

The role of Parliaments in Intelligence Reform and Governance: The Case of North Macedonia



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Introduction

In 2015, Macedonian society was shaken by a massive wiretapping scandal. Hundreds of telephone conversations released online revealed that some 20,000 government and opposition members, journalists, civil servants, businesspeople, and activists had been unlawfully monitored for years. The scandal exposed the complete and spectacular failure of political, judicial, and security institutions to control the use of intrusive powers. It led to mass protests, triggering snap elections that ended the decade-long reign of the country's largest right-wing party. Importantly, it also initiated a profound transformation of the security sector, driven by the need to restore accountability and public trust. Reforms in this sector have been followed and encouraged, and at times even required, by the European Commission in the context of the larger (and longer) Euro-Atlantic integration effort of North Macedonia, which began in 2005.

In North Macedonia today, the normative and institutional foundations of good security sector governance (SSG) are largely in place. Security and justice sector reforms have shifted the focus of security provision away from a state-centric approach and toward a new human security paradigm in which citizens are the ultimate beneficiaries of security policies. Institutional and legal safeguards have been established to protect against human rights violations and abuses of power while developing professionalism and effectiveness in the work of security and justice providers. Legislation on issues of security and defence

emerges from a clearly defined structure of standing parliamentary committees, together with independent specialized bodies (such as audit offices and ombuds institutions) established to ensure accountability in public spending and respect for human rights. As a result, national expertise on security governance has developed slowly but steadily within state bodies and within civil society, alongside a democratic vision of security and the widespread acceptance of democratic oversight principles and mechanisms.

In fact, North Macedonia is a perfect showcase of the benefits induced by the conditionalities of EU accession in combination with sustained and substantial financial and technical assistance. The power of prospective European integration is, in this case, an uncontested and effective driver of change. Moreover, a shift in norms and the creation of adequate systems for democratic governance in the security sector was relatively swift and thorough in North Macedonia; though transforming norms and principles in local, everyday practices remains a challenge.

This case study explores some of the key accomplishments of the Assembly of the Republic of North Macedonia in the security sector reform process, by focusing on the architecture and effectiveness of the country's intelligence oversight system. However, first, challenges to reform and to the ability of parliament to perform oversight are outlined.

Challenges to comprehensive security sector reform

The comprehensive reforms started by the North Macedonian government in 2016 have been four-pronged, targeting (1) intelligence institutions, (2) the interception of communications, (3) the judiciary and prosecutor's offices, and (4) democratic oversight bodies.¹ A solid parliamentary majority has allowed executive and legislative actors to work in tandem to enact ambitious legislative reforms that have redefined the country's security landscape in only several years.² In that time, a number of key institutions have been established, including:

- The National Security Agency (NSA), created as the country's main domestic intelligence service and mandated to gather intelligence in order to guarantee state security. Unlike its predecessor, the Bureau for Security and Counterintelligence (UBK),³ the NSA is an independent agency positioned outside the Ministry of Interior, without police powers.
- The Council for Coordination of the Security-Intelligence Community (CCISC), mandated to coordinate security sector institutions.
- A brand new Operational Technical Agency (OTA), to facilitate links between telecommunication service providers and the state bodies authorized to intercept communication, and to guarantee the legality of this process.
- The Council for Civilian Supervision (CCS), designed to supplement the already strong parliamentary oversight system (composed of three standing committees), is mandated to receive complaints from the public and to supervise the legality of intercepts.

These new institutions have been matched by legislative reforms, enacted in 2018 and 2019, that clarify and strengthen the role of parliament in intelligence oversight, especially in the post-facto review of the use of intrusive powers by intelligence agencies. Still, some challenges remain regarding the capacity and efficiency of oversight mechanisms, and some legislative gaps must yet be filled.

A complex parliamentary oversight system

The establishment of the current oversight system of the North Macedonian Parliament represents an evolution toward specialization and institutional complexity seen in other European parliaments, but with added elements and processes that are unique and potentially very effective in ensuring accountability in the use of special powers by intelligence and law enforcement agencies. The system relies on three standing committees and one council, with complementary mandates.

The Committee on Defence and Security has a broad legislative mandate that covers the entire security sector, as well as oversight competency for the two principal security sector ministries (defence and interior) and the forces they administer (military and police).

The Committee is composed of thirteen members and their deputies; both the chairmanship and the majority of seats are usually held by ruling parties.

The Committee for Supervising the Work of the National Security Agency and the Intelligence Agency – the intelligence oversight committee – deals exclusively with the oversight of North Macedonia's domestic and foreign intelligence services.⁴ It is led by an opposition member and has a total of nine members, the majority of whom are from ruling parties.

The Committee on Oversight of the Implementation of Measures for Interception of Communications has the very precise and specialized oversight mandate of monitoring the use of intrusive methods for information

1 These four areas were characterized as requiring urgent intervention in the European Commission's "Priebe Report" (2015). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf

2 For example, see the Law on Interception of Communications (Official Gazette of the Republic of North Macedonia, no. 71/2018); the Law on Operational-Technical Agency (Official Gazette, no. 71/2018); the Law on the National Security Agency (Official Gazette, no. 108/2019); the Law on Coordination of the Security-Intelligence Community in the Republic of North Macedonia (Official Gazette, no. 108/2019).

3 The UBK was disbanded and part of its personnel was reintegrated into the NSA.

4 These are the National Security Agency (domestic) and the Intelligence Agency (foreign).

collection by the intelligence and law enforcement agencies authorized to do so. Among the diverse intelligence oversight structures created by European parliaments, this committee is unique.⁵ It is led by an opposition member and is composed of only five members, the majority of whom are also from the opposition.

The recently created Citizens Supervision Council is now a fourth body through which security and intelligence actors can be held accountable. Composed of seven citizens elected by members of the Assembly, the Council is separate from and external to parliament but works on the same premises and in close relationship with parliament.⁶ The Council can receive complaints from the public and initiate investigations into the legality of communication intercepts. But innovatively, the Council may also request that the Committee on Oversight of the Implementation of Measures

for Interception of Communications conduct a parliamentary investigation on alleged illegal intercepts, therefore acting not only as an independent security oversight body but also guiding the work of a parliamentary oversight body. In this way, the Council can ensure continuity in oversight, helping to compensate for the absence of parliament between parliamentary sessions or when the Assembly is suspended before elections are organized.

This institutional structure is ambitious and demonstrates the commitment of North Macedonian parliamentarians to avoid the mistakes of the past, when the existing political and judicial safeguards were unable to prevent abuses of intrusive powers. However, ensuring the functionality and efficiency of each of these oversight bodies, and their coherence and complementarity as a system, has been and will continue to be a challenge.

Limits to legal authority

The sources of legal authority for the parliamentary and civilian bodies tasked with intelligence oversight in North Macedonia are relatively well developed. Nonetheless, the speed with which legislative reform was undertaken in 2018 and 2019 left some potential shortcomings in this legislation. The further development of an effective oversight system depends on how these loopholes are addressed.

The first source of legal authority for parliamentary oversight is the constitution and general laws, which clearly lay out the democratic principle of parliamentary control over the executive. While the Committee on Defence and Security extracts its legal authority mainly from general legislation and parliamentary Rules of Procedure, the mandates of the intelligence and intercept oversight committees are further defined by statutory legislation that regulates the functioning of intelligence services. Two laws in particular clarify and enhance the oversight powers of these bodies: the Law on Interception

of Communications and the Law on the National Security Agency, both adopted by parliament in 2018.

The intelligence oversight committee has a strong mandate to oversee both the domestic (NSA) and foreign intelligence (IA) services of North Macedonia; including by reviewing the legality of their work, the respect of these agencies for the rights and freedoms guaranteed by the Constitution and the laws, their employment policies, and their technical capacities.⁷ Both intelligence services are obliged to provide any information necessary for realization of the commission's oversight mandate, based on the need to know principle, and must also submit an annual activity report to the committee.⁸ On top of this, the NSA submits an annual working program as well. However, the committee has no competence when it comes to the appointment of the directors of either service.

The committee that oversees communications interception is endowed with legal authority that is detailed in a chapter of

5 The few other oversight bodies mandated to exclusively monitor communications intercepts (as in Germany and Sweden) are external to the parliament, and their members are not parliamentarians.

6 Members are selected by parliamentarians after a public vacancy announcement; three are subject experts, and three are representatives of non-governmental organizations with a focus on the protection of basic human rights and freedoms, security, and defence.

7 Parliamentary decision no. 08-1396/1, 31 May 2017.

8 Law on Intelligence Agency (Official Gazette of the Republic of North Macedonia, no. 19/1995), Article 10; Law on the National Security Agency, Article 60, Paragraph 6.

the Law on Interception of Communications, which elaborates the committee's composition, mandate, and powers.⁹ These provisions are a textbook case for the double-sided effects of well-intended but imperfect legislation, though; the law does not contain sufficient clarity, specificity, and thoroughness, and thus risks limiting rather than enabling action. On the other hand, the law does state that the committee must be chaired by a member of the opposition. Giving the opposition a leading role in oversight is considered a good practice in establishing the accountability of government activities that occur in secrecy, where the abuse and arbitrary use of power may be more likely to occur. Importantly, the committee may perform oversight without prior announcement when necessary, and at least once within a three-month period even in the absence of majority votes. The access of committee members to classified information is conditioned by a security certificate, issued within 30 days after their appointment.¹⁰

This committee is mandated to oversee the legality and effectiveness of intercepts by analysing technical and statistical data on their use, in sources specified in the law. Technical data consists mainly of information about log-ins and anonymized court orders; statistical data refers to the number of authorizations issued, the types of surveillance, and the categories of offences that triggered surveillance, and is generated by service operators, OTA, the public prosecutor, and other authorized bodies. This type of oversight provides important information on the *legality* (and overuse) of intrusive powers, but it offers less clarity about their *effectiveness*.

For example, statistical information may support an assessment that the use of intercepts by law enforcement is effective in building criminal cases, but evaluating their use for national security and defence purposes requires more diverse and insightful sources of information. Yet the law does not refer to other sources of information, tools of oversight that could be utilized, or possible

alternative scopes of the oversight mandate – such as by including operational activities and their efficiency. A lack of explicit inclusion in the law does not mean these issues are necessarily beyond the reach of the committee, but how the law is interpreted depends on the reader. Ultimately, the committee must strive to obtain information that meets the needs of its oversight responsibilities, which means looking beyond the “paper trail” and the comparative statistical data, to develop a fact-finding capacity within the committee so that it can investigate relevant agencies.

The Council for Civilian Supervision, which was created by law in 2018 and formed in 2019, adds several original functions to the North Macedonian oversight system.¹¹ It opens new opportunities for increased accountability in the security sector, and in parliament itself. Based on complaints received from citizens, the Council can request that the communication interception oversight committee conduct investigations to determine whether abuse has occurred. The law gives the committee just 15 days to notify the Council of its findings. The Council can also undertake oversight on its own initiative, conducting announced visits to OTA and other bodies to compare data from anonymized court orders and log-ins.

As in many other countries, the North Macedonian Assembly has long periods before elections when parliamentarians are involved in political campaigning and are completely disengaged from their parliamentary duties, including oversight. At other times, parliament is dissolved, leaving an institutional void when it comes to oversight. The Council for Civilian Supervision is therefore the only institution, external to the executive and the intelligence community, that can exercise consistent democratic oversight in the sector even in these times of parliamentary absence. This is an important factor in incentivizing the consistent legal use of special intrusive powers by intelligence and law enforcement agencies, but requires the Council to function effectively and credibly.

9 Law on Interception of Communications, Articles 38–46.

10 Background checks on these members are carried out by the very institution that is subject to their oversight – the NSA – but the certificate is issued by the Directorate for the protection of classified information. If a security clearance is denied, the Directorate has no legal obligation to elaborate the reasons, but the law stipulates an appeal mechanism in such cases.

11 Law on Interception of Communications (Official Gazette of Republic of North Macedonia no. 71/2018), Articles 47 to 53

Limits to capacity

Legal authority is a necessary condition for effective oversight, but it must be met by capacity. The normative framework has significantly improved in North Macedonia since 2018, providing parliamentarians with more powerful tools to ensure accountability in the use of communications intercepts, yet the ability and political will of parliamentary committees to conduct meaningful oversight has not developed at the same rapid pace as legal reforms. A complete lack of routine, insufficient expertise among staff, and inconsistent political will have resulted in uneven oversight practices and performance among the three competent committees.

Parliamentary staff support all three of these parliamentary oversight committees. A joint secretariat is composed of five staffers, each of whom assists a specific committee according to a predefined division of labour. Staffers are vetted and hold a security clearance, and can participate in all committee meetings and activities, including those in which classified information is discussed. Gathering the staff who support these committees in one secretariat, and under the coordination of one head of unit, is a good practice that should foster expertise and a solid institutional memory within the parliamentary administration, while also encouraging coherence, collaboration, and joint action among the three committees.

Nonetheless, access to external expert support is a challenge. In fact, insufficient expertise in intelligence matters is one of the biggest obstacles to effective oversight in any country. North Macedonian committees should thus consider different ways to increase the expertise of their secretariat. For example, the Rules of Procedure allow every committee to elect two external members from the ranks of scholars and professionals (one elected by the majority, the other by the opposition), who may participate in the work of the committee without voting.¹²

Moreover, the new legislative framework for communications interception provides for some exceptional measures intended

to increase expertise on the Committee on Oversight of the Implementation of Measures for Interception of Communications, to enhance the ability of members to engage in effective oversight.¹³ By law, the committee must hire two experts for permanent technical support within 50 days after its formation, and within 6 months, must create a roster of national and international experts who can provide support on a case-by-case basis; other state agencies must also provide expert support at the request of the committee, a requirement that should generate increased cross-institutional expertise, trust, and information exchange.¹⁴ Still, a lack of budgetary resources has meant that outside experts have not been engaged by any of the three security and intelligence oversight committees, which rely only on the parliamentary secretariat for expertise.

From its very beginning, the Council for Civil Supervision has also faced problems related to institutional limitations. One proposal to help remedy this, by giving civil servant status to the Council's members, has been highly controversial. On top of this, the Council has repeatedly asked parliament to provide it with the necessary administrative, technical, and financial means to facilitate its functioning, with no success. These unresolved issues were key reasons why three Council members, including the president and the deputy, resigned in the first months of 2020. Indeed, when the Macedonian Parliament was dissolved for more than six months in 2020 because of parliamentary elections and the COVID-19 crisis, the Council should have stepped in to ensure democratic oversight over the use of intrusive powers.¹⁵ But unfortunately, it conducted no oversight activities during this time. The resignation of several members came in response to the passivity of parliament in addressing legal ambiguities related to the investigative powers of the Council, and its lack of secretariat and budget. The institutional deadlock that is paralyzing the Council must be resolved by the new legislature, which was installed in August 2020, as effective civilian oversight

¹² Rules of Procedures of the Assembly of the Republic of North Macedonia, Article 119, Paragraph 2 and 3

¹³ Law on Interception of Communications (Official Gazette of Republic of North Macedonia no. 71/2018), Article 39

¹⁴ Mainly the Agency for Electronic Communications, the Directorate for Security of Classified Information and the Agency for Personal Data Protection

¹⁵ The Assembly was not in session from 16 February 2020 until the formation of the new parliamentary committees on 14 September 2020. Elections were scheduled for 12 April 2020, then postponed until 15 July 2020, due to the COVID-19 crisis.

of the use of intrusive methods will play a role in alleviating public mistrust in the state. The Council will only be effective, efficient, and

legitimate if it is made complete with experts and if it possesses all the necessary capacities to fulfil its tasks and duties.

The challenges of changing culture

Even the best laws cannot be formulated to erase all potential for abuse of power. In other words, laws must be implemented in good faith to have their intended impact; and until recently, some institutions in North Macedonia failed to do so, and hence, failed to control the abuse of intrusive powers. The 2015 wiretapping scandal revealed that this problem was rooted in the institutional and political culture of the country, which allowed both individual politicians and security services to exploit loopholes without any reaction or sanction from oversight bodies.

The cross-party consensus and mobilization

for intelligence sector reform that emerged after the scandal marked a dramatic shift from the political divisiveness of the past. However, there is always a risk that reforms intended to redistribute power and resources will be watered down, resulting in only moderate changes in the end. In the current stage of reform, success is also increasingly dependent on local political will to change long-embedded habits and overcome long-standing enmities, and breakthroughs often depend on individuals and not on manageable drivers of change.

North Macedonian successes in security and intelligence reform oversight

The renewed capacity of civil society to inform public debate and undertake research, watchdog, or advocacy projects is a positive development in North Macedonia, mainly because it adds to the external pressure on oversight bodies to fulfil their mission; compensating for insufficient political will, interest, or courage. This has influenced parliamentary practices and instruments, and in the midst of the last wave of reforms aimed at aligning the country to the European Union *acquis*, it is clear that members of parliament have started to take their role in oversight more seriously. Indeed, the Assembly is increasingly viewed as a forum for constructive

political dialogue and is moving proactively toward fulfilling its legislative, oversight, and representative functions. Existing checks and balances over the executive have been restored in the last few years, and new accountability mechanisms have been defined through EU-guided laws.

Importantly, the transparency of parliament toward the public has also improved dramatically. A look at the increased frequency of committee meetings from 2018 to 2019 reflects this growing functionality of parliament (see Table 1).¹⁶

¹⁶ Because 2020 was an atypical year, in which COVID restrictions hampered the normal functioning of government, it is not included in this Table.

Table 1. Frequency of meetings of parliamentary security and intelligence oversight committees, 2018–2019¹⁷

Committee	Meetings	
	2018	2019
Defence and Security	20	25
Intelligence Oversight	1	6
Interceptions Oversight	1	12
TOTAL	22	43

Legislative successes

The North Macedonian Parliament adopts an average of 200 laws per year, and reforms undertaken by the Government have been fully backed by legislation in the Assembly, where relevant laws have been adopted with appropriate expediency. While this indicates that political forces in the country have developed the maturity to join together to achieve national goals, there is a danger that a sense of urgency has encouraged a weakening of the democratic process and an avoidance of meaningful parliamentary debate, as the number of laws adopted under a shortened legislative procedure rose considerably in 2019, from 2018. In fact, just 20% of laws were fast-tracked in 2018, compared to 62% in 2019.¹⁸ Using the fast-track procedure means that proper public consultations and impact assessments are not undertaken, and the amendment process is circumvented.

Four laws passed since 2018 have defined key benchmarks in security and intelligence reform in North Macedonia and have underpinned a regulatory framework for the non-partisan operation of intelligence services. Reform began in April 2018 with passage of the Law on Interception of Communications and the Law on the Operational Technical Agency. A year later, in May 2019, the Law on the National Security Agency and the Law for Coordination of the Security and Intelligence Community finalized the new institutional architecture of

the country's intelligence system. The Law on Interception of Communications and the Law on the National Security Agency are both organic laws, which require a two-thirds vote in the Assembly; their smooth adoption was solid proof of cross-party support for intelligence reforms.

More pieces of the intelligence and security reform puzzle were added in later 2019 and in 2020, with renewed legislation on classified information and personal data protection, aligning internal regulations with EU standards and the General Data Protection Regulations (GDPR).¹⁹ A new law on defence as well as amendments to the law on military service also paved the way for the acceptance of North Macedonia as a full member of NATO, as of 27 March 2020.²⁰

The Committee on Defence and Security is responsible for legislation in the security sector and took the leading role in the legislative process that shaped the intelligence reform package. However, the intelligence and intercept oversight committees also played a role, providing opinions on draft laws concerning institutions covered by their mandates.

¹⁷ The Annual Report on the work of the Assembly of the Republic of North Macedonia for 2018–19 is available at: <https://www.sobranie.mk/content/izvestai/IZVESTAJ%20%20SOBRANIE%202019.pdf>

¹⁸ European Commission, North Macedonia 2020 Report, No. SWD(2020) 351 final, 6 October 2020, p. 13. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/north_macedonia_report_2020.pdf

¹⁹ Law on Classified Information (Official Gazette of the Republic of North Macedonia, no. 275/2019); Law on Personal Data Protection (Official Gazette of the Republic of North Macedonia, no. 42/2020).

²⁰ Law on Ratification of the North Atlantic Treaty (Official Gazette of the Republic of North Macedonia, no. 36/2020).

Improving oversight

The parliamentary oversight exercised during the last legislative session - from May 2017 to January 2020 - was a definite improvement over the past. Yet, the frequency of formal oversight activities (questions and debates in the plenary, committee hearings and

field visits, analysis of annual activity reports by security institutions, etc.) remained limited, with only 14 oversight activities organized by the relevant committees (see Table 2). These consisted of 5 hearings and 9 inspection visits.

Table 2. Oversight activities of intelligence oversight committees, 2018–2020

Committee	Oversight activities			
	2018	2019	2020	TOTAL
Defence and Security	1	0	0	1
Intelligence Oversight	1	1	0	2
Interceptions Oversight	3	7	1	11
TOTAL	5	8	1	14

In fact, during the last legislative term, the Committee for Supervising the Work of the National Security Agency and the Intelligence Agency (the intelligence oversight committee) conducted only one pre-announced visit to the intelligence service. Two members of the committee also participated in a multi-stakeholder commission for the selection and transfer of personnel from the former UBK to the newly formed NSA.²¹ However, one of these members (representing the opposition) resigned in October 2019, at the end of this process, claiming it had been compromised and subjective.

The Committee on Oversight of the Implementation of Measures for Interception of Communications, created in 2006, did not meet regularly in the first decade after its formation (not even once a year) and didn't exercise its functions and powers effectively; it collected no statistics on the use of intercepts, requested no activity reports, and carried out no inspections of the intelligence directorate. The unsurmountable obstacle to the functioning of the committee seemed to be a lack of access to classified information, as the law stipulated that the five members were to obtain a security clearance through the very agency they were tasked with overseeing (the UBK). Thus, at any given point in the first ten years of its existence, the committee included one or two members

without the necessary security clearance; they refused to apply, denouncing the inherent conflict of interest in receiving it from the UBK.

Since the intercept scandal and the elections that followed, which brought the previously long-standing ruling party into the opposition and into the leadership of this committee, all members have acquired a security clearance and the committee has become functional. The dynamics of the committee have also been strengthened by the legislative authority endowed by new communications interception legislation. The committee has thus been meeting regularly and now engages in frequent exchanges with intelligence and security agencies. But public trust in the use of intrusive measures for information collection has only improved by 1% from July 2018 - when the Law on Interception of Communications was adopted - to February 2020.²² So, it is clear that parliament needs to better communicate with the public about its oversight activities and their impact on the conduct of security sector actors.

Parliamentary oversight is at the centre of a more complex system envisioned by new laws to ensure accountability in the use of special powers within intelligence and security institutions. Hence, other bodies have also been created to support and complement parliamentary oversight, such as the

21 Law on the National Security Agency (Official Gazette of the Republic of North Macedonia, no. 108/2019), Article 186.

22 See the public survey conducted in February 2020 by the International Republican Institute's Center for Insights in Survey Research, available at: https://www.iri.org/sites/default/files/iri_n_macedonia_february_2020_poll_presentation.pdf

Operational Technical Agency (OTA), designed to increase accountability within security sector institutions. Its establishment by the legislature separated the technical capability to engage in surveillance from the agency responsible for collecting and analyzing intelligence.²³ The OTA acts as an interface between information and

the intelligence services, performing an external control function that reduces the possibilities for abuse, and can implement measures related to the interception of communications only on the basis of a court order. The director of the OTA is appointed by parliament.

Improving budgetary functions

The Assembly approves the budgets of security sector institutions and oversees their spending. The Committee on Defence and Security deliberates on proposed allocations to the sector and takes the lead in controlling budget outlays. The other two intelligence oversight committees are limited to submitting amendments to the budget, during debate of the state budget law in the plenary. However, recently increased legal authority of the committee that oversees the use of intercepts gives it a role in the deliberation and approval of the OTA budget.²⁴ This was materialized through hearings with the OTA Director in January 2020.

Both the Committee on Defence and Security and the intelligence oversight committee have a legal mandate to oversee budget allocations to the institutions in their competency. A lack of expertise, time, and interest has limited the ability of committee members to effectively

analyze and scrutinize budget spending, however, making this a “decorative” function of parliament that is currently meaningless. Significant effort should be invested in making the process meaningful, and a first step was taken in this direction in 2020 with the creation of the Parliamentary Budget Office. Of course, it remains to be seen if and how the expertise concentrated in this office will improve financial oversight in the long term. A cross-party agreement on amendments to the Rules of Procedure, which are due to be adopted by the newly composed Assembly, should also strengthen the role of parliament in the budgetary process by introducing public hearings, a strict budgetary calendar, and procedures for EU-flagged laws. Promisingly, the preparation of the 2020 budget has already included open public consultation. Good communication with the State Audit Office should be a goal of parliamentarians as well.

Improving representative functions

According to the 2020 European Commission country report, the North Macedonian Parliament has deployed significant efforts to strengthen democracy and the rule of law in recent years, including through broad public outreach, discussions, and debates on key policy and legislative issues, as well as by promoting the protection of human rights and deepening cooperation with external oversight actors. The new legislature is expected to work inclusively to build on previous achievements, while further improving the functioning of parliament.

The adoption of EU-related laws, with the support of the opposition in cases that require a two-thirds majority vote, is a success as far as representation of the public interest. The

Assembly also helped monitor the protection of human rights and fundamental freedoms. Indeed, the Club of Women Members of Parliament supported several human rights initiatives, and the wider parliament adopted a cross-party declaration on the right of persons with disabilities to participate in political processes.

The organization of public hearings, with significant participation by civil society representatives, has become a frequent occurrence, at the initiative of the Committee on Defence and Security. In shaping recent reforms of the intelligence and security apparatus, the deliberation of every major law included a public hearing with independent experts, government representatives, academia,

²³ Law on Operational-Technical Agency (Official Gazette of the Republic of North Macedonia, no. 71/2018).

²⁴ This is composed of the state budget and revenues from the Agency for Electronic Communications of the Republic of North Macedonia (AEC), in accordance with the Law on Electronic Communications, on the basis of a previously approved annual financial plan of the OTA. See the Law on OTA, Article 33.

and concerned professionals. This allowed committee members to thoroughly review draft laws and assess the need and best options for amendments.

Public hearings also contribute to the transparency of the Assembly. However, a civil society assessment of parliamentary transparency found a significant difference in the transparency of the three security sector oversight committees.²⁵ Along with meeting much more frequently, the Committee on

Defence and Security scores a significantly higher transparency index than the two other committees (see Table 3). Conversely, the intelligence oversight committee is the least active and also the least transparent, which may be partially explained by the nature of its mandate. The intercept oversight committee, the most affected by legislative reforms – which have increased its legal authority – is trending positively in both its activity and transparency.

Table 3. The activity and transparency of security sector oversight committees

1 January 2018 – 30 June 2019													
	Sessions held per trimester						Total	Transparency index per trimester					
Defence and Security	7	8	2	3	8	4	32	59	67	67	40	50	62
Intelligence Oversight	0	1	0	0	0	4	5	0	0	0	0	0	0
Interceptions Oversight	0	2	0	1	6	3	12	0	0	0	0	27	33

When intelligence oversight is “secretized”, it is a sign that a parliament’s concern for secrecy prevails over its responsibility to inform the public about intelligence accountability issues. In many parliaments, intelligence committee meetings are closed as a rule, and even agenda items and conclusions are kept secret, as none of their reports are disseminated to the public.

But for the public, oversight done in secrecy is oversight undone. Parliamentarians in North Macedonia must recognize that failing to create an open record in the process of denouncing errors, abuses, and individual or systemic problems in security and intelligence institutions undermines their credibility as representatives of the people.

The North Macedonian Parliament & COVID-19

The COVID-19 pandemic, from its outbreak to the present, has generated serious economic and political challenges, and most EU members and candidate countries have declared states of emergency in an effort to prevent the spread of the virus. In North Macedonia, handling of the situation was affected by the fact that the pandemic reached the country after the self-dissolution of parliament, which occurred in anticipation of snap elections.²⁶ The Technical Government in place had only limited powers and the obligation to organize parliamentary elections; but a state of emergency allowed it to take measures necessary to address the health crisis.

The law stipulates that a state of emergency can be introduced by the Assembly on the proposal of the President, the Government, or at least 30 members of parliament. The determination must be made by a two-thirds majority of the Assembly, and a state of emergency lasts for thirty days. If parliament cannot convene, the President decides on the introduction of a state of emergency and submits this decision to the Assembly for confirmation, as soon as it is able to convene.²⁷ In this case, even though members were still within their mandate, the Speaker of the Parliament refused to reconvene on the premise that it

25 The report was published by the Citizen’s Association “MOST” as part of its Included Citizens for Accountable and Transparent Assembly Project. The Index is calculated from public data available on the websites of the Assembly and the Official Gazette, responses to requests for free access to public information by parliament, and the National Program for Adoption of the Acquis (2017-2020).

26 Elections were scheduled for 12 April 2020 but were postponed to 15 July 2020 due to the COVID-19 crisis.

27 Constitution of the Republic of North Macedonia, Article 125.

was constitutionally impossible to reconvene a self-dissolved Assembly. This decision was contested by many national experts and uncovered legal ambiguities and contradictions that should be resolved in specific legislation on states of emergency, which should be placed on the agenda of the new legislature.

On the proposal of the (technical) Government, the President declared a state of emergency on 18 March 2020. This was extended several times, finally ending on 23 June 2020. This gave the Government full

executive and legislative power for the first time in the history of North Macedonia, enabling state authorities to act swiftly to introduce measures to protect against the coronavirus. It also allowed for the concentration of power in the Government, the restriction of basic human and civil rights, and the suspension of parliamentary oversight. Fortunately, at least as far as we know, this did not lead to violations of human rights or abuses of the power in the name of the “collective good.”

Support for the Parliament in SSR/G

The international programme most focused on strengthening the role of the North Macedonian Parliament in SSG is DCAF’s “Intelligence sector reform programme,” initiated in 2017. The programme supports the country’s Euro-Atlantic integration efforts with the aim of backstopping its democratic transition and encouraging the return of public confidence

in state institutions. This is one of DCAF’s most comprehensive SSG programmes, and is built around three pillars: strategic management in the intelligence sector (addressing mainly internal control mechanisms and executive control), parliamentary oversight, and judicial control of the use of intrusive methods for information collection (see Figure 1).

Figure 1. DCAF support to intelligence oversight in North Macedonia

PROCESS	PLANNED ACTIVITIES	OUTPUTS	OUTCOMES	IMPACT
INTELLIGENCE REFORM	BASED ON GOVERNMENT REFORM REQUIREMENTS	Improved knowledge and managerial capacity to initiate, support, implement reforms	Achieve Euro-Atlantic integration goals; Harmonization of law and practice with European standards	INCREASED SECURITY AND INTELLIGENCE ACCOUNTABILITY
PARLIAMENTARY OVERSIGHT	DEVELOP AWARENESS, EXPERTISE, PROCEDURES	Increased oversight abilities of committees, including independent critical analysis	Development of effective oversight mechanisms, processes, practices	
JUDICIAL SUPERVISION	STEER LOCAL DEVELOPMENT OF NEW KNOWLEDGE PRODUCTS	Expertise and capacity to make more objective judgements on the use of intrusive methods	Foster a Rule of Law culture characterized by robust judicial supervision	INCREASED PUBLIC TRUST IN THE STATE

Unlike other parliamentary assistance programmes that address general services or parliamentary administration as a whole,²⁸ DCAF’s initiative in North Macedonia offers focused support to the three committees mandated to provide security sector oversight. The members and staff of these committees have been able to access technical expertise and European best practices in their area of work, and sustained programmatic activities

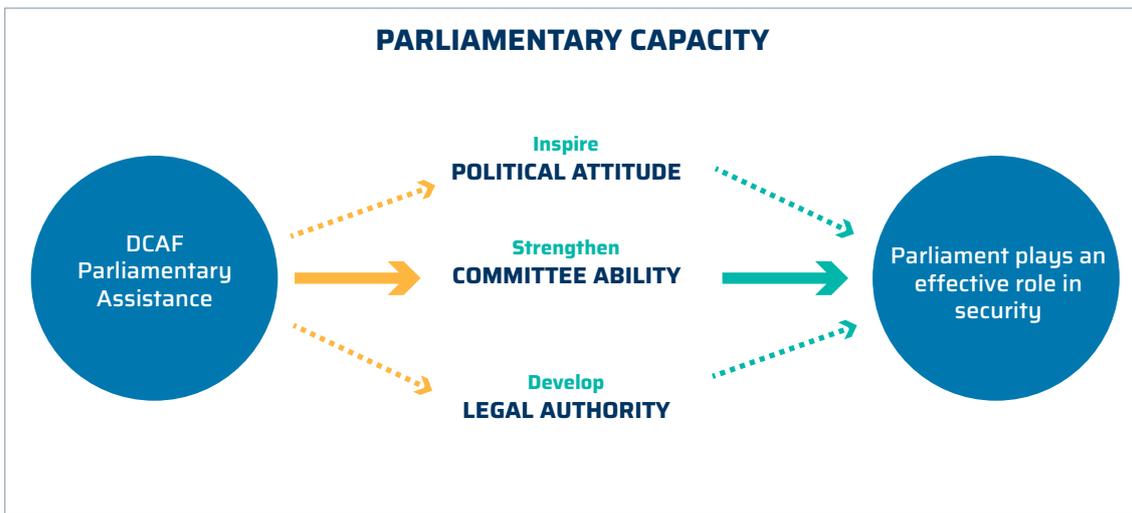
(about 30 capacity building events over 3 years) have created an educative environment that facilitates peer exchange, self-assessment, and independent critical analysis. The program has steered the development of new knowledge products (created *for* and *by* local practitioners), as well as procedures and practices that have helped build parliamentary expertise and have increased confidence in the way oversight is conducted.

28 The Assembly receives consistent support from Switzerland and NDI, for example, but their programmes do not target security sector oversight specifically.

The DCAF programme has thus contributed to the ongoing development of new dynamics and attitudes in the relationship between parliament and the intelligence community. Oversight activities are now taking place, and are slowly becoming more meaningful, effective, and consistent. Moreover, draft intelligence legislation is undergoing genuine review in committees, where new intelligence directors

are being called to testify in oversight hearings and respond to questioning. The challenging and often unpredictable political situation in North Macedonia has been largely mitigated by DCAF through flexibility, continuous dialogue with local stakeholders, transparency, and cooperation with other international actors in the country.

Figure 2. How DCAF programming is building capacity



Conclusions and Recommendations

Thus far, the Republic of North Macedonia is a success story of post-conflict stabilization and democratic change under the auspices of Euro-Atlantic integration. Despite some deficiencies in the legislative framework, the formal requirements of democracy and good security governance are in place. Still, transforming norms and principles in local practice and daily conduct is a remaining challenge.

Democratic transitions should not be taken for granted but should be encouraged and backstopped, as democratic consolidation relies on long-term support that goes far beyond the establishment of normative frameworks. Indeed, it implies a transformation of society that includes changes in cultural values and norms. This is a process that must essentially be domestically driven; meaning, local agents of change must be identified and championed.

It may be relatively easy for parliamentary institutions in a country like North Macedonia to fail in their oversight mission simply due to traditions of bad practice and poor capacity. Human resources, funding, and expertise are all scarce within the parliamentary administrations of transitioning countries, which makes legislative work almost completely dependent on the government's own monopoly of information. Considering this - and given that intelligence oversight is an ambitious, evolving, and bold endeavour for any parliament - the process of improving oversight mechanisms must be understood as both long-lasting and vital to the separation of powers, the rule of law, and the preservation of citizens' trust in the state. With that in mind, the following recommendations for strengthening parliamentary performance can be drawn from the Macedonian case study:

1. Members of parliament and staff advisors involved in oversight should **avoid a minimalistic interpretation of the law** that downplays their oversight options and responsibilities. Clearly defining the oversight authorities of parliament in law is always a desirable step towards enhanced accountability, but any authorities defined by law are *always non-exhaustive*. Law sets the legal authority for oversight, but defines the mandate of overseers as involving certain functions, processes, and flows of information, which can be interpreted by parliamentarians as

a limited mandate. Laws should be read in their letter, but also in the spirit of the Constitution, and in democratic states, constitutions affirm the right of legislative powers to supervise all government activities.

2. **Oversight should be demystified.** After they are established in a newly elected parliament, committees should engage their legal powers and quickly transform them into oversight action by organizing meetings, debates, expert analysis on reports, hearings, and field inspections. Most often, parliamentary committees operate in a less than ideal environment, characterized by insufficient staff, expertise, and access to information. However, this should not discourage and prevent them from engaging with government agencies. Committees learn by doing and only become effective in keeping government accountable when oversight becomes a routine.

3. **Effective oversight must be recognized as a holistic enterprise.** Whenever several parliamentary committees and/or independent oversight bodies are mandated to oversee the security sector, they must work together to achieve meaningful oversight. In most parliaments, oversight has developed institutionally, with parliamentary committees focused on specific government departments and agencies. There may be overlap between the mandates of committees, but there may also be aspects of security and intelligence work that slip between the gaps, enabling some actors to avoid accountability. What is required today is functional oversight which recognizes that security services do not act in isolation. The traditional division of labour between various government agencies is now challenged by trans-border security threats, an increased integration of executive responses to threats, intense cross-government and international cooperation, and blurred lines between intelligence functions or between the public and private use of information due to the utilization of contractors. Parliaments must therefore develop a comprehensive understanding of security related processes and networks.

4. In the same vein, **communication, expert collaboration, and joint action between oversight bodies are indispensable** and bring significant benefits. First, this helps different oversight bodies to understand the security and intelligence sector better. Second, it allows these bodies to pool limited resources (staff, time, budgets) and expertise, strengthening their oversight ability. Third, joint action by oversight bodies generates increased political leverage. By working together, committees can better influence both the executive and the intelligence sector. On their own, committees have no power of enforcement, offer recommendations that are not legally binding for the executive, and must rely on the force of argument, publicity, and multi-partisan support to convince the parliament to follow their advice and the executive to comply with recommendations. When acting together, committees have increased legitimacy and their united voice carries greater political weight. It is the right and responsibility of committees to define when (the situations) and how (the procedures) they work together in oversight.

5. **Committees can and should adopt their own Rules of Procedure** to facilitate the organization of their activities and formulate well-defined rules of engagement in oversight. Parliamentary Rules of Procedure enable the smooth and efficient functioning of parliament and provide a basis for resolving any questions of procedure that may arise, while taking into account the rights of members, but they often fail to clearly define the mandate, scope, and powers of parliamentary committees. In many cases, the rights and responsibilities of committee chairpersons, committee members, and staff are also unclear. For these reasons, committees with especially sensitive and difficult mandates, such as security and intelligence oversight, should detail their mandate, modus operandi, and oversight powers in committee-specific Rules of Procedure. Such a document not only supports the smooth functioning of decision-making processes within a committee, but gives committees more legitimacy and confidence while engaging with third parties.

6. Within committees, **expertise and independent analytical capacity should be consolidated** through continuous learning that includes both elected members and committee staff. This would address the most significant problem in oversight – the asymmetry of information and expertise that exists between parliament and security services. Indeed, parliamentarians with a deep knowledge of security and intelligence issues are relatively rare and in almost every circumstance, security services have the upper hand in terms of expertise, access to information, and freedom of decision making over their process, tasks, and resources. Developing expertise and knowing what to look for and what questions to ask is a precondition for effective oversight, yet acquiring expertise in this field takes time and requires dedication and persistence. The development of a strong expert staff capacity within the parliament is also essential; without this, a committee’s capacity for research is limited, obliging members to rely on information provided by the government and the very security institutions overseen by the committee.

7. Parliaments must **understand multi-stakeholder dialogue on oversight principles and practices as a key enabler of accountability**. Effective oversight depends on a common understanding of oversight procedures and objectives, but also an appreciation of the legal responsibilities, requirements, and limitations of the “other side” and a degree of consensus between the overseers and the overseen about the principles and benefits of oversight. Parliament should initiate dialogue on these principles and lead the development of specific tools for facilitating oversight activities and improving communication with the security sector. Such tools may include protocols for the inter-institutional exchange of information, formal reporting requirements for security institutions, criteria for the analysis of activity reports, communication procedures, or the identification of points of contact/oversight responsible officers in security institutions. The discussion and joint development of tools such as these will foster transparency, trust, and mutual respect between overseers and the overseen, contributing to the consolidation of a security culture that enables accountability.

8. Parliaments have a responsibility to **inform the public about security sector accountability** and must reconcile the democratic requirement for transparency with the equally important constraint of protecting classified security information. The work of parliament cannot be kept exclusively behind closed doors, even when it involves security and intelligence oversight and state secrets. Intelligence oversight bodies are especially and profoundly influenced by the norms of secrecy, and in many countries this amounts to a 'secretization' of oversight. Yet, a lack of transparency in denouncing mistakes, abuses, and individual or systemic problems in security undermines the credibility of parliament as competent supervisor of the public interest and as vigilant defender of individual rights. Any protracted silence by committees on intelligence and security matters gives the impression that they, and parliament in general, are ineffective and even compliant in relationship with the executive. While full transparency of oversight is neither possible nor desirable, for the public, oversight done in secrecy is oversight undone. Thus, oversight committees must distinguish between information that can be published or should be kept in the 'ring of secrecy'. They also need to better inform the public about their work; reach out to media, civil society, and other independent oversight bodies; and build alliances and partnerships dedicated to improving democratic accountability. The value of oversight mechanisms depends not only on how and whether they foster accountability, but also on their own transparency and engagement with the public.



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