

Saving Democracy in Macedonia: What to do After the Wire-tapping Scandal

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Introduction

Since February, 2015, Macedonia is in a political imbroglio as the Social Democrat (SDSM) opposition leader Zoran Zaev has begun releasing sets of illegally recorded phone conversations. The accusations against Prime Minister Nikola Gruevski and the Head of Intelligence Service (DBK) Sasho Mijalkov are that they have, during the last few years, secretly and illegally wire-tapped some 20,000 people including journalists, opposition leaders, businessmen, NGO activists, academics, religious leaders, members of the judiciary and others prominent intellectuals. According to the opposition leader the recordings reveal direct influence on the judiciary including dismissing criminal charges against government ministers, appointment of party loyal judges, influence on the media, selective prosecution of political opponents, mass electoral fraud during past elections, using fictive voters, fake ID cards, buying votes, registering up to 50 such voters at individual addresses and instructing them to vote for the ruling party, intimidation of public servants including threats to fire them if they do not vote accordingly, attempts of stealing election material, misuse of police and public administration for party agenda, and pressure on individuals and firms.

Prime Minister Gruevski has since denied the allegations of wiretapping claiming it was organized by a former Head of the

KEY POINTS

- **The first and immediate issue to be tackled is to return politics to a sense of normality and decency**
- **Macedonian government should in the long run establish results-based models of monitoring and evaluation, looking at outcomes and impacts, as opposed to the traditional monitoring and implementation orientation**
- **Macedonia must immediately thoroughly improve fiscal transparency**
- **In the mid to long run Macedonians of all credos must demand further democratization of our political parties**
- **In the mid to long run Macedonians must also insist on deepening the decentralization processes.**
- **Elite settlement “tames” politics: leads to compromises among political leaders, generates shared practices among competing political elites and defines sanctions for violating that.**
- **There needs to be a quick agreement on the necessary steps forward. (See Annex 1 on practical steps needed to do this) Changes in the composition of ministers in Gruevski’s cabinet is expected and necessary,**
- **SDSM must resume its parliamentary function**
- **A parliamentary committee to investigate the wire-tapping affair should be consensually agreed upon.**

secret-police close to the Social Democrats accusing Zaev of launching a coup backed by foreign intelligence services. He has accused Mr Zaev of trying to blackmail him into forming an interim government and calling for fresh elections. Moreover, officials from the governing VMRO-DPMNE claim the recordings had been cut and were heavily edited to create a negative impression of the government and to blackmail the government. Criminal charges were filed against Zaev including "overthrow of the constitutional order," and "espionage and violence against top state officials." Zaev has said only fresh elections administered by a caretaker government would resolve the deadlock, with SDSM filing charges against Mijalkov and several members of the Secret Police. Zaev and SDSM demand a 'political resolution' of the crisis, rejecting a solution that would involve Macedonia's courts with its current composition – allegedly since it is impossible to have a credible court process due to the direct control of the ruling party on the judiciary.

EU Enlargement Commissioner Johannes Hahn has called for responsible bodies to 'investigate these allegations immediately and transparently in an independent, unbiased and credible manner,' and that 'irrespective of the origins of the wiretapping any potential wrongdoing revealed with their disturbing content must be investigated and appropriate measures must be taken, especially if it fundamentally infringes the rule of law and the separation of powers.' (Byrne, 2015). The wire-tapping scandal has contributed to the increase of instability in the country, where the opposition has boycotted parliament since the 2014 April elections. What should be done? This policy brief is a blueprint for discussion, a set of ideas and proposals that we think merit further debate and implementation.

The Wire-tapped State of Affairs

The content of the wire-tapping conversations is disputed. However, even if we accept what Prime Minister Gruevski claimed, that some of

the material is true, some is half-true and some is false, there are serious indications that the state of democracy in Macedonia today is gravely endangered. For some time now all aspects of public life, from the bureaucracy to public enterprises to civil society have been politicized. Complaints of political dominance of the media system; the structural inefficiency of the public administration, the rising costs of entry to politics of new subjects, weak execution of the regulations concerning the public financing of parties, the de-facto arbitrariness of many decision-making processes excluding wide and efficient public consultations, the lack of confidence of citizens in the state, and the political class; the lack of a sense of state building attitudes in the public service are not new, have existed even before the recordings have been released. The recordings have augmented the fear that the system is designed with the objective of maximizing wealth, power, and impunity for the benefit of particular groups and networks, rather than serving the public interest.

Among large sectors of the population there is a feeling that the ruling coalition and VMRO-DPMNE in particular has captured the state. (See data in Public opinion on the wire-tapping affair: A Survey) Among many in Macedonia a widespread 'sense of impunity' of VMRO-DPMNE and DUI officials exists amplified by a long-standing absence of alternation in government. The feeling is that Prime Minister Gruevski and his associates have learnt to maximize wealth and power for their own benefits while extracting large-scale resources from the society and employing part of those resources through clientelism and other means. All of these actions are seen as being taken in order to ensure their continuing positions, financial gain, and impunity. At the moment the legitimacy of public policy making is questioned, while social norms, and the trust in the public institutions shaken. The trust in the functioning system of checks and balances is broken. A belief that a systemic failure has occurred in the country is omnipresent.

Literature on state capture underscores that it presents unique difficulties for policy-makers, practitioners, and concerned citizens who wish to address it. One major challenge is simply gaining detailed documented information about actual structures and processes that accompany this phenomenon (Hellman et al.). EU Progress Reports, analyses by various think tanks and the content of the wire-tapped conversations provide Macedonians with ample evidence, even if on a somewhat superficial level. Citizens need to focus on the second challenge, “creating sustained public pressure under which even captured institutions go against the interest of their captors and come back to serve their citizens under public scrutiny.” The third challenge is keeping reformed institutions out of the orbit of state capture. (Hellman et al) The following section presents a set of ideas how to make reforms so that there is a critical mass of agencies that are not under state capture, assuring that those institutions that have been reformed remain free of internal as well as external pressures.

Reforms Now for European Macedonia

The first and immediate issue to be tackled with is to **return politics to a sense of normality and decency**. Being politician must not confer special privileges. Politicians must not abuse the system and have humility and accountability as virtues. Macedonian politicians should not enjoy extraordinary incomes; neither should they enjoy various hidden privileges as they do at present. (for e.g. extra income from membership in various supervisory and governing boards, extravagant travel expenses and per diems, unlimited or unaccounted usage of publically paid for mobile phones, automobiles or meals in restaurants) Politics in Macedonia must be open and transparent activity where public goods are not used for private or party benefits during electoral campaigns and beyond. Integrity means playing by the established rules, not subverting them, even for the sake of ideological or party gain. Politicians are elected by the citizens to make decisions on the basis of evidence based

policy research conducted by public servants in cooperation with analysis of experts from think tanks, universities, trade unions, employers association, business associations and civil society activists, and in communication with the citizens. Politicians are not elected to seclude themselves and base their decisions on their own or party interests.

Furthermore, given that there are typical problems related to corruption and political/party influence on the independence of public institutions, the media, and the electoral processes, Macedonia should **immediately focus on strengthening the independence and the competencies of several public institutions** that can influence the mentioned problematic areas. These include, the State Audit Office, the Media Regulatory Body, the Public Broadcasting Service, (MRT), the Ombudsperson Office, the Public Prosecutor, the Anti-corruption Commission, the State Electoral Commission, and the Commission for Protection from Discrimination. One could envision a system of election/appointment of officials in these bodies through a consensual vote in the parliament where for example the nominations would be confirmed by a strong majority and the candidates would have very strong qualifications. Among other things, the strengthening of the efficacy and the role of the mentioned institutions will in the short run influence the fairness of elections. Conducting free and fair elections, whereby voting will not be disputed by any party, should be a priority for the near future.

A key aspect of this engagement is to **improve monitoring and evaluation** of public policymaking in general. Macedonia should move from traditional monitoring which focuses on implementation monitoring, i.e. tracking inputs (money, resources, strategies), activities (what actually took place) and outputs (the products or services produced). This approach focuses on monitoring how well a project, programme or policy is being implemented, and is often used to assess compliance with work plans and budget. The

government should begin using results-based monitoring, which involves the regular collection of information on the public policy performance. Results-based monitoring demonstrates whether a given law, programme or policy is achieving its stated goals. However this should not be used as an incentive for further enlargement of the public administration but should be performed through reforming its present capacities and efficiency to fit the new results-based monitoring approach. This approach is in line with the EU accession strategy as the union repeatedly calls in all progress reports for the country output legitimacy to be strengthened rather than just focusing on the input legitimacy of decisions. It will inevitably need establishment of a monitoring and evaluation framework that is currently lacking, as well as acquiring certain sets of skills of civil servants as well as level of knowledge and awareness of public managers for results – based monitoring framework to be enforced.

Performance-based budgeting is the practice of developing budgets based on the relationship between program funding levels and expected results from that program. The performance-based budgeting process is a tool that program administrators can use to manage more cost-efficient and effective budgeting outlays. It is a way to allocate resources to achieve specific objectives based on program goals and measured results.” The key to understanding performance-based budgeting lies beneath the word “result”. In this method, the entire planning and budgeting framework is result oriented. Program budgeting is not simply about changing the way a budget is presented, but about changing the way policy officials, the public and government staff think of the government, how they plan, manage and budget. Each line ministry and agency needs to engage in the process of developing a program structure for their budget. Line ministry management and staff-- not consultants-- must undertake the work. This also implies that a country should not simply import a program classification from another

country and try to adopt it. In the same time the performance – based program budgeting is in line with the EU accession requirements for Macedonia and a commitment the Government fails to implement since 2009.

Macedonian government should **in the long run** establish results-based models of **monitoring and evaluation**, looking at outcomes and impacts, as opposed to the traditional monitoring and implementation orientation, which only looks at the inputs and milestones for project’s implementation rather than program implementation. Performance-based monitoring, evaluation and budgeting must include systematic and continuous data collection on public policy implementation for performance measurement, and it must include indicator values against which progression towards meeting targets can be measured in line with objectives set. Furthermore it should facilitate adjustments and adaptation, thus making for more effective public policy management. This facilitation of full-fledged monitoring and evaluation through consensus and capacity development – with a view to increasing the efficiency and effectiveness of public policies - should be a priority. Regulatory impact assessments and other steps and commitments to performance-based budgeting already presuppose strategic planning for targets and indicators measurement. Pertinent to the success of the results based models of policy making is time, for deliberation, for implementation, for adjustment and measurement of impact and results. The style of governance promoted in the last decade was rather contrary, marked by not inclusive policy making due to the lack of time, express procedures for adoption of new legislation successfully hidden behind the need to meet pressures for accelerating EU accession. Therefore, a new government should take it slowly, define several results per sectors and devote time for implementation, that will allow time for measurement of results and deliberation of new policy solutions. Such improvements due to the currently low capacities of the government in monitoring and evaluation and

performance budgeting can be bridged by the inclusion of independent experts and civil society actors.

Consequently, Macedonia must **immediately** thoroughly **improve fiscal transparency** – the comprehensiveness, clarity, reliability, timeliness, and relevance of public reporting on the past, present, and future state of public finances – is critical for effective fiscal management and accountability. It helps ensure that governments and the public have an accurate picture of public finances when making economic decisions, including of the costs and benefits of policy changes and potential risks to public finances. The current crises revealed problems that originate from the lack of pre-budget statement and thereof lack of debate for the central budget in Parliament; lack of citizens budget and thereof user-friendly budget information sharing with ordinary citizens; absence of reporting the public debt in the budget document¹; absence of reporting the transfers of socially owned enterprises (such as ELEM, T-home, AEK and etc.) to other public enterprises such as JSP, MTV and others. Fiscal transparency should provide legislatures, markets, and citizens with the information they need to hold governments accountable.

By joining the Open Government Partnership, the government of Macedonia has pledged to continuously improve itself on the foundations of open, transparent, reliable and efficient government institutions that communicate and cooperate with the citizens. The obligations for transparent implementation of the government activities as well as inclusion of NGOs are **proclaimed priorities** that should be put in real use. It is an imperative that the civil sector is more actively used in the policy making processes. Macedonia needs to **develop a culture of inclusion** and respect of rights for all citizens

¹ The separate reporting of the external public debt is not sufficient, it needs to be included in the budget as it is financed and administered through the budget, as well as it needs to include debt not just towards external financial institutions but also commercial borrowers.

in the policy making and decision-making processes, including the adoption of laws and access to information. Better enforcement of the Law on Free Access to Public Character Information should also be a priority especially providing data to citizens firsthand so that there is no actual need that one should use this Law to ask for certain information.

The **reform of the judiciary** should be a continuous process, important **now as in the long run**. Enforcement of anti-corruption legislation requires an efficient, predictable, and accountable judiciary, able to hold the executive accountable under the law, and to interpret and enforce the terms of the constitution. The independence of the judiciary from direct undue interference with adjudication by the government and the power to enforce its rulings are crucial in the anti-corruption efforts. Hereby, enforcement of rulings is the key issue and Macedonian government must consent to provide the resources needed for enforcement. Given its stature, the Constitutional Courts could contribute more to the development of public policies.

In the **mid to long run** Macedonians of all credos must demand further democratization of our political parties. Ethnic parties should adopt more nuanced party platforms based on political ideologies rather than solely on advancing particular kin interests. The electoral system must not only equally take into consideration the role of women, going beyond the current 30% quota, but also present citizens with choices to elect candidates on the basis of individual virtues perhaps through using the open party lists model or a combination of a majoritarian and PR system as used in Germany. To reduce interethnic tensions electoral system to induce ethnic accommodation, for example, vote pooling could be used in local or presidential elections. Through vote pooling politicians in a heterogeneous society seek support outside their own group in order to win elections and voters exchange votes across group boundaries. Transparency of the

elections must be raised both in terms of party financing and media coverage.

In the **mid to long run** Macedonians must also insist on deepening the decentralization processes. Deepening the principles of equitable and just representation defined with the Ohrid Framework Agreement to the municipal level in combination with moderated electoral campaigns as envisioned above should have a reconciliatory effect on interethnic relations in the country. Macedonia should focus on the implementation of the Strategy on Integrated Education and have a more proactive approach in order to ensure the ethnic, cultural and linguistic identities of all communities lowering the threshold of 20% for official use of minority languages. This threshold is one of the contentions point hovering over the census taking process.

Given the problems witnessed with the wire-tapping affair **various forms of participatory democracy**, such as the community forum program supported by the Swiss, should be taken into consideration in the **mid to long run**. Electronic participation at the problem defining level if not at the strategic planning and budgeting processes should be an aim for citizens to be able to effectively engage at on a local level. Overall, participatory budgeting which allows the participation of citizens in the conception and/or allocation of public finances' should be a target. Doing so will encourage Macedonians to become part of the 'public sphere' rather than to remain mired in the civic disengagement and apolitical cynicism that seems to have plagued our political systems in recent years. Such citizen engagement will increase social justice by involving the poor and excluded, and helps individuals become better citizens through oversight of public spending, thereby helping to reduce corruption and cronyism, empowering a more diverse range of political activists, reducing elitism and clientelism and, in the end, providing citizens with greater access to basic services and improved living conditions (Moynihan 2007).

Elite Settlement Now

The current state of affairs and elite conflict distinctively resembles the circumstances described by political scientists in literature on democratic transitions. Key authors in this field noted that the critical step for a successful democratization included transformation of disunified elites into consensually unified ones, through an elite settlement of basic disputes among elites (Higley and Burton, Burton and Higley, O'Donnell, G., and Schmitter, Higley and Gunther)². **An elite pact, settlement or political settlement is a relatively rare event in which warring national elite factions suddenly and deliberately reorganize their relations by negotiating compromises on their most basic disagreements. Such pacts are the processes in which previously disunified and warring elites suddenly and deliberately reorganized their relations by negotiating compromises on their most basic disagreements, thereby achieving consensual unity and laying the basis for a stable democratic regime. Alternatively put, political pacts are a set of formal and informal agreements between contending political actors to diffuse potentially disruptive contestation; they establish a basis for restrained and peaceful political competition between major elite camps. An elite pact can also be defined as an explicit, but not always publicly explicated or justified, agreement among a select set of actors which seek to define (or better, to redefine) rules governing the exercise of power on the basis of mutual guarantees for the 'vital interests' of those entering into it. The effect of these settlements is to fundamentally transform relations among existing elite factions, creating a consensually unified elite structure that provides a foundation for lasting political stability. After settlements, elites continue to be affiliated with conflicting parties, movements and beliefs, but they share a consensus about government institutions and the codes and rules of political competitions. The essence of**

² All definitions are from the mentioned references.

an elite settlement is a bargain among elites that their respective supporters will accept.

In political science elite pacts are related to **political settlements**. Both are related to the current Macedonian crisis. Political settlements are the common understanding between elites about how power should be organised and exercised and include formal institutions and informal agreements. (DFID) Every state is based on a political settlement that represents the outcome of contention and bargaining between elites, and between social groups and those who occupy authority within the state and society more widely.’ The political settlements approach focuses on the formal and informal negotiations, bargains, **pacts and agreements between elite actors**, as crucial drivers of the locally effective institutions and policies that promote or frustrate the achievement of sustainable growth, political stability and socially inclusive development. OECD characterised the term as referring to how the balance of power between elite groups is settled through agreement around the rules of political engagement. Political settlement may be (re)shaped by the outcome of a single event (such as a peace agreement), or it may reflect an ongoing process of exchange and (re)negotiation that extends over time where what matters is the conduct of key actors

Political scientists have argued that elite settlements are triggered by a sharp and profoundly **dangerous crisis** which drives elites to abandon competition and cooperate to effect a change of regime. Elite settlements occur through relatively quick negotiations among leaders of major elite factions. The negotiations are conducted by experienced political leaders. They are often face-to-face, partially secret, negotiations among paramount leaders of the major elite factions/parties. Through a combination of skill, desperation, and accident, impasses are broken and crucial compromises are struck that result in formal written agreements. Written agreements commit elite factions publicly to the concessions and guarantees they have made. But formal agreements and

constitutions by themselves hardly suffice to produce the common elite acceptance of a new code of political conduct, which is the most fundamental and lasting consequence of an elite settlement. Behind such agreements there must be a great deal of **forbearance and conciliatory behaviour** among the most central elite actors

Elite settlement as a new and transformed political order born of crisis and achieved through elite cooperation is crucial for our country. Elite settlement **“tames” politics**: leads to compromises among political leaders, generates shared practices among competing political elites and defines sanctions for violating that. After settlements, elites continue to be affiliated with conflicting parties, movements and beliefs, but they share a consensus about government institutions and the codes and rules of political competitions. Politics no longer kills, “is no longer a warlike affair, (...) affirms itself as the standard *modus operandi* of a polity”; only a settlement leads to a stable democracy. (Sartori, 1995) We need such a settlement as soon as possible in Macedonia.

Bridging the immediate differences

Macedonian politicians have for a long time disagreed about government institutions, engaged in fights for dominance, and had “the winner takes all” attitude. It is imperative for the political and social actors to understand that the consolidation of democracy comes through cooperation not based on self-interests but on society-oriented interests. In order for democracy to consolidate it is imperative for political parties and politicians to show political will in negotiations and institution building past petty and temporary interests. VMRO-DPMNE and SDSM must immediately open communication channels. There needs to be **a quick agreement on the necessary steps forward**. (See Annex 1 on practical steps needed to do this) While changes in the composition of ministers in Gruevski’s cabinet, especially ministers most implicit in the alleged wrongdoings evidenced by the wire-tapping recordings, is expected

and necessary, **SDSM must resume its parliamentary function**, returning to the Macedonian *Sobranie*. There is a need that VMRO-DPMNE and DUI find a consensual agreement with SDSM and DPA regarding the cabinet reshuffle. Furthermore, key ministers for the necessary reforms and for gaining trust in the political process, such as ministers of interior and justice, should be approved with the consent of the opposition. A **parliamentary committee** to investigate the wire-tapping affair **should be consensually agreed** upon to include independent experts from Macedonia, such as the individual members of the Venice Commission from Macedonia and friendly states. The commission should report its findings in a reasonable period of time (one year). While the publication of wire-tapped recordings should stop the juridical process against all the persons involved in any manner in the wire-tapping/coup scandal should proceed carefully. Given the climate of distrust, monitoring by EU appointed prosecutors/judges should be agreed upon. The criminal charges against Zaev and Gruevski should be especially carefully processed.

Action plans for **reform of key institutions** (the State Audit Office, the Media Regulatory

Body, the Public Broadcasting Service, (MRT), the Ombudsperson Office, the Public Prosecutor, the Anti-corruption Commission, the State Electoral Commission, and the Commission for Protection from Discrimination) should be agreed upon. A **census should be prepared** and organized as soon as possible, even if the question of ethnic belonging is not to be posed (language identification could be used in the census as this is actually key for policy making in education for example, not collecting data on ethnic identity will avoid unnecessary tensions over the Ohrid Agreement provisions of bestowing rights in local municipalities to populations over twenty percent, and would reduce unnecessary tensions over the ethnic balance in the country). All the other outstanding issues regarding free and fair conduct of elections should be tackled immediately – the electoral roll being one of them. Timelines for this and the conduct of the census could be agreed. Overall, an agreement to hold **new elections in the late fall of 2016** should be made. Given that the reforms envisioned here are implemented and politics is returned to normal, these elections could bring a new dawn to democratic Macedonia.

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Annex 1: Primer on practical steps to bridge differences

Since commitment to problem resolution cannot be achieved without trust there has to be a two pronged approach to trust building/problem resolution separated into long and short term themes.

The **Short-Term Themes (STTs)** will engulf the present crisis but focus on:

- a. What the political parties and other stakeholders **agree on** (particular issues, problems, tasks, goals) and then create an action plan for problem solutions.
- b. Defining the issues that they **disagree on** but for whose resolution no substantial political capital needs to be spent. Then create ad-hoc task forces to come up with solutions for particular issues behind closed doors with a fixed deadline (few days or weeks at most) and after they reach a deal or partial deal to inform the public.

The **Long-Term Themes (LTTs)** will engulf issues which are not immediate or generated by the present crisis but for which a:

- a. Wider political consensus among the main parties is necessary in order to achieve a **common direction** of all present and future Governments of Macedonia (such as a consensus on the red lines about the name issue with Greece)
- b. Other issues that generate political conflict but are easily solvable through **consultation and agreeing on a certain “set of rules”** to which all sides will agree to adhere (in writing).