the armed forces in the country’s political system, but, on the other, also markedly strengthened civilian supremacy, was an emerging epistemic community consisting of civilian defense experts, who played a moderating role in the negotiations.

Law No. 3/2002 specified the defense functions of TNI. The law concluded lengthy negotiations which started already during the Habibie presidency. A first bill, drafted by the TNI and submitted to the legislature in 1999 (State Security Law, see Case Study 2), had to be withdrawn due to vociferous public opposition. The re-drafting of the bill, which began under the Wahid administration, was more participatory and apart from the defense ministry and the TNI headquarters also included civilian experts from the academe and civil society.<sup>15</sup> The DPR eventually succeeded in inserting into the law a clause empowering the legislature to endorse the presidential nominee for the post of TNI chief-of-staff. The law also specified eligibility for the TNI top post, in an attempt of de-politicizing military promotion procedures. The predominance of the army in the TNI, and by implication, the army’s territorial structure, was left untouched by this change. The law also confirmed MPR Decree VII/2000 which had vested in the TNI “functions other than war.” This means that the TNI still has a role in internal security such as in the suppression of separatism and terrorism. The DPR was however able to stipulate that troop deployments for security operations must be endorsed by the DPR.

But the DPR failed to redefine the relationship between TNI headquarters and the Department of Defense. While the law stated that “in terms of policy and defense strategy including administration support, TNI is under the coordination of the Department of Defense,” it did not explain the meaning of “under coordination” and the way the coordination should be carried out (Anggoro 2007:14). Neither did it provide a timetable for integration of the TNI under the Department of Defense. With the TNI chief participating in cabinet meetings, the TNI still wields considerable political influence, even though it had officially withdrawn from active politics (ibid.).

Partly overlapping with Law No. 3/2002, Law No. 34/2004 became the cornerstone of military reform legislation. It not only further specified the functions of TNI, but also regulated its internal organization. It was drafted by a working group established by the Department of Defense consisting of officials from the ministry, representatives of TNI headquarters and members of the academe. Negotiations in the drafting group dragged on for more than 2 years and were characterized by serious disagreements. Complicating the negotiations was the fact that, over time, the TNI replaced its drafters by more conservative representa-

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15 Authors’ interview, 10 March 2008.

tives who increasingly dominated the drafting process. Much of the draft legislation thus reflected the views of the armed forces.<sup>16</sup>

Particular controversy attracted Article 19 which became known as “*pasal kudeta*” or coup article. The article gave the armed forces widespread discretion in handling emergencies and internal security problems without notifying the president and the legislature. Existence of the article was made public by one civilian member of the drafting group in a press conference.<sup>17</sup> Expectedly, the revelation caused a public outcry. Although the article received support from leading legislators such as Golkar party chairman Akbar Tandjung and MPR chairman Amien Rais, in the end TNI had to yield to the strong public pressure and to withdraw the unpopular article.<sup>18</sup>

The legislature, with the assistance of civilian defense experts, was thus able to rid the bill of the most serious encroachments of the TNI on civilian supremacy. The law placed TNI under democratic core norms such as democracy, civilian supremacy, human rights; national and international law. Troop deployments by the President and the use of force henceforth need to be approved by the DPR within 48 hours. The DPR also successfully thwarted attempts of the TNI to weaken parliamentary participation in the appointment of the TNI chief and to reinstate *dwi fungsi* through a clause that had proposed that active military officers be allowed to occupy civilian posts in the bureaucracy. The law also touched upon the hot potato of military businesses and provided for their transfer to the state by 2009, but left open how this is to be done (International Crisis Group 2004:9).

While the TNI failed to restore some of its pre-1998 prerogatives due to public pressure and legislative oversight, it succeeded in maintaining the *status quo* in other crucial areas of military reform. Law No. 34/2004, for instance, did not abolish the territorial structure of the TNI. Neither did it explicitly place the TNI under the defense ministry. The law also retained the “functions other than war.” Although the law clarified this provision by enumerating several military responsibilities such as fighting terrorism, it perpetuated the blurred lines of responsibility for internal security. It is thus fair to conclude that the law failed to overcome existing ambiguities in civil-military relations, especially in issues where no agreement was possible.

### **Establishing Legislative Supervision**

Established supervisory procedures are, as argued by Cottey, Edmunds & Foster (2000), a critical element in second generation military reforms. Yet, the institutional foundations for effective supervision must already be laid during the first generation of reforms. Particularly crucial in this respect is supervision of the defense budget. A telling indicator how effective the legislature in this respect is military procurement.

In Indonesia, one of the cherished reserved domains of the armed forces is procurement of military equipment. Yet, as even Indonesian Defense Minister Juwono Sudarsono admitted, procurement is notoriously corruption-prone. It is dominated by brokers, often former or active military officers, who negotiate the kickbacks with the decision-makers, link buyers with contractors and charge a hefty commission for their activities. It is estimated that 30 percent of the official defense budget is “lost through corruption in the process of buying military equipment and supplies” (Beeson 2008:480).

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16 Authors' interview, 10 March 2008.

17 Authors' interview, 10 March 2008.

18 Back on the March – The TNI Returns to Politics, in: Van Zorge Report, Issue V/3, 14 March 2003, pp. 4-11.



Before 2003, the Indonesian parliament was widely inactive in scrutinizing procurement deals. Like the Ministry of Defense, it was bypassed by TNI headquarters. Legislators, who, with a few exceptions, were largely novices in defense matters, lacked the necessary technical expertise to scrutinize purchases of defense equipment and, no less importantly, were preoccupied with negotiating constitutional amendments which would curtail the military's role in politics.

The first major procurement case in which the DPR became involved was the acquisition of four Sukhoi fighter jets and two M-35 assault helicopters from Russian arms manufacturer Rosoboronexport at a cost of US\$192.6 million during a state visit of President Megawati Sukarnoputri in Russia in April 2003. The two parties agreed that 20 percent of the costs should be paid in cash, the remaining 80 percent through a countertrade mechanism to be handled by state logistics agency Bulog. The deal became public after Finance Minister Boediono refused to repay Bulog's US\$30 million down payment, arguing that the deal was not included in the state budget.<sup>19</sup>

Responding to the intra-bureaucratic conflict, Commission I on Foreign Affairs, Defense and Information of the DPR set up a working committee of inquiry (Panitia Pekerja) in June 2003. In its 3-months deliberations, the committee unearthed a number of embarrassing facts, but in the end, obviously under pressure from party leaderships, ruled that there were no irregularities despite conceding that there have been violations of the purchasing procedure.<sup>20</sup> It largely followed the explanation of President Megawati Sukarnoputri that the deal was essential in the light of infringements on Indonesian territory by foreign powers and that the countertrade offered the opportunity to promote Indonesian exports.<sup>21</sup>

After the Sukhoi case, the DPR brought up other procurement issues to public scrutiny. One of them was the overpriced purchase of thirty-two armored personnel carriers for the TNI's participation in the UN Lebanon mission in 2006.<sup>22</sup> The DPR can thus be credited with having heightened public concern for irregularities in the procurement process. To this extent, it has achieved the objective of first generation military reforms of establishing an institutional base for legislative supervision. Yet, the various procurement scandals have also shown that there are no legal consequences for those involved in irregularities. With its obvious lack of consistency and rigor, the DPR is unable to effectively discourage the military institution and fraudulent individuals from circumventing, twisting, by-passing and even openly defying the legal provisions for procurement.

The problems of scrutinizing procurement are representative for the legislature's general limitations in budgetary oversight. Yet, such a critical assessment should not ignore that there have been marked improvements in defense budgeting over the last 10 years. But legislators readily admit that they are overwhelmed by the flood of data and that they often lack the technical expertise to screen the items in sufficient depth. They thus concentrate on random checks, covering about 20 percent of the budget's items.<sup>23</sup> Still, legislators spend most of their time, about 29 percent, on budgetary matters as one study of the Universitas Indonesia-based think tank Pacivis disclosed (Widjajanto, Kurniawan & Tirtawinata 2008:17).

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19 *The Jakarta Post*, 26 June 2003.

20 *The Jakarta Post*, 23 September 2003.

21 *The Jakarta Post*, 2 August 2003.

22 For details, see *The Jakarta Post*, 13 September 2006, 21 September 2006, 26 December 2006. Authors' interview, 17 March 2008.

23 Authors' interviews, 17 March 2008.

Even more serious is the failure of the DPR to thoroughly examine the process of budget implementation. As several of the interviewed legislators complained, the Ministry of Defense and the TNI only reluctantly provide information on actual spending.<sup>24</sup> On the spot inspection has been repeatedly cited by legislators as a remedy. Yet, on the spot inspection is hardly able to bring to the fore misallocations of appropriated funds as potential offenders may have sufficient time to cover up the irregularities before the legislators arrive. Intermittent audits of the defense budget have indeed revealed serious irregularities<sup>25</sup> in the form of disobeying the rules and regulations (70 percent), uneconomic and inefficient use of state finance (20 percent) and ineffectiveness (10 percent).<sup>26</sup> But also the State Auditing Board (Badan Pemeriksa Keuangan, BPK) has encountered major obstacles to systematically scrutinize TNI spending (International Crisis Group 2001:13; Artjana 2005:151, 158; Human Rights Watch 2006:92, 99).

Similarly problematic is the fact that the DPR does not hold the TNI accountable for the budgetary implications of covert operations or offensives against separatists such as the one started in May 2003 in Aceh. In these cases in which the military argues that the unitary state is at stake, the majority of legislators readily side with the armed forces, giving the latter virtual discretion over its operations. Given these shortcomings of budgetary oversight, outspoken legislator Djoko Susilo of the Partai Amanat Nasional (PAN) concluded that "in budgeting the DPR is still a rubber stamp."<sup>27</sup>

Summarizing the evolution of legislature-military relations in Indonesia during the first two phases of transition, that is, "regime change" and "democratic transition and first generation military reforms," two major conclusions can be drawn. First, the legislature definitely mattered as a player in military reform after the resignation of President Suharto. The legislature exerted substantial influence on the constitutional amendment process in the MPR, passed legislation curtailing military power and wielded oversight functions more assertively than in the past. Pivotal in this development was DPR's Commission I (Komisi I) on Foreign Affairs, Defense and Information which is composed of forty-nine members. At the time of field work, Commission I was supported by twenty staffers and had a budget of US\$ 100,000. It held three meetings a week, all open to the public, except for hearings on the secret intelligence budget (Born 2006: 60). It was well linked to think tanks, university institutes, civil society organizations and the media. Due to the fact that the membership of the Commission fluctuated only moderately during the legislature's five-year term, it acquired substantial specialist knowledge as a collective body on defense matters. The second observation is that with the military law (Law No. 34/2004) the scope for further concessions on the part of the military had come to an end. As a result, the process of "competitive argumentation," which so far enabled progress in military reform, became deadlocked.

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24 Authors' interviews, 4 March 2008, 11 April 2008.

25 See *The Jakarta Post*, 13 March 2003. Authors' interviews, 17 March 2008, 8 April 2008. See also an interview with LIPI scholar Jaleswari Pramodhawardani "They Should Be Accountable for How the Funds are Obtained and Spent," in: Van Zorge Report, Issue V, No. 9, July 16, 2003, pp. 19.

26 I Gde Artjana: The Accountability of the Military Budget (<<http://www.lesperssi.org/content/view/41/6/lang.en>>) (accessed 23 April 2010).

27 *The Jakarta Post*, 13 March 2003.

#### 4.4. Re-legitimizing Old Grounds through “Constitutive Localization”: Stalemated Legislative-Military Interaction under Democratic Consolidation (2004-2009)

But why and how has the deadlock occurred? Moreover, what are its theoretical implications for the mode of interaction and practical consequences for future legislature-military relations? This process of stagnation will be empirically discussed in the following case studies on TNI’s territorial structure, military business as well as human rights impunity and military justice. Our findings suggest that a normative and pragmatic convergence occurs between parliamentarians and defense epistemic communities, on the one hand, and military, on the other hand. This ideational re-orientation caused a narrowing of the scope of military reforms. As a matter of course, first generation military reforms remained incomplete impairing on second generation reforms – crucial for consolidating *de facto* parliamentary control - to get off the ground. Moreover, during this process of re-orientation the mode of legislature-military interaction had shifted to “constitutive localization.”

##### Reforming TNI’s Territorial Structure

The territorial command structure of the Indonesian army is closely intertwined with the historical development of the Indonesian military from a guerrilla force to regular armed forces. It reflects the experiences of the independence struggle against the Dutch and is part of the army’s *Sishankamrata* (total people’s defense and security system) doctrine. The territorial commands were formed and expanded in the 1950s and 1960s in order to deal with separatist movements and the communist infiltrations (Kingsbury 2003; Honna 2003; Hafidz 2006; Sebastian 2006). During the Suharto era it became an organizational structure paralleling the civilian bureaucracy on all levels of the state. Below the armed forces headquarters, army commands existed at the regional level (Kodam), provincial level (Korem), district level (Kodim), sub-district level (Koramil) and village level (Babinsa). The territorial command structure enabled the armed forces to interfere in civilian politics, to establish a dense intelligence network and to build up its own business infrastructure. Throughout its existence it had been the mainstay of the Indonesian military’s power. This explains why in the post-Suharto era dismantling the army’s territorial command structure became a core demand of the reform movement.

Debates within the armed forces about the transformation of the territorial structure ended with the rise of conservative military officers to the TNI leadership in 2001. In subsequent reshuffles, they sidelined or purged reformist officers led by Maj. Gen. Agus Wirahadikusumah and Maj. Gen. Agus Widjojo who had earlier proposed a total or partial dismantling of the territorial units. The trend against reforming the territorial structure became also visible in the heated parliamentary debates of the TNI Law No. 34/2004 in which the lawmakers were only able to strike an ambiguous compromise with the TNI. Despite taking a more critical stance than previously against the TNI’s determination to hold on to the territorial mechanisms,<sup>28</sup> lawmakers eventually accepted the maintenance of territorial commands. In return, the military had to make sure that its political role was to be fully eliminated (Said 2006: 230). Part of the compromise was also provisions in Law No. 34/2004 for a future review of the army’s territorial structure. Yet, there were no concerted moves of the legislature after 2004 to call for an implementation of such a review.<sup>29</sup>

Separatist uprisings in various parts of the country and the threats posed by terrorism after the October 2002 Bali bombings strengthened TNI’s arguments for retaining the territorial

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<sup>28</sup> *Suara Pembuaran*, 3 September 2004.

<sup>29</sup> Calls for review – with the intention of strengthening the territorial structure – rather came from the TNI, see *Suara Pembuaran*, 19 January 2006.

structure. Responding to ethno-religious strife and separatist challenges, TNI increased the number of regional commands from ten to twelve between 1999 and 2002. In 1999 it established Kodam Pattimura in Ambon and in February 2002 Iskandar Muda regional command in Aceh (Heiduk 2010: 128, The Editors 2003:28-29). Kodam Iskandar Muda became the operational base for the TNI when in May 2003 it launched the largest military offensive in the history of Indonesia against the Gerakan Aceh Merdeka (GAM) rebels. In October 2005 President Yudhoyono proposed to strengthen the territorial structure as a means to fight terrorism more effectively, a suggestion received favorably by the TNI.<sup>30</sup> This strategy has not changed since then. Quite to the contrary, it has become even more entrenched as illustrated by the reactions of lawmakers, military and the executive to the Jakarta hotel bombings in July 2009.<sup>31</sup> Leading lawmakers from Commission I supported the strengthening of the TNI in the anti-terrorism activities. However, while emphasizing the necessity to rely upon the competence and skills of the TNI in fighting terrorism, they also advised that this widening of the military's mission should be clearly regulated by the government and closely overseen by the public and the legislature in order to prevent human rights abuses as occurred in the past.<sup>32</sup> However, these precautions cannot obscure the fact that since passing the military law No. 34/2004, the DPR has abstained from making new overtures towards dismantling the territorial structure. In fact, the issue is dead-locked since then.

### **The Futile Effort of Reforming the Indonesian Military Businesses**

The power and autonomy of the Indonesian armed forces is also closely intertwined with their economic activities. A military business sector emerged when the armed forces took over the Dutch companies nationalized in 1957 and the expropriated British and American firms in 1964 and 1965 (Robison 1986). In the early 1960s the army also began to establish non-profit foundations (*yayasan*), the number of which increased rapidly in the New Order period. By the end of the Suharto regime, a far-flung empire of military businesses existed that can be subdivided into (1) formal businesses, (2) informal business activities and (3) illicit businesses. Formal military businesses are usually under the holding of a foundation or a cooperative. They cover a wide range of commercial activities including interests in hotels, taxi firms, shipping, airlines, timber, plantation, insurance, property, banks and construction companies (Human Rights Watch 2006).<sup>33</sup> Informal businesses are not controlled by the military as an institution but by individual officers and their families. Often military officers are only members of the board of private businesses without an active role in their operations. Most problematic are undoubtedly the illicit business practices of the military. They include protection rackets for gambling dens, prostitution rings and business companies ranging from the Chinese shop keeper to transnational corporations such as ExxonMobile and Freeport Mining, drug courier services, smuggling of goods, illegal logging, human trafficking, renting out of military equipment to private firms, selling fuel and spare parts, selling commodities from military cooperatives to local communities and selling weapons especially in conflict and post-conflict areas (Rabasa & Haseman 2002:76; Human Rights Watch 2006).

The military has always been adamant in defending its business interests. It justified its economic activities with the argument that – until recently – only 25-30 percent of the TNI's budgetary needs were covered by the state budget and that the enterprises in the first place serve the welfare of the ordinary soldier. However, comprehensive studies of the

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30 *The Jakarta Post*, 4 May 2005, 6 October 2005, 13 October 2005, 10 December 2005.

31 *The Jakarta Post*, 8 August 2009, 21 August 2009, 24, August 2009, 31 August 2009

32 *The Jakarta Post*, 21 August 2009, *The Jakarta Globe*, 1 September 2009

33 *The Jakarta Post*, 17 September 2002.

military business sector (Human Rights Watch 2006; Rieffel & Pramowardhani 2006; Mietzner 2008) have exposed this reasoning as a myth. New estimates suggest that between 50 and 60 percent of the defense budget are currently covered by the government's defense budget which has more than quadrupled since 2000.

The DPR saw a chance to regulate the military businesses in the negotiation process of Law No. 34/2004. A group of progressive Komisi I legislators eventually succeeded in including an article in the law (e.g. Article 76) which stipulates that all military businesses must be transferred to the government within a period of 5 years. Some legislators also repeatedly demanded that regular audits of the military enterprises are conducted.<sup>34</sup> Unfortunately, though, Law No. 34/2004 says nothing about the military's informal and illegal business practices.

While the DPR was able to pave the way for a wholesale reform of military businesses, TNI succeeded in slowing down and diluting the reform. The task force set up to work out the details for the transfer, the Supervisory Team for the Transformation of TNI Businesses (TSTB), was a body on which the Ministry of Defense had strong influence and subsequently failed in devising credible criteria defining what constitutes a military business. The inventory of military businesses thus proved a highly confusing exercise, with the number of business units first fixed at 219 and later revised to 1,520 and finally to 2,636 (Mietzner 2006:55; Mietzner 2008:233).<sup>35</sup> Most of these units were foundations and cooperatives, which the military excluded from the transfer on the ground that they served the welfare of the soldiers. In the end, the military only defined six enterprises with assets over US\$50,000 as transferable businesses (Honna 2009:242).<sup>36</sup> By that time it had already sold its shares in profitable companies such as the Artha Graha Bank and Kostrad's Mandala airline to the private sector (Mietzner 2006:56). While these practices were strongly criticized in the legislature,<sup>37</sup> there was little legislators could do as also the president sided with the TNI.<sup>38</sup> Moreover, he returned several times the draft submitted by TSTB for a presidential decree regulating the details of the transfer of the military businesses to the government. When the legislature's term ended in October 2009, the deadline set by Law No 34/2004 had expired. By that time, the issue had also disappeared from the legislature's agenda. The legislators had acquiesced to the strategy of TNI of diluting and postponing the issue. The new legislature elected in April 2009 had, at the time of writing, failed to table the topic anew.<sup>39</sup> The issue of military businesses has thus remained unresolved. For the foreseeable future a major pillar of military autonomy will thus remain intact.

### **TNI's Human Rights Impunity and Military Justice in Limbo**

The worst authoritarian legacy of the Indonesian armed forces is their human rights record. The Indonesian military was involved in the large-scale violence which erupted in the aftermath of the aborted coup of 30 September 1965, which was blamed by the military on the Communist Party of Indonesia (PKI). In the subsequent witch hunt on Communists between 500,000 and one million people died. Military operations against Muslim sectarians such as in Tanjung Priok, Jakarta (1984), and Talangsari, South Sumatra (1989) and

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34 *Kompas*, 28 October 2008, p. 2.

35 *Tempo Interaktif*, 3 February 2006, <<http://www.tempointeraktif.com/hg/nasional/2006/02/03/brk,20060203-73416.id.html>>; Komisi I DPR Ragukan Nilai Aset Bisnis TNI", <<http://www.dpr.go.id/artikel/artikel.php?aid=1434>> (accessed 9 February 2008).

36 *The Jakarta Post*, 12 June 2007, 21 December 2007, 26 December 2007, p. 13, 5 February 2008, p. 9.

37 *The Jakarta Post*, 26 January 2005; 29 September 2005; *Kompas*, 18 January 2008, <<http://kompas.com/kompas-cetak/0801/18/Politikhukum/4173815.htm>> (accessed 9 February 2008).

38 *The Jakarta Post*, 5 February 2008, p. 9.

39 Authors' interview, 26 March 2010.

the separatist movements in East Timor, Aceh and Papua also led to serious human rights abuses. Moreover, military units were responsible for the kidnapping of dissidents shortly before the collapse of the Suharto regime, the shooting of demonstrating students at Trisakti University, the riots in May 1998 and the Semanggi I and II incidents during the Habibie presidency (O'Rourke 2002; Ufen 2002; Schuck 2003). Severe human rights abuses of military personnel were also a concomitant of the independence referendum in East Timor (August and September 1999), the communal conflicts in Maluku (1999-2002) and Central Sulawesi and the offensives against the Gerakan Aceh Merdeka (GAM) separatists in Aceh. It is thus hardly surprising that human rights activists and parts of the *reformasi* movement demanded that the officers responsible for the abuses are brought to justice. In their view, ending military impunity and the culture of violence pervading the institution should be one of the most significant elements of military reform.

The legislature's achievements in creating a credible post-authoritarian human rights regime were ambiguous. The DPR ratified major international human rights conventions which the government had signed after the fall of Suharto. The legislature also markedly contributed to the constitutional amendments of Article 28 which was expanded to become a Bill of Rights (Eldridge 2002). Yet, in the intense post-Suharto "competitive argumentation" over human rights legislation lawmakers in the MPR could not prevent the insertion of a clause in the constitution prohibiting the retroactive prosecution of human rights abuses. Responding to strong international pressures demanding prosecution of the military's post-referendum abuses in East Timor, the legislature subsequently sought to define conditions which despite the retroactivity clause would allow holding past human rights violators accountable. Therefore, Human Right Law No. 26/2000 stipulated that human rights violations committed before the enactment of the law will fall under the jurisdiction of *ad hoc* courts, while those taking place after this law came into force will be prosecuted by special human rights courts. The human rights courts only have jurisdiction over gross violations of human rights such as genocide or crimes against humanity including those committed by Indonesian citizens outside Indonesia. Moreover, according to the decision of the Constitutional Court No. 18/PUU-V/2007 the recourse to the *ad hoc* courts' prosecution of cases of human rights violations has to be made upon recommendation of the National Commission on Human Rights (Komnas HAM) and the Attorney General. *Ad hoc* human rights courts, however, can only be set up by a presidential decree following a recommendation of the DPR (Hadiprayitno 2009).

So far, under immense public pressure, the DPR has endorsed the establishment of *ad-hoc* tribunals for human rights violations in East Timor in the Suharto era and the 1984 Tanjung Priok massacre, which acquitted most officers and generals involved (Hafidz 2006: 201-202). The conduct of the trials and the process of investigation appeared to be highly politicized which partly explains the poor performance of the judiciary to deliver credible sentences. In the Tanjung Priok case (September 2003 to August 2004), most defendants who were low and middle ranking officers were released, while only two of them were sentenced. Prominent figures such as Gen. Try Sutrisno and Gen. L.B. Murdani were not defendants in the trial. Moreover, an atmosphere of intimidation by the TNI surrounded the work of these Human Rights courts when military troops and officers associated with Kopassus (Special Forces) were mobilized to attend the court proceedings (Hadiprayitno 2009).<sup>40</sup> In other human rights issues such as the Talangsari incident the DPR did not recommend to the president issuing a presidential decree for the establishment of an *ad-hoc* tribunal as required by Human Rights Law No. 26/2000.<sup>41</sup>

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40 See also *The Jakarta Post*, 24 October 2003.

41 *Suara Pembaruan*, 18 February 2006; *Kompas*, 9 February 2009.

The revision of the Military Tribunal Law No. 31/ 1977 is one of the few legislative initiatives targeting the military reform originating in the House. It seeks to place the investigation and prosecution of military crimes involving civilians under civilian judicial control (Heiduk 2009:16). The revision of the law started in 2003 but it did not yield any result. When the new parliament elected in 2004 re-opened the process of negotiation on the revision of the military tribunal law, lawmakers tried first to find a minimum consensus about why the revision is needed and how to proceed with it.

The breakthrough eventually came after media and civil society were heavily involved by the lawmakers as part of a shaming strategy that targeted Defense Minister Juwono who was openly accused of thwarting the reform process. The Department of Defense and TNI eventually agreed on the revision of Article 9 of the law that would render possible to refer soldiers committing crimes to the civilian justice system. Still, however, legislature-military negotiations over the draft bill ended in deadlock over the question of who should be in charge of investigating the crimes. Up to the end of the legislative term in October 2009, TNI stubbornly rejected the police as investigating agency on the ground that police is corrupt and that in the face of the fierce rivalry between the police and the military after the separation of the two institutions in 1999, soldiers could not be expected to be treated fairly. Interestingly, a number of political parties in the DPR such as Golkar, the Democratic Party, the Prosperous Justice Party (PKS), the Prosperous Peace Party (PDS) and Democratic Vanguard Star (PPD) supported TNI's position on the issue of investigation.<sup>42</sup> The DPR finally abandoned the deliberations on the military tribunal law before the old House came to end its mandate.<sup>43</sup> At the time of writing, the more conservative House elected in April 2009 has done nothing to revive the negotiations on the military tribunal law, suggesting that it is even closer than the previous legislature to the norms cherished by the military.

### **Explaining the Deadlock: From “Competitive Argumentation” to “Constitutive Localization”**

The case studies on the army's territorial structure, military businesses and military justice have amply illustrated that after the enactment of the military law No. 34/2004, interactions between the legislature armed forces became deadlocked. Key elements of first generation military reforms remained incomplete and the legislature was not able to establish a degree of firmly institutionalized oversight that is characteristic for second generation reforms. Except for the Freedom of Information Bill of 2008, which liberalized access to information in the realm of defense and security, the DPR did not pass any new legislation spurring military reform. Quite to the contrary, in an attempt to contain the consequences of the Freedom of Information Law, the government with the support of the security agencies, launched a State Secrecy Bill that, if passed by the legislature, would neutralize many of the gains of the Freedom of Information Law. And also the bill on civil reserves deliberated in the legislature elected in 2009 includes provisions strengthening the autonomy of the military in defense and security matters.<sup>44</sup> All in all, one may conclude that after 2004 the DPR continued to screen executive bills, expose irregularities in the field of procurement, exert oversight of the defense budget and subjected the designated TNI chiefs to fit-and-proper tests, but that these activities had a diminishing impact on the TNI. Detrimental to DPR oversight capacities is also the high turnover rate of legislators in the electoral process. After each parliamentary election around 70 percent of the legislators were not re-

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42 Ibid. and *The Jakarta Globe*, 14 February 2009.

43 *The Jakarta Globe*, 28 September 2009.

44 *The Jakarta Post*, 21 November 2007, p. 6, 12 January 2010.

turned to the House (Sherlock 2004).<sup>45</sup> In Commission I, there are currently only five legislators who had served in the previous legislature, a dramatic loss of expertise which cannot be compensated on short notice.

Further contributing to the deadlock was the fact that the new democracy had difficulties to consolidate. The process of transition did not come to an end before finally the MPR had concluded the constitutional amendment process in 2002. Until then, the new democracy faced great problems to deliver what was expected of it. Economic recovery from the Asian financial crisis was sluggish, corruption (including the legislature) was endemic as ever and, perhaps worst in the view of most Indonesians, separatist insurgencies and ethno-religious strife in several parts of the country jeopardized the territorial integrity of the Indonesian state. The slow pace of consolidation and the power struggles within the civilian elite during the presidency of Abdurrahman Wahid gave the military the chance to regroup and strengthen its bargaining position in the process of “competitive argumentation” with the legislature and the reform movement.

Also external factors strengthened the domestic position of the armed forces. After the terrorist attacks on the United States on 11 September 2001 and the declaration of South-east Asia a “Second Front” in the war against terrorism, the Bush administration began to court the TNI as an ally. This policy sought to revert the ban imposed on military cooperation between the U.S. and Indonesia which the U.S. government imposed on Indonesia under the Leahy Law of 2000 in response to the Indonesian military’s human rights violations in East Timor (Fromm 2010). With the military law No. 34/2004, the military had reached institutional arrangements which secured much of its internal autonomy. They accorded to it a position weaker than under authoritarian rule, but markedly stronger than in established liberal democracies. The scope for further compromises in a process of “competitive argumentation” had been exhausted.

Yet, the relationship between the DPR and the military did not relapse into “competitive argumentation” or “pseudo-competitive argumentation” as theoretical assumptions on “rhetorical action” let us expect (Schimmelfennig 2003). What, in fact, happened was the convergence of legislators and the military on a new normative consensus which amalgamated new and old political ideas. The common new ideational platform localizing the democracy norm was nationalism. Given the ordeals of the independence struggle, repeated serious separatist challenges in the nation’s post-independence history and a seemingly hostile international environment, nationalism is the norm most deeply ingrained in the Indonesian collective memory (Weinstein 1976).

Nationalism experienced a strong resurgence in the post-2004 period. This resurgence had two major, albeit contradictory sources. One were the humiliations Indonesia encountered in the aftermath of the Asian financial crisis, the conditionalities of the International Monetary Fund (IMF) rescue packages, the intervention of a United Nations peace keeping mission in East Timor and the loss of leadership in the Association of Southeast Asian Nations (ASEAN). The other was the pride in having mastered the crisis, against all the odds, the economic recovery from 2004 onward, the progressive consolidation of the new democracy, and the international recognition Indonesia received for its political transition.

As a result, pressure on the TNI relaxed. Indonesia’s widely celebrated new image as the world’s third largest democracy had a diminishing effect on public watchfulness at home. By 2004 the reform movement no longer staged street demonstrations for military reform and also the pressure by the media and civil society organizations, though not ending, decreased significantly. In fact, opinion polls at the time began to show a remarkable im-

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45 *The Jakarta Post*, 4 October 2005.



provement of military ratings (Mietzner 2006: 30). Today, the reform movement mainly concentrates on human rights violations, thus reducing military reform to a one-issue affair.<sup>46</sup> With Indonesia's growing democratic image, also the flow of resources for security sector reform was drying out. International funding agencies shifted their attention to new issues making it more difficult for the local epistemic defense community to sustain their activities. Partly propagated by scholars associated with new think tanks, the view gained currency that military reform in Indonesia is essentially completed<sup>47</sup> and that from now on the main task of the military is to professionalize its operational capability by modernizing its equipment in line with the needs of modern warfare (Rahakundini Bakrie 2009). Such views have been corroborated by encroachments on Indonesia's natural resources and maritime zones by neighbors. Especially the conflict with Malaysia over the Ambalat Block in the Sulawesi Sea, a maritime region believed to be rich in oil and gas deposits, has aroused strong nationalist outbursts in the Indonesian media, the legislature and the public which in some cases reminded of the *konfrontasi* period in the mid-1960s. Even serious political magazines such as *Tempo* discussed the likelihood of a war with Malaysia and compared the military power of the two nations.<sup>48</sup> Nationalist groupings sprang up nationwide, mobilizing volunteers for the seemingly coming war with Malaysia and legislators joined the chorus of these organizations calling to "Crush Malaysia" (*Gayang Malaysia*).<sup>49</sup> Even less rhetorically radical legislators including those from the pro-Islamic PKS, while calling for restraint and diplomatic solutions, opted for military solutions in case Malaysia continues to what they regarded as violations of Indonesian sovereignty.<sup>50</sup> The conflict with Malaysia had several other facets including the putative discrimination of Indonesian labor migrants and a dispute over cultural infringements; in sum they exacerbated a widespread feeling in Indonesian society that internationally "the country punches below its weight."<sup>51</sup> This sense of frustrated entitlement, which called for a regional leadership role and a more assertive foreign policy in global issues, was another factor driving Indonesia's neo-nationalist discourse.

The resurgence of nationalism strongly favored the military which has always claimed for itself to be the vanguard of Indonesian nationalism. The persistent electoral gain of nationalist parties was further affirming the new normative consensus based on nationalism (Rüland 2009). Legislators and the armed forces converged on the belief that a strong military is essential to enable Indonesia to repel encroachments on its sovereignty and to play an elevated role in international politics. The persistent increases of the defense budget enacted by the DPR may have served to reduce the military's dependency on extra-budgetary funding, but they have also to be seen in the context of Indonesia's external challenges and leadership claims in international politics.

So far, the nationalist discourse did not jeopardize the post-Suharto democratic consensus. But it localized Indonesian democracy by dissociating it from liberal interpretations and bringing it back to the organicist traditions of Indonesia's cognitive prior. Nationalism revalued the TNI as a major institution in the Indonesian polity and, at the same time, discredited calls for military reform as a deliberate and, hence, anti-patriotic policy of weakening the nation's military force. With the new ideational platform on which legislators and the military establishment converged, further breakthroughs in terms of military reform are rather unlikely in the nearer future.

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46 Authors' interview, 15 April 2010.

47 Authors' interview, 15 April 2010.

48 *Tempo Interaktif*, 5 March 2005.

49 *Tempo Interaktif*, 5 March 2005, 14 March 2005 and 31 August 2010.

50 *Suara Pembaruan*, 3 March 2007 (accessed 13 July 2008) and 5 March 2007 (<<http://www.suarapembaruan.com/News/2007/03/05/Nasional/nas01.htm>>) (accessed 11 April 2008).

51 *The Jakarta Post*, 21 December 2009.

## 5. The Legislature and Military Reform in Nigeria

Analysis of legislature-military interactions in Nigeria follows the same sequential pattern as in the Indonesian case. We distinguish three phases of legislature-military interactions, starting with the period of regime change, followed by the institutionalization of the new democracy and finally the attempts to consolidate the new political order. For each of these phases, we have selected key issues of legislature-military interaction impacting on military reform which we present in the form of case studies. To get a better understanding of the normative obstacles military reform faces in Nigeria, we begin with briefly examining Nigeria's "cognitive prior," that is, the normative order prevailing prior to regime change.

### 5.1. The Nigerian "Cognitive Prior"

Like in the empires and kingdoms of pre-colonial Java, the separation of the military from politics is widely regarded as an alien and predominantly European idea imported to Nigeria after independence (Elaigwu 2011). Students of Nigerian history and politics have repeatedly argued that soldiers were always closely entangled in the politics of pre-colonial Nigerian kingdoms (Mazrui 1975; Uzoigwe 1977). In fact, it was basically military force which in pre-colonial times paved the way to power and which preserved power. In Nigeria, as in most other pre-colonial, traditional African societies, the average man was a potential warrior (Elaigwu 2011). Being a warrior commanded high social prestige. The ideal king was thus a great warrior. Lack of military power, on the other hand, was equated with the demise of a ruler and, by implication, his kingdom (Uzoigwe 1977).

The fusion of military and state structure in pre-colonial African kingdoms provided a similarly convenient legitimization for Nigerian military rulers and political soldiers than for the Indonesian armed forces. However, despite these constructions of pre-colonial legacies, military influence in Nigerian society was less deeply entrenched than in Indonesia. When Nigeria became independent in 1960, it did not have to fight for it. Thus, unlike the Indonesian armed forces, the Nigerian military could not claim that it was the creator of the nation and carve out for itself a political mission based on a particular ideology. Yet, the secession of the eastern parts of the country in 1967 and the subsequent Biafra War (1967-1970) provided the Nigerian military with the opportunity to proclaim for itself the role of the savior of the nation. In the war, the Nigerian army received a national character and galvanized into a *de facto* national army. Subsequently, the victory over the secessionists and the self-image derived from vintage modernization theory, that is, being the organization spearheading the drive for modernization, were at the root of an over-boarding claim to rule – or at least to have a major influence on policymaking – and a feeling of superiority over civilians. The latter was exacerbated by the short-lived interludes of civilian rule and the far from persuasive governmental performance of these civilian governments which were marred by ethnic strife, rampant corruption and economic decline. Many military officers thus despise civilians as best exemplified by the often used depreciatory characterization as "bloody civilians."<sup>52</sup> As the self-styled guardians of the nation's security the military and the professional managers of defense matters, the Nigerian military surrounded all defense-related issues with a cloak of secrecy. Removed from public scrutiny and immunizing themselves from the probes even of legitimate state organs, enabled the Nigerian

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52 Tell, 21 April 2008.

armed forces to establish a degree of corporate autonomy that may have been even larger than the one the Indonesian military was ever able to carve out for itself.

## **5.2. Absence of Contestation: Intra-Military Regime Change without Legislature (1998-1999)**

Political transition in Nigeria was triggered by the unexpected death of military dictator Gen. Abacha on 8 June 1998. As there was no legislature under military rule and civil society was muzzled by the brutality of Abacha's security forces, there was little space for "communicative action." The decision to hand over government to civilians was thus unilaterally taken by influential military leaders in consultation with former military heads of state following a 16-hours stormy deliberation inside the Provisional Ruling Council (PRC), the highest decision body through which the military under Gen. Abacha ruled Nigeria. The PRC members opted for two stars General Abdulsalami Abubakar instead of more senior officers, such as Lt. Gen. Jeremiah Timbut Useni or Lt. Gen. Bamaiyi, as interim head of state.<sup>53</sup> The choice of Abubakar signaled a move away from the Abacha's loyalist group, although his appointment was not accepted by all PRC members.<sup>54</sup> It appears that his very choice hints at an intra-military decision to hand over political power to civilians. Gen. Abubakar subsequently enforced May 29, 1999 as the deadline for an early power transfer in spite of tough intra-military pressures for delaying the process to October 1999 or even to the year 2000.<sup>55</sup>

Military elites had come to the conclusion that military rule had been deeply discredited by endemic human rights violations, momentous economic incompetence and rampant corruption, thereby accelerating the decay of the country that was noticeable already under previous military governments (Ihonvhere & Shaw 1998). Moreover, the Western world made political liberalization a precondition for Nigeria to access external economic and financial assistance so much needed. The transition was thus a self-interested decision of the military leaders, a tactical retreat motivated by the hope of being able to control the damage caused by many years of unbridled military rule and it was not the result of engaging in "communicative action" with any other political actor. In the absence of a public debate about the political future of the country, the military was able to embark on a unilateral strategy of change in which it rhetorically accepted democratization, but limited its actions on mainly mimicking (Western) democratic institutions and concomitant military reforms without changing its identity and normative foundations. The substantial rhetoric-action gap illustrated by the subsequent case studies is typical for this isomorphic behavior. The case studies also suggest that the feeble legislature emerging after the end of military rule in 1999 did little to challenge this attitude and largely also engaged in isomorphic behavior.

### **Abubakar's 10-months Transitional Program**

From a comparative perspective, the transitional period under Gen Abubakar corresponds to the period of regime restructuring in Indonesia under the presidency of Habibie. A range of political measures initiated by Gen. Abubakar in the months following the death of Gen. Abacha considerably relaxed the political atmosphere and prepared the reform of the political system. Abubakar's transitional regime thus differed markedly from earlier transition programs announced by military rulers which, however, had the only function to create a

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53 *The News*, 29 June 1998, pp. 11-17; *Tell*, 25 January 1999, pp. 16-19.

54 *Tell*, 25 January 1999, pp. 16-19.

55 *Tell*, 25 January 1999, pp. 16-19.

political order which would perpetuate their autocratic rule. The last such façade transitional program was announced by Gen. Abacha in 1995 which most observers believe pursued the objective of legitimizing his presidency through an election (Jega 2007).

Soon after taking over the interim government, Abubakar scrapped Abacha's earlier transition program. This decision was taken in the light of calls coming from the re-emerging, however after years of repression still feeble Nigerian civil society, but to an even greater extent as a result of external pressures. Tony Lloyd, for instance, the British deputy minister for African affairs, who met Gen. Abubakar shortly after his appointment on 27 June 1998, conveyed to him the message that EU sanctions would be eased only if political changes take place.<sup>56</sup> Similar diplomatic messages came from the U.S. too.

The Abubakar government subsequently released political prisoners (though not all) and enacted a new constitution paving the way to parliamentary and presidential elections in February 1999. With some revisions made by the Provisional Ruling Council (PRC), the new constitution was largely based on the 1979 Constitution, the charter in force during the democratic interlude under President Shehu Shagari (1979-1983). Even though the Constitutional Committee under the leadership of Justice Tobi organized country-wide consultations, the drafting process was often criticized as controlled by the ruling junta. The members of the Tobi Committee were handpicked and the junta also had the final decision on the provisions of the document. Finally, shortly before leaving office, Abubakar also repealed the repressive State Security Decree No. 2/1984<sup>57</sup> on the ground that it violates the 1999 constitutional provisions.<sup>58</sup>

All in all, one may conclude that the domestic pressures for democratization were much weaker in Nigeria than in Indonesia. There was no civil society driven reform movement staging demonstration on an almost daily basis. This also explains why under the Abubakar interim government the military did not embark on a unilateral internal reform program like the Indonesian armed forces with the *Paradigma Baru*. Gen. Abubakar's approach towards his own organization was a mixed strategy of appeasement and strategic action in favor of the military's retreat from politics. Soon after his installment, Abubakar dissolved the federal cabinet and appointed his own staff.<sup>59</sup> In order to secure the support of the armed forces for his transitional program, he toured military barracks, explaining why it is "imperative for the military to go back to its constitutional role of defending the territorial integrity of the country."<sup>60</sup> Part of his strategy to win the support of the armed forces for the civilian turnover was to ensure that the salaries of soldiers and officers were increased (Olonisakin 1999: 32). Gen. Abubakar had also set up a committee on the "Reorientation of the Armed Forces and the Police towards Enduring Democracy," which organized workshops in Abuja and the six geo-political zones of the federation<sup>61</sup> on issues pertaining to the welfare and adequate remuneration of the military, re-professionalization and the need for the armed forces to commit themselves to the democratic transition.<sup>62</sup>

The military's response to international pressures and the country's accelerating decay was thus basically isomorphic behavior. The interim government under Gen. Abubakar and the military paid lip service to democratic reforms and engineered the withdrawal of the armed forces from politics. But it made sure that the armed forces remained in firm control over the democratization process and that military reform would be hardly more than a

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56 *Newswatch*, 13 July 1998.

57 This Decree allowed for the discretionary detention of persons.

58 *Vanguard*, 10 May 1999, p. 3; *The Guardian*, 29 May 1999, p. 2.

59 *Newswatch*, 14 September 1998.

60 *The Guardian*, 27 November 1998, p. 11; *Newswatch*, 31 August 1998, pp. 17-19.

61 Nigeria is sub-divided into six major geo-political zones, among which political posts in the federation are shared: Southwest, Southeast, South-South, Northeast, Northwest and North-Central.

62 *Newswatch*, 7 June 1999, pp. 52-54.

token of reform. The Nigerian democratic transition thus exhibits the rhetoric-action gap characteristic for isomorphic behavior.

### **5.3. Absence of Legislature-Military Interaction under Democratic Transition (1999-2000)**

As previously discussed, the drive towards power transfer to a civilian government did neither lead to internal military reforms nor to legislature-military debates over the need to reform the Nigerian armed forces. The discourse on military reform during the regime change was restricted to the issue of the military's return to the barracks and re-professionalization. Nevertheless, no concept of reform or policy agenda was worked out and the public itself did not initiate any debates about this. Moreover, the momentum for internal military reforms got lost right after the Provisional Ruling Council (PRC) under Gen. Abdulsalami Abubakar handed over power to newly elected President Obasanjo. Some moves resembling a weak attempt to first generation military reforms were carried out by the executive. The following case study will discuss the extent of military reform as enforced by the new executive of President Obasanjo.

#### **Military Reform under Executive Dominance**

Contrary to the Indonesian legislature, the newly elected bi-cameral Nigerian National Assembly (consisting of a House of Representatives and a Senate) was only marginally involved in first generation military reforms. Most of the Nigerian reforms were initiated by the executive. Shortly after assuming office, President Obasanjo in a surprise move retired ninety-three high-ranking military officers.<sup>63</sup> All of them were considered "political officers" who had served the preceding military dictatorships as ministers, governors and military administrators.<sup>64</sup> The purge was a first head-on attempt to depoliticize and re-professionalize the armed forces. Ignoring the preferences of the incumbent service chiefs, Obasanjo also appointed a new military leadership. Unlike in the past, the majority of these officers did not come from the Hausa-Fulani dominated North, but belonged to minority ethnicities of the middle belt. With this choice, Obasanjo sought to pre-empt the instrumentalization of the military as a vehicle for the opposition of frustrated Northerners who regarded the election of a Yoruba-president from the Southwest as a threat to their traditional political hegemony. Obasanjo's defense minister Theofilo Danjuma, a former general, sought to civilianize the Defense Ministry by appointing civilian officials to top positions and proposed to reduce the force strength from an estimated 80,000 to 50,000, a plan from which he however had to retract due to strong resistance from the armed forces (Adejumobi 2000:32). Obasanjo also set up a Human Rights Investigation and Violation Commission in June 1999. The Commission, headed by Justice Chukwudifu Oputa and henceforth known as Oputa Panel, was tasked with investigating "the causes, nature and extent of all gross violations of human rights in Nigeria between January 15, 1966 and May 28, 1999."<sup>65</sup> Although the Panel gained much recognition for its tireless work in the 3 years of its existence, under strong political pressure by former military rulers, the Obasanjo government finally decided to lay to rest the Panel's findings, neither publishing them nor acting on them.<sup>66</sup>

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63 *Tell*, 28 June 1999, p. 20-29.

64 *Daily Times*, 11 June 1999, p. 1; *Tell*, 28 June 1999, pp. 20-29.

65 *Tell*, 16 August 1999, p. 25.

66 *Newswatch*, 17 June 2002, p. 15.

Another step to promote military reform was the government's hiring of Military Professional Resources Incorporated (MPRI), an American consultancy firm for military affairs (International Institute for Democracy and Electoral Assistance 2000:184). MPRI was tasked to devise a plan to civilianize the Nigerian military, to provide technical assistance, to conduct workshops on civil-military relations for military officers and civilians and to train Nigerian soldiers for peace keeping missions (Fayemi 2005:329; Garba 2008:186). Like in the reform measures mentioned above, parliament was neither involved in the decision of contracting MPRI nor in monitoring its activities (Fayemi 2002:17). The latter's mission, which was co-sponsored by USAID and the U.S. Defense Department, was highly controversial and opposition to it led to the early retirement of Army Chief Gen. Victor Malu (Yoroms 2005:179; Fayemi & Olonisakin 2008:262). In fact, it seemed that the decision to hire MPRI was largely a symbolic exercise, targeted at the audience abroad without much impact on military transformation.

The whole language of military reform and democratization represented a largely non-reflected and instrumental adoption of a foreign (Western) discourse on security sector reform<sup>67</sup> and democratic norms. Interestingly, the drivers of the reform rhetoric were retired and partly also active military officers who, in a strategic move instrumentally followed some of these new ideational prescriptions. Yet, it was a highly selective and superficial implementation of the Western discourse on military reform that could not lead to genuine internalization by the military. The pro-reform military elite skillfully evaded any public argumentative dynamics by successfully framing the issue of military reform as accomplished through the retreat from active politics and by omitting to bring up the issue of parliamentary control of the armed forces. The concept of military reform on which Obasanjo's moves against the Nigerian armed forces built was purely defined as executive control reminding of Huntington's concept of subjective control (Huntington 1957). Obasanjo's own apprehension and disregard of the Nigerian National Assembly was a good reason for not encouraging any debate on parliamentary control and oversight of the Nigerian military.

Moreover, by borrowing the Western language of reform, the executive could effectively prevent any substantial involvement of Western agencies and norm entrepreneurs in this field that could have impacted on ideational dynamics inside Nigeria. This contrasts to the Indonesian case in which foreign norm entrepreneurs were much more present and in a position to influence internal discourses on military reform and the legislature's role within it. In Nigeria the development of an epistemic defense community has been prevented by the tight grip over such expert and scholarly networks exerted by a limited number of military academic institutions (such as the National Defense College, the Military Academy in Kaduna and the National Institute for Policy and Strategic Studies in Kuru) which have fully controlled the discursive production of knowledge on the military in Nigeria until today. In addition, a culture of secrecy surrounding all military matters had been perpetuated by all stakeholders – executive, legislature and military – and, as it will be shown in the following case studies, was unsuccessfully challenged by civil society and scholars.

#### **5.4. "Entrapped" Legislature in Military-Executive Relations under Democratic Consolidation: A Case of "Isomorphic Behavior" (2000-2009)**

The fact that in Nigeria military reform was considered as essentially completed less than 2 years after regime change, raised major questions for the role of the legislature in civil-military relations. As the reforms discussed above were mainly of a mimetic nature and a

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67 On security sector reform, see Hänggi (2003).

formality, directed to the audience abroad, there was still much scope for the legislature to show “actorness” in military reform after first parliamentary elections were held and the Nigerian Congress came into existence in 1999. Especially in a presidential system of government with its sizeable legislative autonomy, the legislature can shape military reform in several ways. First, it can initiate a constitutional review process with the objective of strengthening civilian supremacy and democratic control of the armed forces; second, it can pass legislation advancing military reform and it can, third, build up supervisory capacities making it difficult for the military to insulate its reserved domains.

Yet, the contextual conditions for such actions of the legislature were less favorable in Nigeria than in Indonesia. Apart from the fact that major decisions about the re-civilianization of the military were made prior to the formation of a legislature, there was no civil society which would have agitated with the same fervor for the political emasculation of the armed forces as in Indonesia. Moreover, as far as it existed, civil society pressure for military reforms also subsided much earlier than in Indonesia, irrespective of the fact that many intellectuals, the media and civil society continue to harbor strong distrust towards the military. Moreover, like in Indonesia after 2004, lawmakers by and large shared the ideas of the military on national security in which the armed forces used to frame their reservations for a continuation and deepening of the reform process. In Nigeria, too, nationalism became the ideational bridge on which the norms of military leaders and lawmakers converged and which prevented them from competing over institutional arrangements related to military reform. In the subsequent case studies, we will provide empirical evidence for these claims by examining the legislature’s role in reviewing the 1999 Constitution, in debating and passing new military legislation and in overseeing the defense sector.

### **Evading the Military: Constitutional Debates and the Legislature**

As outlined above, the legislature had no role in constitutional change in Nigeria after the demise of the Abacha regime. In the absence of a legislature and a democratically mandated government, constitutional change was a process entirely in the hands of the military. Yet, even though the legislature may have been excluded from changing the political rules of the game prior to the transition, this does not automatically preclude the possibility of amending the constitution after regime change. This is what happened in Nigeria where the legislature indeed initiated repeated moves to amend a constitution which for many Nigerian democrats still had the odium of the authoritarian past (Nwanko 2003:95). Yet, these constitutional debates did only marginally touch upon civil-military relations.

Initiatives to reform the 1999 Constitution surfaced almost immediately after regime change. Much of the pressure for constitutional change came from the re-emerging civil society organizations which regarded the constitution as a remnant of the authoritarian past and a document undemocratically imposed on the Nigerian people. In the process, President Obasanjo appointed an expert commission under Clement Ebri, a former Governor of River State, to study amendments of the 1999 Constitution (Abia 2008:172), followed by the Nigerian National Assembly which established a bicameral review committee in 2001. However, civil society organizations seeking a more inclusive and participatory constitutional amendment process in the form of a Sovereign National Conference (SNC) strongly resented the prospect of the legislature with its seemingly vested interests spearheading the revision of the constitution.<sup>68</sup> Due to an intensifying dispute between the House of Representatives and the presidency over budgetary powers which soon escalat-

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68 *Comet*, 21 February 2001, p. 25.

ed into a personal power struggle between President Obasanjo and House Speaker Ghali Na'Abbas, the constitutional review process ended in deadlock in the 1999-2003 legislative term. While the executive rejected the proposal to set up a Sovereign National Conference, the president's opponents in the House supported the creation of the SNC as a tactical ploy to weaken the presidency even though the civil society's SNC proposal was explicitly directed against the legislature.<sup>69</sup> Thereafter, in each subsequent legislative term a new Joint Committee on the Review of the Constitution was set up, only to be taken hostage by disputes over protocol between the two chambers<sup>70</sup> or other, more pressing political issues of the day.<sup>71</sup>

Taking a closer look at the issues raised in the constitutional debates inside and outside the legislature, one realizes that none of these debates focused on civil-military relations, except for the government-installed Ebri Commission's proposal to include an article retroactively sanctioning *coup* makers (Abia 2008:172). Yet, while the commission's recommendations to make coup attempts punishable as an act of treason and to empower every Nigerian to resist coups (ibid.:172) found support in the legislature and the public, they were not enacted, notably due to controversies over the inclusion of a constitutional clause on a third term at the request of President Obasanjo (ibid.:172). Otherwise, the constitutional debates were dominated by issues not connected to civil-military relations such as federalism, the country's electoral system, the shift to a semi-presidential system, the immunity clause, revenue allocation, state creation and the separation of powers.<sup>72</sup>

Searching for explanations why civil-military relations played only a marginal role in the legislature's constitutional debates, we repeatedly encountered the view among legislators and scholars that in this point the Constitution is clear beyond doubt.<sup>73</sup> It putatively regulates the functions of the armed forces comprehensively so that – except for a strengthening of the anti-coup clause - there is no urgent need for constitutional amendments. This view precisely reflects the position of former President Obasanjo who speaking at a graduation ceremony at the National Defense College in July 1999 emphasized that the constitution is “the main and supreme document defining the role of the armed forces” (Yoroms 2005:178-179).

### **Military Legislation under Executive Dominance**

All major steps towards military reform were – as we have seen – initiated soon after transition. Thereafter, except for persistent admonitions of the military by government representatives to stay politically neutral, recognize civilian supremacy and re-professionalize, few serious additional initiatives to deepen military reforms were taken. One of them was the formation of a Military Transformation Committee in 2006 which was tasked “to change the mindset, capabilities, effectiveness, efficiency, training education, leadership and tradition of the military personnel.”<sup>74</sup> But neither parliament nor any other civilian was involved in the committee. This means that the military continued to consider reform as an exclusively internal affair with the assistance of the executive which effectively insulated such intra-governmental and intra-military debates from the scrutiny of both the Congress and public. It is thus hardly surprising that also National Defense Policy published by the gov-

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69 *Comet*, 23 February 2001, p. 25.

70 *This Day*, 21 October 2001, p. 30; *The Guardian*, 7 July 2003, p. 8.

71 *The Guardian*, 21 November 2008 <<http://www.ngrguardiannews.com>> (accessed 12 February 2009), *This Day*, 2 December 2008 <<http://www.thisdayonline.com>> (accessed 2 December 2008); *The Guardian*, 17 February 2009, p. 7.

72 *The Guardian*, 21 November 2008, <<http://www.ngrguardiannews.com>> (accessed 12 December 2009).

73 See also International Institute for Democracy and Electoral Assistance (2000:186).

74 *Tell*, May 2007 Supplement, p. 18 and authors' interview, 2 September 2008.



ernment in 2006 was drafted and passed without serious deliberation in the National Assembly. Like in the case of the Military Transformation Committee, the legislature was only briefed about the document by the Ministry of Defense and the Military Headquarters.<sup>75</sup>

In the absence of civil society pressures also the legislature did little to keep military reforms going. An exception was a committee set up by House Speaker Na'Abba in the 1999-2003 term to study the re-ordering of civil-military relations. The committee, chaired by a well-known academic, ultimately proposed four bills entrusting the military with developmental functions. Although the House of Representatives eventually passed the bills, there was no more time for the Senate to consider them before its term ended in early 2003. The newly elected National Assembly never tabled them again.<sup>76</sup> The bills were strongly associated with Speaker Na'Abbas, who had launched the most forceful of several impeachment challenges against President Obasanjo in August 2002 (Oyewo 2004:112). After surviving the challenge with the support of the Senate, Obasanjo did everything to thwart not only the re-election of Na'Abbas, but also to derail the latter's legislative program.<sup>77</sup> During the first term, the assertiveness of the Congress manifested in the confrontation with President Obasanjo and not in relation to the military.

Unlike military legislation in the Indonesian DPR, discussion of the four bills was hardly characterized by "competitive argumentation." Attitudes of lawmakers towards the military were much less critical than in the Indonesian case. They converged in beliefs strongly influenced by early modernization theory. Legislators and academic advisors viewed the military as the best trained, most coherent and best organized Nigerian institution the professional capacities of which should be harnessed for the society's benefit in fields such as engineering, construction, medical services and disaster management. For them the military knows much more about civil society than vice versa. They believed that such an extended mission would give the military dignity and distract it from political ambitions. By stressing the need to have a military with modern equipment and, hence, high fire power, these beliefs coincided with strong nationalist sentiments and great power aspirations widely shared by Nigerian politicians, intellectuals and the media.<sup>78</sup> It goes without saying that with these views they found an open ear among military leaders who despite paying lip service to civilian supremacy still regard the military as an exceptional institution in the Nigerian polity. While such views certainly had the positive effect of acquiescing the armed forces, they also paved the way toward a Nigerian version of *dwi fungsi* and argued for military's involvement in various policy fields, if not in politics. This at least may be concluded from the National Defense Policy published by the government a few years later. The document states that "The involvement of the military in the executive functions of government need not to be limited to membership of [...] defense/security bodies. Therefore, the expertise available in the military shall be harnessed in those areas that both the Executive and the National Assembly consider desirable" (Federal Government of Nigeria 2006:53). Behind such views was a strategy of appeasement of the military by organizing and legitimizing access, at least in principle, to economically rewarding activities.

In the 2003-2007 legislative term as well as in the current term, no military-related legislation of significance and with the prospect of becoming passed was initiated by the legislature. The National Assembly re-enacted the Nigerian Military Act, a decree first issued in 1993 under military rule, albeit without any parliamentary debate. Thereafter, only feeble voices have been heard in the National Assembly calling for a revision of the Military Act.<sup>79</sup>

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75 Authors' interview, 5 March 2009.

76 Authors' interview, 23 February 2009.

77 Authors' interviews, 23 February 2009, 2 March 2009.

78 Authors' interviews, 18 September 2008, 5 March 2009.

79 Authors' interview, 11 September 2008.

By the end of field work in March 2009, however, these overtures have not had tangible effects. Recently, the National Assembly also tabled a bill specifying the conditions under which the president is allowed to deploy troops for the purpose of quelling civil disturbances, which, if passed, would increase the oversight powers of the National Assembly on force deployment.<sup>80</sup> Another law renaming the National War College into National Defense College was mainly a symbolic exercise. A Freedom of Information Bill, legislation with the potential of significantly enhancing the supervisory power of the legislature and breaking the habit of the armed forces of hiding behind an aura of secrecy, was tabled by the first House of Representatives after the return to civilian rule as early as 1999 but enactment was prevented by presidential veto and a skeptical Senate.<sup>81</sup>

Other issues at least temporarily strongly contested between the legislature and the military in Indonesia prior to the post-2004 stalemate on military reform, have not come on the agenda of the legislature in Nigeria, partly because at least on paper they were less ambiguously regulated and partly because they did not exist to the same extent as in Indonesia. Crimes committed by military personnel, for instance, are tried by civilian courts and military court decisions are subject to Supreme Court review. Formal military business is not as extensive as in Indonesia. Even so, retired military officers are deeply entrenched in many business sectors and illicit income generation through oil bunkering and other forms of racketeering likewise constitutes a major problem only occasionally discussed by the legislature.<sup>82</sup> There is also no territorial defense structure which would require restructuring.

### **National Security First: Oversight without Insight**

If the influence of the Indonesian parliament on military procurement was generally low, the Nigerian National Assembly was even less able to exert control over purchases of military equipment. The latter are largely controlled by the service chiefs and to a lesser extent by the Chief of Defense Staff and the Defense Ministry. Changes in procurement rules under the democratic regime are thus mainly procedural. Unlike before, military representatives are now obliged to appear before the defense-related committees of the National Assembly and defend the need for the envisioned acquisitions and their costs. Yet, even though a military unused to public oversight initially found parliamentary hearings offending, the impact of the legislature on actual procurement decisions is very limited. Until publication of a National Defense Policy or White Book in 2006, the legislature virtually lacked criteria to evaluate the envisioned purchases (Yoroms 2005; Omitoogun 2006). But an even greater obstacle for effective parliamentary control of military procurement is the habit of the armed forces to withhold essential information from the legislators on the ground of national security concerns.<sup>83</sup> Even more than in Indonesia, the legislature is virtually powerless when the military resorts – in the Obasanjo era often with the support of the presidency via an executive order (Omitoogun 2006:258) – to financing military equipment from extra-budgetary sources. Especially the Nigerian military's frequent and extensive peace-keeping missions have often been financed from extra-budgetary sources (Omitoogun 2003:86).

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80 *Leadership*, 25 February 2009, p. 35; *Daily Independence*, 25 February 2009, p. 1.

81 *The Guardian*, 3 March 2005, pp. 18-19, 18 November 2008; *The Punch*, 16 November 2006, p. 7; 17 November 2006, p. 7, 18 November 2006, p. 10, 30 April 2008; *Leadership*, 4 June 2008; *The Lawmaker*, Vol. 9, No. 193, 2nd Half June 2008, p. 23; *Legislative Digest*, Vol. 2, No. 1, July 2008, p. 14; *This Day*, 14 September 2008, p. 115; *Vanguard*, 15 September 2008, p. 14.

82 Authors' interview, 29 August 2008; *Tell*, 21 April 2008. See also Okonta (2005:204).

83 Authors' interviews, 29 August 2008, 2 September 2008, 11 September 2008, 12 September 2008, 18 February 2009, 23 February 2008, 24 February 2009, 12 March 2009, 10 March 2009.

In our research we encountered only one publicized case in which the National Assembly was able to block purchases of military hardware. According to Garba, in October 2002 the National Assembly refused to appropriate some N55 billion for the purchase of ammunition. The legislature feared that the executive had belligerent intentions after the International Court of Justice had ruled in favor of Cameroon in the dispute over the Bakassi peninsula (Garba 2008:183). While we cannot discount the possibility that parliamentary scrutiny may have influenced other procurement decisions in more discreet ways (although we have not found evidence for it), the main difference to Indonesia is the National Assembly's inability or unwillingness to publicize procurement irregularities. Defense committee meetings take place behind closed doors and only terse and unreliable information often provided by anonymous sources reaches the public via the media.

Most of the committee work concentrated on the *defense* budget by screening the budgetary proposals of the Defense Ministry. Yet, the ability of the legislature to supervise the military budget effectively is severely hampered by a number of factors. First, budgetary data are often submitted late to the National Assembly, giving the legislators only short time to scrutinize the figures (Hettmann & Mohammed 2005:23). Second, the data often come without explanation and only with rudimentary cost estimates. Legislators, for instance, regularly approve the expenditures of the armed forces for personnel, without knowing the precise troop strength (Omitoogun & Hutchful 2006:175). And, third, to an even greater extent than in Indonesia, the legislature is unable to control actual defense spending. Nigeria's auditing laws are outdated, full of loopholes, and the Auditor-General is a political appointee of the presidency and hence lacks discretion in his judgments. President Obasanjo's decision not to reappoint a recalcitrant auditor-general in February 2003 was precedent setting in this regard. The decision came in response to a report critical of government spending which the auditor-general had dared to submit to the legislature (Oyewo 2004:117). Aggravating the legislature's predicament is the late submission of auditing reports which usually come two or more years after the end of the respective fiscal year (Omitoogun & Hutchful 2006:162-168). Moreover, military spending from extra-budgetary sources and secret funds is not included in the auditing reports.

Inspection tours may be popular among legislators, because they entitle them to generous allowances, but as already argued in the case of Indonesia, they are hardly an effective method to uplift the legislature's supervisory performance. The weak supervisory power of the legislature is evidenced by the fact that only between 30 and 50 percent of the approved budget is actually implemented.<sup>84</sup> Cases where the executive withholds funds earmarked by the legislature are widespread. It is public knowledge in Nigeria that the heads of agencies only reluctantly release the appropriated funds and often bag the year-end's surplus for private enrichment.<sup>85</sup> As this practice constitutes a cascade reaching from the top to the lowest level of an agency, one can imagine why very little government funding reaches the grassroots level and why complaints about the dilapidated state of military barracks and the poor living conditions of ordinary soldiers outside the big cities persist (Fayemi 2002:115; Omitoogun 2003:86).<sup>86</sup> It is under these circumstances no surprise that many observers rated the legislature's control over the defense budget very low in the initial years of the new democracy. Yoroms, for instance, concludes that the "defense budget since 1999 has been approved without serious and critical oversight" (Yoroms

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84 Authors' interviews, 10 March 2009 and *The Punch*, 27 December 2004, p. 20.

85 Authors' interview, 3 March 2009.

86 For the recurring theme of dilapidated barracks, see *Tell*, 14 May 2001, p. 29 and 21 January 2002, pp. 28-31; *Newswatch*, 10 June 2002, pp. 48-56; *This Day*, 3 June 2006; *Nigerian Tribune*, 20 August 2008, p. 30; *Defense Newsletter*, June-September 2000, p. 50-51.

2005:192) and Omitoogun rates Nigeria as one of five African countries with low adherence to good budgetary practices (Omitoogun 2006:258).<sup>87</sup>

Apart from budget control there were certainly other areas of oversight in which the legislature engaged. In November 1999, the Senate conducted an investigation of the deployment of military troops to the village of Odi in Bayelsa State which followed the killing of twelve policemen in a local conflict. The military intervention resulted in great physical destruction and up to 500 civilians died. Despite the creation of an *ad-hoc* committee investigating the killings,<sup>88</sup> the Senate played only a minor role in the ensuing public debate over military abuses as the virtual non-existence of press reports on the Senate activities shows. Moreover, Senate criticism was more directed against the President's constitutional right to deploy troops in cases of emergencies than against military brutality *per se*. The House passed a resolution against the troop deployments to Bayelsa State<sup>89</sup> and ordered the Committee on Defense to investigate the case. However, parliamentary records do not disclose anything about the committee's findings and the case did not seem to have resurfaced on the plenary agenda. Three years later, the House instrumentalized the Odi case, together with a similar, subsequent case of military abuses in Zaki Biam (Benue State) in its impeachment bid against President Obasanjo. Again, at center stage of the critique was the President, not the military. This was hardly surprising as, at the same time, the House opposition against Obasanjo silently sought to lobby the military for supporting Obasanjo's impeachment.<sup>90</sup> Odi and Zaki Biam ceased to be on the parliamentary agenda after the impeachment bid against Obasanjo was eventually derailed. The power struggle with the presidency left the legislature weakened as the president tried to install a more loyal House leadership in the coming legislative terms.

Also in recent years the oversight performance of the Nigerian legislature did not improve significantly. Supervisory functions are still way below the level needed for establishing a solid base for second generation military reforms. Like in the past, defense-related committees spent most of their time for budget scrutiny. The House Committee on Defense's decision to return the 2009 draft defense budget to the Ministry of Defense for 2009 for revision and re-submission was a rare departure from previous docile behavior. Whether this signals a more assertive stance of the committee towards the ministry remains to be seen.

Yet, many of the problems haunting effective budgetary oversight persist. Most of the scrutiny concentrates on secondary issues such as arrears of the armed forces, their electricity bill, medical allowances and rent subsidy.<sup>91</sup> Other questionable practices known from the past also continue unabated. One such practice is that committees of the National Assembly conduct budgetary and other inquiries *surplace* at the Defense Ministry and the Military Headquarters. While legislators argue that the visit provides them with additional first-hand insights,<sup>92</sup> the fact that such hearings are sponsored by those to be scrutinized (Garba 2008:188) does not augur well for the independence and rigor of the inquiry. After all, the practice that legislators accept favors from agencies they are supposed to supervise seems to be widespread.<sup>93</sup> Even worse is the often alleged practice of legislators to extol money from members of the executive who need legislative endorsement for their ap-

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87 The other countries, Omitoogun names are Ethiopia, Ghana, Kenya, Mali (Omitoogun 2006:258.).

88 The Senate, Federal Republic of Nigeria, Debates, Fourth National Assembly, First Sessions, Monday 11th October, 1999 to Monday 20th December 1999, Volume II, Thursday, 25th November, 1999, Militarization of Bayelsa State and Niger Delta Areas and Wednesday, 8th December 1999, Senate Ad Hoc Committee visits Odi, pp. 197-198.

89 Federal Republic of Nigeria, House of Representatives, Federal Republic of Nigeria. Votes and Proceedings, Fourth Assembly, 3rd June, 1999 – 8th June, 2000, Tuesday, 30 November 1999; 6. Deployment of Soldiers to Bayelsa State, pp. 197-198.

90 Authors' interview, 5 March 2009. See also Nwolise (2002:335) and Newswatch, 2 September 2002, p. 19.

91 Ibid.

92 *Nigerian Defense Magazine*, 3rd issue 2007, p. 43.

93 *The Lawmaker*, Vol. 6, No. 125, 2nd half August, 2005, p. 25.

pointment or seek approval of their budget proposal.<sup>94</sup> Even if charges in this respect have not been aired publicly in the case of the defense-related committees, the mere existence of such practices in the House discredits the National Assembly as a supervisory body.

Moreover, in the absence of a credible auditing process, budgetary oversight remains a largely futile and symbolic exercise with little effect on the actual spending behavior of the Nigerian armed forces. Yet, to the credit of the National Assembly it must be said that the House of Representatives recently targeted these problems and pressured agencies with a budget surplus at year-end to return the unspent money to the Ministry of Finance.<sup>95</sup> Whether the House is able to sustain this agenda or whether it is only a smart public relations stunt of its Speaker to shore up his public image, remains to be observed in the future.

So far, the Nigerian legislature also tacitly accepted the practice of the president of appointing the service chiefs without consulting the National Assembly (Garba 2008). It even seems that until the issue was brought up by a disgruntled military officer and a Lagos-based lawyer in August 2008,<sup>96</sup> the National Assembly was not even aware of this right, which is granted to it by Article 20 of the Military Act. Legislators interviewed argued that the public scrutiny of the designated defense chiefs would unnecessarily politicize military promotion.<sup>97</sup> This shows that legislators adopt the rhetorical frames by which the military legitimizes their exclusion from information flows and oversight.

Apart from budgetary oversight, much of the committee work concentrates on the hearing of petitions submitted by aggrieved retired military officers complaining about unjust dismissal or non-payment of pension funds. The latter is a persistent problem in the light of thousands of prematurely retired soldiers. Soldiers are retired if they do not pass promotion exams, on disciplinary grounds without being cashiered, when the armed forces decide that the services of an officer are no longer required, for medical reasons or if they have merely been bypassed in the promotion process by junior officers (Yesufu 2005:53-54). But while prematurely retired senior officers usually settle in private business, lower ranking officers often end up stranded in unemployment. The National Assembly has responded to the problem, which in some cases led to violent protests of the retirees, by passing resolutions calling on the government for a quick settlement of the problem. Unfortunately, however, as the recurrence of the problem demonstrates, these resolutions had no tangible and lasting effect.

Similarly proliferative is the habit of the National Assembly to exert oversight through resolutions. The latter are usually derided by the public as instruments without teeth and largely ignored by the targeted government agencies. In conclusion it is thus evident that the National Assembly is far from reaching the supervisory capacity needed to serve as foundation for second generation military reforms.

### **The Stalemate Persists: The Nigerian National Assembly between Self-Aggrandizement and Isomorphic Behavior**

The limited contribution of the Nigerian legislature to first generation military reforms has often been excused with the legislature's late start among the country's major political institutions. In an interview with *Newswatch Magazine*, former Senator Udoma complained

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94 See Garba (2008:197) and *Newswatch*, 15 November 2004, pp. 14-23; *The Guardian*, 23 March 2005, p. 1.

95 *Daily Trust*, 4 September 2008, p. 1; *The Nation*, 20 February 2009, p. 31; *Tell*, 23 February 2009, p. 29; *Vanguard*, 27 February 2009, p. 1.

96 *The Guardian*, 9 June 2008.

97 Authors' interviews, 24 February 2009, 2 March 2009.

that when the legislature started, “there were not enough offices, offices were not furnished, and there was no parliamentary staff.”<sup>98</sup> While this may be true, a greater obstacle was the absence of a legislative culture, ethics, procedural routines and expert knowledge in areas such as budgeting and lawmaking. Neither did the highly fragmented and unwieldy committee system boost the National Assembly’s legislative and supervisory performance. Mainly for patronage reasons, there are no less than eighty committees in the House of Representatives and fifty-four committees in the Senate, often with overlapping functions. Four of the House committees deal with *defense* and eight with security issues, while in the Senate three committees cover defense and five security matters. Most legislators are members of five to six committees,<sup>99</sup> greatly limiting their ability to contribute meaningfully to committee proceedings and to build up expertise. Compared to the Indonesian DPR’s first two terms after the transition to democracy (1999-2004 and 2004-2009), there are fewer lawmakers in the Nigerian National Assembly who have specialized on defense issues. The highly hierarchical structure of the committees, vesting disproportionate powers and resources in the committee chairmen, and the fluctuating membership of the committees further weaken their effectiveness. Defense-related committees also meet less frequently than Komisi I in the DPR, expert support for the committees is less elaborate and committee meetings are usually ignored by the media and the public. Hearings take place but in most cases do not include members of academia, partly due to the aura of secrecy in which the military shrouds defense issues, and partly because they are believed lacking expertise in military affairs, an image that military officers also convey to the legislators.<sup>100</sup> Moreover, with the bi-cameral structure of the Nigerian Assembly, the Senate often acts as an additional veto player which slows down lawmaking.

While these problems may explain some of the Nigerian legislature’s shortcomings in the field of military reform, they are definitely not a question of resource shortages. Despite a fierce dispute with President Obasanjo the National Assembly defended its right to prepare its budget. It has thus defended greater resource autonomy than the Indonesian DPR which is entirely dependent on government budgeting (Sherlock 2003:28). Right from the beginning the National Assembly clashed frequently with the executive over the budgets it appropriated for itself which the president considered as utterly extravagant (Aiyede 2005:79). A comparison with the Indonesian DPR’s resources shows that the National Assembly was indeed lavishly funded. While the DPR had a budget of approximately US\$211 million in 2009 and US\$240 million in 2010,<sup>101</sup> the Nigerian National Assembly received approximately US\$933 million in 2008<sup>102</sup> and US\$741 million in 2009,<sup>103</sup> a five to sevenfold increase since 2000 (Aiyede 2005:79). This is at par with the budget of major federal ministries as a comparison with the defense budget suggests: In 2009, for instance, the legislature appropriated US\$1.30 billion for defense.<sup>104</sup>

On first sight, this seems to suggest that the National Assembly has abundant resources to build up a well-functioning parliamentary support infrastructure. Yet, numerous accounts show that over 80 percent<sup>105</sup> of its budget is allocated for personal emoluments of the legislators.<sup>106</sup> Legislators justify their enormous remunerations and benefits with “the need for a living wage to ensure honesty and dignity of the office holders.”<sup>107</sup> No wonder, with the

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98 *Newswatch*, 7 July 2003, pp. 16-21, see also Aiyede (2005:76).

99 See the documentation in the *Newswatch* Magazine series “Know your Legislator,” December 2007.

100 Authors’ interview 13 March 2009.

101 *Media Indonesia*, 12 April 2010, p. 3.

102 *The Lawmaker*, Vol. 9, No. 192, 1st Half June 2008, p. 13.

103 *Tell*, 25 January 2008, pp. 52-53.

104 *Ibid.*

105 *The Lawmaker*, Vol. 9, No. 192, 1st Half June 2008, p. 13.

106 *Tell*, 13 May 2002, p. 28.

107 *Ibid.*

material stakes thus high, that legislative elections have been criticized as fraud-ridden and unfair.<sup>108</sup>

The legislature's credibility is further eroded by a string of scandals shaking the institution from its very beginning in 1999. These include forgery of educational qualifications, indiscriminate waste of public funds for status symbols and patronage purposes and money politics. The latter is endemic in the race for legislative leadership positions.

Summing up, the malfunctions of the Nigerian legislature were much less caused by resource constraints than by an abundance of resources. Overall, the problematic internal structure, dominance of the ruling People's Democratic Party (PDP), the latter's centralistic and hierarchical structure, re-election ratios of only about 20 percent, high fluctuation of committee membership, rivalry between the two chambers of the legislature and a prevalence of money politics have strongly compromised its legislative and supervisory performance.

Resulting from the fact that first generation military reform became deadlocked as early as by 2000, in Nigeria the road towards *second generation* reforms is longer and thornier than in Indonesia. The National Assembly's contribution to complete first generation military reforms and to initiate second generation military reforms is strongly circumscribed by its isomorphic behavior which largely recognizes the military's normative foundations, even if in the more recent past signs of a more assertive behavior could be observed. However, the latter is still too feeble as to go beyond a rather shallow process of supervision and to enter into "competitive argumentation" over more advanced military reforms.

The generally docile attitude of Nigerian legislators towards the military is reinforced by a similar nationalist discourse as in Indonesia. Nigerian politicians also often propagate visions of Nigeria as a Great Power. Like in Indonesia, claims for Great Power status are driven by a sentiment of frustrated entitlement and chiefly rest on the country's size and large population. It is exemplified in Nigeria's extensive participation in peace-keeping missions which magnify the country's international status and, at the same time, require a strong and effective military organization. Not unexpectedly thus, Nigerian legislators have been similarly accommodating as their Indonesian counterparts in approving considerable increases of the defense budget, even though the latter is – like in Indonesia – hovering around a low level of only approximately 1 percent of the GDP (Fayemi & Olonisakin 2008:253).

Apart from this, Nigeria faces similar security threats as Indonesia. There is perceived encroachment on Nigerian territory by neighbors like in the case of the Bakassi peninsula and there are major internal security disturbances such as the recent ethnic and religious unrest in Jos, Bauchi and Maiduguri, terrorist attacks and the protracted rebellion in the Niger Delta. All this, too, requires a strong military. Given the long period of military rule, the military's legacy as guarantor of national unity, which draws from its victory in the Biafran secession war and the seemingly better training of military officers, have created an inferiority complex among civilian politicians which stifles a more vocal call for additional reforms.<sup>109</sup> And, even more than in Indonesia, there is the ubiquitous retired military officer who is well entrenched in local politics, business and the legislature. These persons, though not necessarily identifying with the corporate interests of the incumbent military leadership, due to their professional knowledge also markedly influence parliamentary

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108 To be fair, it should however be noted that despite shortcomings and election-related violence the 2011 elections were far more credible than the previous elections. See Nigeria: Final report - General elections April 2011, European Union Election Observation Mission: 2011 General Elections - Foundation for Further Democratic Development, <<http://reliefweb.int/node/405296>> (accessed 28 August 2011).

109 For a similar argument, see Hettmann & Mohammed (2005:25).

interaction with the military thereby exacerbating the latter's docile behavior. Isomorphic behavior remains entrenched in the legislature as long as former generals such as Senate President David Mark can publicly claim that "only soldiers have the discipline to nurture the nation's fledgling democracy. The core civilians are lazy and dull. An army sergeant is more intelligent than a university graduate" (Amaike 2007:192).<sup>110</sup> Such statements and others where legislators openly called for the military to take over in times of crisis such as Senator Waku in an interview with *Tell* magazine were not heard of publicly in Indonesia.<sup>111</sup>

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110 See also *Tell*, 25 June 2007, pp. 43-45.

111 Federal Republic of Nigeria, House of Representatives, Federal Republic of Nigeria. Votes and Proceedings, Fourth Assembly, 3rd June, 1999 – 8th June, 2000, Tuesday, 1 February 2000; 4. Matter of Urgent Public Importance. Call for Military Intervention, p. 296.



## 6. Conclusion

Our comparative analysis stressed the centrality of interaction as a causal mechanism determining actor constitution and institutional change. Our findings revealed that different patterns of legislature-military interaction emerged in Indonesia and Nigeria. This is the result of variation in the way “causation” had worked both in our synchronic (between-cases) and diachronic (within-cases) comparisons as well as with regard to substantive issue-areas constitutive of parliamentary-military interaction. We argued that causation processes are contingent on past dependencies, conditions of interaction, and ideational resources informing both actors’ arguments and “intersubjective structures” prevailing in “cognitive priors” and established norms. We will further present these multiple variances in the constitution of parliamentary “actorness” with regard to military affairs in Indonesia and Nigeria according to time, issue-areas and modes of interaction.

The time analysis showed that the three phases – regime change, transition, and democratic consolidation - do not perfectly overlap although they can be identified both in Indonesia and Nigeria. No perfect time overlap shows that there is a different weighting of factors and causation dynamics shaping actors’ constitution. For instance, the phase of regime change was quite short in Indonesia, leading to a breakup of the hegemony of the 32-year old autocratic Suharto regime, which was hastily followed by a “pacted” transition under President Habibie. Nigeria did not experience this kind of breakup, but after the unexpected death of military dictator Abacha it entered a pretty long period of regime change of about 10 months under General Abubakar during which the military had systematically, without much public debate and in coincidence with its corporate interests, organized the *de facto* power handover to civilians. The conditions allowing the Nigerian legislature to directly engage in “communicative action” with the military or to provide an arena of interaction for political opposition, public and expert communities to challenge the the military and old normative grounds were not in place as, at the time of regime change, Nigeria had no parliament at all. Moreover, variation also exists with regard to the role of the military in the *ancien regime*. While in Indonesia the military was the main associate and guardian of Suharto’s autocracy, the military in Nigeria became the sole ruling class enjoying absolute control over the country. This created from the onset an unchallenged powerful position for the Nigerian military in re-structuring the political system during the regime change. This situation is not matched by the Indonesian military prior to 1998. Here, the military had shared power with other sections of the political elite and already found itself under strong domestic and international critique throughout the 1990s, so well before the downfall of Suharto. Therefore, the Indonesian military experienced a situation of competition with other elite groups and contestation by the public prior to regime change which laid down the necessary conditions for “communicative action” and “competitive argumentation” to manifest.

Furthermore, the second phase of transition was considerably longer in Indonesia than in Nigeria. This is of extraordinary relevance because, presumably, this is the phase of most intensive interaction on substantive issues of military reform and political re-structuring with major impact on the last phase of democratic consolidation. In Indonesia, it may be subdivided into a first highly dynamic period of 3 years (1999-2002), followed by another 2 years (2002-2004) of slow down and obvious shift into stalemate. Indonesia thus took about 5 years of intense “competitive argumentation” between DPR and TNI for achieving important military reforms. In marked contrast to Indonesia, Nigeria experienced only a very short phase of just a few months of military reform under President Obasanjo in 1999, when the Nigerian executive implemented a number of reforms without any involvement of

the legislature or other societal and expert actors. However, our findings illustrate that there is considerable gap in the quality of these reforms in Indonesia and Nigeria. Moreover, parliamentary “actorness” in the military reform process during the transition phase is diametrically opposed. While the Indonesian parliament was quasi the “maker and pusher” of military reforms, also due to the influence of non-parliamentary pro-reformist forces, in advisory capacity, on legislative decision-making and deliberation process, the Nigerian Congress was largely side-tracked by President Obasanjo’s grip on the military reform process.

Finally, the third phase of democratic consolidation is in both cases characterized by stalemate of military reform leading to an unfinished implementation of first generation reforms and the impossibility to embark on second generation reforms which would have solidly entrenched parliamentary “actorness” in military affairs. However, the deadlock manifests in different ways.

Variation also exists with regard to substantive issues constitutive of legislature-military interaction in Indonesia and Nigeria. These issue-areas include: constitutional review and inclusion of constitutional provisions forbidding military’s political involvement, military reform legislation, supervision and involvement in debates on defense policy and past human rights abuses by the military or the military re-professionalization. With the exception of thin supervision of military budget and military operations in internal and international contexts, the Nigerian Congress had no significant contribution to any other aspect of military reform or democratization of the political system. These dimensions of military reform were addressed to a certain extent in Nigeria too, but primarily by the executive or the military itself. In sharp contrast to the Indonesian parliament, the Nigerian Congress thus dispelled almost no “actorness” at all with regard to substantive issues of military reform and defense affairs. Nor can formal supervision discarded of any critical or investigatory spirit by Nigerian Congress constitute a serious claim to parliamentary “actorness.”

The military reform in Nigeria is the result of isomorphic adaptation to foreign norms by the military itself and the executive which has precluded any substantial legislature-military interaction from emerging. It is precisely this absence of interaction that explains the poor performance of the Nigerian Congress in developing “actorness” capacity in military affairs. Moreover, even though military reform stalemated in both countries during the last phase of democratic consolidation, the meaning of deadlock for the degree of parliamentary “actorness” has to be differently weighted. The activism and involvement of the Indonesian parliament in the military reform has created a solid political culture of legislative control and it has legitimized public scrutiny and transparency over military affairs. Moreover, it has relaxed Indonesian military’s reluctance to communicate with legislatures and non-governmental epistemic groups. In spite of the new normative convergence between legislature (as well as broader public opinion) and military on nationalist grounds due to “constitutive localization,” there is undoubtedly an important consciousness of entitlement by DPR to own the right of interference in military affairs and containment of TNI’s ambitions to institutional autonomy. We can thus speak of a level of “parliamentarization” of military affairs in Indonesia while a similar performance is not yet matched by the Nigerian Congress. Abstracting from our findings following propositions may be derived for generating hypotheses for further research on a broader case basis and/or quantitative analysis.

- 1.) Legislatures do matter in the process of advancing military reform. But their impact is conditioned by several factors. One important factor is the mode of transition from the erstwhile authoritarian regime to a democratic order. Chances that the legislature becomes a major player in military reform increase, if a legislature existed before regime change, if this legislature was more than a mere rubber stamp, if it had developed a viable institutional infrastructure and if it had a role in the process of transition. Moreover, the absorption capacity of legislatures towards reformist ideas through establishing formal but also informal institutional channels of communication and exchange with broader societal and political actors (civil society, media, epistemic communities, extra-parliamentary opposition), especially throughout the transition period, are factors supportive of the capacity of legislatures to become actors in the process of military reform and oversight. The increasing anti-reformist and *status-quo* attitude of the Indonesia DPR in the third phase of parliament-military interaction are indicative of a loss in its informal capacity and disposition to integrate extra-parliamentary pro-reformist views and policy aims. Instead, the same informal channels have been increasingly utilized by the military in order to ensure its insulation from democratic control and transparency.
- 2.) If new foreign and old local ideas clash in a situation of acute crisis, they may trigger a process of “communicative action.” As “communicative action” is highly conditional, the prospects for an immediate wholesale normative transformation of the older order and thus far-reaching and comprehensive military reform are quite dim.
- 3.) More likely is it that in a situation of severe crisis and/or great insecurity “communicative action” facilitates an agreement among actors that a major institutional change based on a new normative foundation is required to cope with the situation. As the normative consensus is preliminary and disagreement over institutional arrangements of the new order prevails, a process of “competitive argumentation” ensues which is characterized by compromises between the legislature and the military protagonists and which enable partial progress towards military reform.
- 4.) If the new democracy faces major problems in consolidating (that is, when the expectations associated with the new order do not materialize, if major international context factors change in favor of the military or if the civilian politicians reinvigorate the military establishment through instrumentalizing the armed forces in power struggles), the likelihood increases that the scope for compromise on the part of the military is exhausted. A stalemate in legislature-military interactions emerges. In this case several paths of action are possible: Under favorable conditions a resumption of “competitive argumentation” and the continuation of military reform is possible. Another possibility is that “competitive argumentation” degenerates into “controversial argumentation” or “pseudo argumentation,” which may initiate a phase of political instability and turmoil, a process which may end in an authoritarian reversal. However, given the high costs of such an option, it is more likely that the protagonists search for a new normative consensus.
- 5.) Such a normative accommodation is most likely if protagonists agree on a fusion of old and new ideas. This localization revalidates older norms, but does not undermine the earlier consensus for ending authoritarian rule and establishing a democratic regime. Yet, it weighs the institutional arrangements in favor of the military, preserves some or many of its reserved domains and ends the process of military reform for the more immediate future.

- 6.) Where the military was deeply entrenched in society, where weak parliamentary foundations exist, where due to external pressures a reform movement driven by civil society reform is non-existent or weak, and where regime change was a basically unilateral decision by the *ancien regime* (including the military), there is a great likelihood that the exponents of the *ancien regime*, but also the newly emerging elected representatives, basically content themselves with isomorphic behavior. They mimic democratic institutions and military reform without markedly changing the “cognitive prior.” The legislature’s impact on military reform is very limited in such a case.

## List of Abbreviations

ASEAN	Association of Southeast Asian Nations
ABRI	Angkatan Bersenjata Republik Indonesia (Indonesian Armed Forces)
BPK	Badan Pemeriksa Keuangan (State Auditing Board), Indonesia
DPR	Dewan Perwakilan Rakyat (Indonesian Parliament)
DPRDs	Regional Representative Bodies, Indonesia
EU	European Union
GAM	Gerakan Aceh Merdeka (Free Aceh Movement), Indonesia
GDP	Gross Domestic Product
IMF	International Monetary Fund
Komisi I	Parliamentary Commission for Foreign Affairs, Communication and Defense, Indonesian Parliament
Maj. Gen.	Major General
MPR	Majelis Permusyawaratan Rakyat (Consultative People's Assembly), Indonesia
MPRI	Military Professional Resources Incorporated, US
PAN	Partai Amanat Nasional (National Mandate Party), Indonesia
PDI	Partai Demokrasi Indonesia (Indonesian Democrat Party)
PDI-P	Partai Demokrasi Indonesia-Perjuangan (Indonesian Democratic Party of Struggle), Indonesia
PDP	People's Democratic Party, Nigeria
PDS	Partai Damai Sejahtera (Prosperous Peace Party), Indonesia
PKI	Communist Party of Indonesia
PPD	Democratic Vanguard Star, Indonesia
PPP	Partai Persatuan Pembangunan (United Development Party), Indonesia
PRC	Provisional Ruling Council, Nigeria
SNC	Sovereign National Conference, Nigeria
TNI	Tentara Nasional Indonesia (Indonesian Armed Forces)
TSTB	Supervisory Team for the Transformation of TNI Businesses, Indonesia
UN	United Nations
US	United States
USAID	United States Agency for International Development

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