

Minutes No. 47

**MCA-Armenia Governing Council Session
16:00, December 2, 2009
GoA Conference Room**

The session was chaired by H.E. Tigran Sargsyan, The Prime Minister of the Republic of Armenia and the Chairman of the MCA-Armenia Governing Council.

In attendance of:

Members of Governing Council:

Armen Gevorgyan	RA Deputy Prime Minister, Minister of the Territorial Administration
Nerses Yeritsyan	RA Minister of Economy
Tigran Davtyan	RA Minister of Finance
Gerasim Alaverdyan	RA Minister of Agriculture
Gurgen Sargsyan	RA Minister of Transport and Communication
Arman Voskanyan	Representative of “Tavush development” NGO
Karen Zadoyan	Chairman of “Armenian Young Lawyers’ Association” NGO
Poghos Shahinyan	Chairman of “National Road Safety Council” NGO
Viktor Engibaryan	Chairman of ““European Movement of Armenia” NGO

GC observers:

Alex Russin	GC observer, MCC Resident Country Director
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In the absence of:

Vahram Nercissyantz	Chief Economic Advisor to the President of Armenia, Deputy Chairman of the MCA-Armenia Governing Council
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Shirak Mikayelyan	Authorized representative of "Work and Motherland" NGO
Ruben Khachatryan	Chairman of "Foundation for Preservation of Wildlife and Cultural Assets in Armenia"

Invitees:

Aram Harutyunyan	RA Minister of Nature Protection
David Sargsyan	Chief of RA Government Staff
Andranik Andreasyan	Chairman of the State Water Committee of the Ministry of Territorial Administration

Participants:

Ara Hovsepyan	CEO, MCA-Armenia SNCO
Nora Martirosyan	Legal Counsel/ GC Secretary, MCA-Armenia SNCO
Anahit Petrosyan	Water-to-Market Officer/Economist, MCA-Armenia SNCO
Tigran Kalantaryan	Irrigated Agriculture Project Officer/ MCA-Armenia SNCO
Inessa Gabayan	Representative of Mott MacDonald (Great Britain)
Hovhannes Sahakyan	Deputy Head of the Economic Department, Government Staff
Aram Ananyan	Assistant to RA Prime Minister
Rima Yeganyan	Leading Specialist of Information and Public Relations Department, Government Staff
Marina Kushkyan	Specialist of Protocol Division, Government Staff
Tigranuhi Baghdasaryan	Interpreter

The meeting was opened by Mr. Tigran Sargsyan, the Prime Minister of the Republic of Armenia and the Chairman of the MCA-Armenia Governing Council.

The Agenda was approved as follows:

1. Discussion of the National Irrigation Policy and Strategy Paper and approval of further steps.

2. Information on works, included in the Second Package of Ararat Valley Drainage System Rehabilitation Works under the Infrastructure Activity of Irrigated Agriculture Project of the MCA-Armenia Program.
3. Introduction and discussion of MCA-Armenia's modified Procurement Guidelines; discussion and approval of the modified Procurement Plan.
4. Discussion and approval of the Annual Supplementary Report of the MCA-Armenia Program.
5. Discussion and approval of information on bonuses and annual salary increase of MCA-Armenia SNCO employees.
6. Information on Millennium Challenge Account-Armenia's newly elected Stakeholder Committee members' activities and existing issues.
7. Other issues
 - a) Discussion and approval of draft Contract on Construction of Spitak gravity system under MCA-Armenia Irrigated Agriculture Infrastructure Activity.

The Agenda was approved unanimously.

Alongside with the Agenda the corresponding references were made available to the members of the MCA-Armenia Governing Council.

Agenda item 1 was presented by Ara Hovsepyan, Chief Executive Officer of the MCA-Armenia SNCO.

Ara Hovsepyan informed that approval of National Irrigation Policy and Strategy Paper (hereinafter referred to as Paper) by RA Ministry of Territorial Administration State Committee on Water Economy is a condition precedent and has to be met prior to December 15, 2009.

The draft Paper was developed under MCA-Armenia Program by Mott MacDonald Company and is submitted to Governing Council as a Concept Paper, incorporating initiatives and steps directed to improvements in irrigation sphere.

The first draft of the Paper was presented to Governing Council for discussion on August 7, 2009 and a decision was made that the Paper as a Concept should be approved till the end of 2009. A number of discussions took place on the Paper with the interested bodies, particularly a series of discussions were initiated with Armen Gevorgyan, RA Deputy Prime Minister, Minister of Territorial Administration. Further on interested bodies presented their feedback and a 3 day round table discussion (October 5-7) was organized to discuss arguable issues. Observations and recommendations presented were studied; the Paper was reviewed and submitted to Governing Council. All possible comments and recommendations to the revised version will be discussed during coming ten days and the finalized Paper will be presented to Governing Council for approval on December 16. Having received the approval of Governing Council, the latter is to be approved by the Chairman of RA State Committee on Water Economy. Having received the approval, the condition precedent will be met.

The second condition precedent is to be met prior to September 2010 and it assumes approval by RA Government of the entire package, including National Irrigation Policy and Strategy Paper, further steps implementation schedule and necessary related legislative changes.

Andranik Andreasyan noted that there were no objections in respect to the presented Paper; however, there are a number of arguable questions that have not been finally agreed. In particular, the Consultant proposes to provide tax privileges to WUAs, whereas RA Ministry of Finance objects that. However, having studied the facts the Consultant insisted on necessity of tax exemption in the Paper.

The RA Prime Minister asked how the Consultant justifies the necessity for the tax exemption.

Andranik Andreasyan responded that WUAs are unions of farmers, their only purpose being water distribution and in fact no commercial activities are taking place, i.e. the WUA is of a consumer's cooperative nature and does not pursue acquisition of profit. As for the payments received against water distribution, they normally cover the expenses needed for further water apportionment.

The RA Prime Minister noted that instead of discussing tax privileges of WUAs the change of their status should be brought forward.

Andranik Andreasyan stated that the status of WUAs is limited by a separate law.

The RA Prime Minister mentioned that there can be no issue of paying a profit tax if WUAs are non profit.

Andranik Andreasyan stated that he was talking about the VAT. To this the RA Prime Minister stated that there is no way they can be tax-exempt as the main idea of the VAT is the chain. WUA being part of that chain will cause its derangement if tax-exempted.

Nerses Yeritsyan added that in this case the point is about taxes and tax-exemption of WUA as a service provider entity.

The RA Prime Minister mentioned that the tax-exemption of WUAs is an unfavorable precedent as the other entities may start raising the issue of tax-exemption. Besides, VAT is already included in the cost of the water and as a matter of fact it is paid by the final consumer; the farmers.

Tigran Davtyan noted that tax-exemption can be applied on the last link of the chain which is not WUA and if tax-exempt this will cause an interruption of the whole chain.

The RA Prime Minister asked how much VAT overall was paid last year by WUAs.

Andranik Andreasyan answered that the overall sum amounts about 800-850 mln AMD.

The RA Prime Minister mentioned that if tax-exemption is applied water cost must be reduced which, certainly, will not be executed by the WUAs.

Andranik Andreasyan answered that the currently paid water costs are not sufficient even for covering the ongoing expenses, let alone the capital ones. The Consultant proposes in the Paper to establish a special fund for covering capital expenses and direct all the VAT fees to that fund.

The RA Prime Minister stated that the matter is not tax-exemption but the coverage of capital expenses with the amount received from taxes and it is this issue that can be discussed.

Ara Hovsepyan stated that the Consultant Representative is present and can present the Paper and answer to the questions requiring clarifications.

Inessa Gabaryan presented the status of WUAs noting that they do not implement commercial activities, they neither buy nor sell, the WUA simply takes water to the source and gets it to its members. Thus, a question is why WUAs should pay taxes.

The RA Prime Minister answered that water is a product and each product must be paid for. However, a question rises whether a private company that wanting to join the network and demonstrating its readiness to provide the same service as the one provided by WUA, however, more efficiently and implement commercial activities, should be allowed to do so.

Inessa Gabaryan answered that it can be allowed in case villagers are supplied with water more efficiently and cheaper due to this service.

To this the RA Prime Minister replied that in this case a private organization can announce about its readiness to provide more efficient and cheaper services, however, to be on an equal field with WUA, it should be tax-exempt as well.

The RA Prime Minister stated that this is an arguable issue and it is still not clear which option is acceptable. It is necessary to listen to the Consultant's arguments more carefully and hold another discussion of this issue. It is also important to have a clear understanding which way the Government will pursue and what it is willing to obtain in this field; whether it is a market or a regulatory field.

Tigran Davtyan noted that in international practice there is a tendency for reduction of tax privileges and if the Government is willing to support this or that sector, it should be done in the form of subsidies. This is an approach accepted by international structures. Besides, reduction of tax privileges underlies the RA Government Program as a principle and it is meaningless to touch upon this issue again.

When the discussions were over it was **unanimously decided** to approve the timetable of further steps necessary for the approval of National Irrigation Policy and Strategy Paper, i.e. prior to the meeting to be held on December 16, 2009 sum up the observations and recommendations on the Paper, present the Concept Paper to approval and if necessary hold a joint discussion with the interested agencies for discussing the arguable issues and summarizing.

The following assignments in respect to the item 1 were recorded: i) For Ara Hovsepyan, Chief Executive Officer of the MCA-Armenia SNCO – hold necessary discussions within 10 days with the interested agencies and the Consultant to finalize the Paper, ii) For Aram Harutyunyan, the RA Minister of Nature Protection – present the position of the RA Ministry of Nature Protection regarding the Paper.

Agenda item 2 was presented by Ara Hovsepyan, Chief Executive Officer of the MCA-Armenia SNCO.

Ara Hovsepyan informed that Second Package of Ararat Valley Drainage System Rehabilitation Works will include cleaning of over 40% drains on over 1.8 mln^{cbm} volume included in the Program; in all the collector networks, with the exception of those totally included in the First

Package, as well as rehabilitation and renovation of a series of other structures which were presented in detail in the references available alongside with the Agenda. Basically, it is considered to conserve or rehabilitate over 50 flowing wells (artesian) and vertical drainage pits, close (liquidate) several unsafe/emergency flowing wells.

Ara Hovsepyan stated that upon necessity MCA-Armenia SNCO can present the report of the designing organization as well, where all the mentioned issues and election principles are presented more thoroughly and in depth.

Ara Hovsepyan also drew the attention of the attendees to the fact that the presented position was already discussed with the RA Minister of Nature Protection and is acceptable for the latter. Ara Hovsepyan then noted another circumstance- some pumping stations are also subject to rehabilitation under the Second Package of Ararat Valley Drainage System Rehabilitation Works which will cause an increase in energy expenses; MCA-Armenia SNCO will estimate their volume and costs assessment and present to the RA State Committee on Water Economy.

After discussing the issue it was **unanimously decided** to take into consideration on works incorporated in the Second Package of Ararat Valley Drainage System Rehabilitation Works under the Infrastructure Activity of Irrigated Agriculture Project of the MCA-Armenia Program.

Agenda item 3 was presented by Ara Hovsepyan, Chief Executive Officer of the MCA-Armenia SNCO.

Ara Hovsepyan presented modifications made in the Procurement Plan, noting that the line stating about the considered construction of Meghri gravity system was removed as MCC found its design technically unacceptable. The Halavar gravity system has temporarily been taken out from the Procurement Plan due to lack of funds.

Andranik Andreasyan mentioned that perhaps MCC found the current draft unacceptable, however, the construction of this system is of a strategic significance for the Republic of Armenia and its construction will be covered by the RA state budget.

Ara Hovsepyan also mentioned that line items on technical assistance to WUAs and WSA were added in the Procurement Plan.

When the discussions were over it was **unanimously decided** to approve the MCA-Armenia modified Procurement Plan.

Agenda item 4 was presented by Ara Hovsepyan, Chief Executive Officer of the MCA-Armenia SNCO.

Tigran Sargsyan, the RA Prime Minister, proposed to Ara Hovsepyan to present the report to the public which is the actual stakeholder of the Program. The point is that villagers are informed of the MCA-Armenia Program, however, it is also important to update them on Program progress results and achievements.

When the discussions were over it was **unanimously decided** to approve the Annual Supplementary Report of the MCA-Armenia Program.

The following assignment on item 4 were recorded: For Ara Hovsepyan, Chief Executive Officer of the MCA-Armenia SNCO – to endorse the Public Awareness Program with Amen Gevorgyan,

the RA Deputy Prime Minister, Minister of the Territorial Administration and inform the public on MCA-Armenia Program progress through Mass Media and other methods.

Agenda item 5 was presented by Ara Hovsepyan, Chief Executive Officer of the MCA-Armenia SNCO.

The RA Prime Minister proposed to postpone the discussion of this issue to 2010 given that salary of civil servants has not been reviewed this year.

Armen Gevorgyan mentioned that other structures/agencies implementing similar programs neither reviewed salaries nor considered bonuses.

Arman Voskanyan added that in case bonuses are not granted to employees a proper justification should be provided.

Armen Gevorgyan explained that to date no component of MCA-Armenia Program has reached its logical end.

Ara Hovsepyan stated that the structure of the Program is such that Program Component activities will be accomplished by the end of the Program.

Poghos Shahinyan mentioned that there is no need to draw parallels between civil servants and employees of private or international sectors as the nature of work of the latter differs significantly, besides, all civil servants get 13th salary and there are quarterly bonuses available at some agencies as well.

Karen Zadoyan proposed that funds considered for bonuses of MCA-Armenia SNCO employees will be directed to the Stakeholder Committee members for covering their per diem and overnight allowances.

Ara Hovsepyan mentioned that this proposal contradicts to the general principle of the Stakeholder Committee according to which it operates on a voluntary basis and does not receive any financial compensation for its work. Besides, the MCA-Armenia SNCO compensates the travel expenses of the Stakeholder Committee members coming from the RA regions/marzes.

When the discussions were over it was **unanimously decided** to postpone the approval of the issue on bonuses and annual salary increase for the MCA-Armenia SNCO employees.

Agenda item 6 was presented by Ara Hovsepyan, Chief Executive Officer of the MCA-Armenia SNCO.

Ara Hovsepyan presented a reference with the detailed description of the current situation as well as MCC's letter regarding to the no objection on the election of 5 SC delegates.

Tigran Sargsyan, the RA Prime Minister stated that RA Government is informed of the current issue, it examined the presented arguments and came to an opinion that the statements of the majority formed as a result of SC elections are right.

The RA Prime Minister also mentioned that after the meeting held among SC and Davit Sargsyan, Chief of RA Government Staff, the RA Government addressed a response to the 7 SC members presenting its position in regards to the issue.

Karen Zadoyan stated that there is only a few votes difference in the votes received by candidates ranking 13-15 places and candidates ranking 16 and 17 elected as a result of the Stakeholder Committee election, The 7 SC members claim that there are 4 invalid ballot-papers among the valid ones and the distribution of votes may change if the 4 ballot papers are acknowledged as invalid. Besides, 8 SC members violated the SC Regulations and making a reference to the provisions of MCA-Armenia Program Governance Agreement, defining that to secure a quorum attendance of at least pure majority of SC members is necessary; held SC meeting and elected a new Governing Council personnel. A letter regarding this matter was addressed to RA Government informing about the current situation and recommending resolving the issue.

The RA Prime Minister asked what the SC members recommend to solve the current situation.

Karen Zadoyan informed that 7 SC members propose to recount SC ballot-papers involving Governing Council, MCC Representative and 15 SC members, resolve this issue, then acknowledge previous decisions made by SC as invalid and continue SC activities with a new staff comprised of 15 members.

The RA Prime Minister asked who implemented the process of elections.

Karen Zadoyan mentioned that the elections were held by the Election Committee comprised of 7 members elected by SC.

The RA Prime Minister was interested to know if there is any disagreement among those 7 members and if all the members are of the same opinion regarding the validity of ballot-papers.

Karen Zadoyan replied that one of the members of Election Committee was absent at the review of ballot-papers, and 1 member from the rest of the six ones presented a separate opinion regarding 3 ballot-papers and one person abstained from voting regarding one ballot-paper.

Poghos Shahinyan presented that the process of SC elections was observed by observers, former SC members, as well as SC member candidates. No objections were presented by the latter either during or after the elections. Two-three days after the elections members that ranked 16th and 17th in the elections presented an application demanding a recount of votes. Although, the demand was not substantiated, recount of votes did take place, given that SC is a public structure. Two arguable ballot-papers were found during the revision, which, however, were acknowledged as valid by a majority of votes of the Election Committee. As for the first SC meeting, it should have taken place in the beginning of October, however, the meeting was postponed due to the recount. 7 SC members objected to the next proposal for holding a meeting and mentioned in their electronic messages that they will not attend meetings unless the issue is resolved. Other SC members, not finding solution to the issue, still held a meeting which was boycotted by the 7 SC members and, as the situation was close to a deadlock, a decision to follow Governance Agreement provisions was made especially given that each SC member bears responsibility at over 100 organizations giving their votes to them for their activity.

In following the Governance Agreement the 8 SC members first of all were guided by the fact that the SC Regulations have no legal effect, it was accepted by SC and can also be modified by SC. Besides, there is a ratified International Agreement which prevails. . The condition reached a deadlock and SC members could continuously boycott SC meetings, the 2/3rd of SC members could never assemble and meetings could never be held. Thus 8 SC members made a decision to follow the Governance Agreement and step forward. In the future discussions were held with the

Chief of RA Government Staff, the situation was discussed many times and 8 SC members addressed letters to the US Ambassador to RA, MCC and RA Government presenting the positions of 8 SC members regarding the situation as well as the readiness of 5 elected delegates to resign.

Poghos Shahinyan officially informed of his resignation.

The RA Prime Minister was curious why the 7 SC members did not attend SC meetings as the 8 SC members called them to attend the meeting and resolve the situation.

Karen Zadoyan informed that 7 SC members initially appealed to the SC members by an electronic mail until not to hold a meeting the issue of SC members is solved.

Davit Sargsyan mentioned that the main issue is that in case of invalidity of those several ballot-papers SC minority will become a majority and vice versa.

Arman Voskanyan mentioned that he was present at the elections and is confident the process of elections of both SC and Governance Committee delegates was normal. Besides, in fact, the present situation is not that complicated as it may seem. For instance the number of SC can be reduced to 14 to fix the situation.

Arman Voskanyan asked Alex Russin to clarify MCC's letter not granting an approval to GC delegates.

The RA Prime Minister asked Ara Hovsepyan which body is competent to resolve the current situation.

Ara Hovsepyan replied that as a matter of fact, that competence belongs to SC. However, it is defined in the Agreement that RA Government must ensure SC elections and operation.

Davit Sargsyan stated that the Government fulfilled that obligation through MCA-Armenia SNCO holding SC elections.

Ara Hovsepyan also informed that SC delegates hold their positions at the Governing Council for a one year period after which their authorizations terminate. In this case MCC has made an exception and allowed the current delegates to hold office until the new staff is approved. However, as one of SC members mentioned in the electronic letter, the attendance of SC members also depends on their desire.

Poghos Shaninyan informed the attendees that the last two SC meetings were held with the participation of 15 SC members and alongside with other issues the application of 2/3 voting ratio was discussed as well. It was decided to change this item with 8 members voting for, 5 against and 2 abstained and consequently the Governance Agreement provisions to be applied.

RA Prime Minister proposed to stop this discussion as it is not an issue of a competence of Governing Council.

Karen Zadoyan informed that the issue that Poghos Shahinyan mentioned had been presented among others in a biased way and the issue of decision making is indisputable. With regards to competence, it belongs to the US and RA Governments. The American side has already expressed its position; we are waiting now for the position of the Armenian side.

Alex Rassin stated that the purpose of the Agreements is to provide civil society involvement which leads to Program transparency. Touching upon public awareness on Program results it should be noted that SC has a significant role in this aspect. As a donor organization MCC is willing to make Program achievements visible and SC informs public of the Program results. Not going into details, it is clear that there is some kind of distrust from one SC group towards another which may have a negative influence on the Program as well. MCC is not competent to say which side is right and which one is wrong, however, it is a fact that some people are discontent. It is indisputable that the resolution of this issue belongs to SC who are the representatives of the None Governmental Organizations interested in the Program. However, on the other hand, RA Government and MCA-Armenia must be interested in the efficiency of SC activities and their positive influence on the Program. The issue is not about unanimous agreements of 15 members, although the disagreements are substantial.

Alex Rassin called to SC to try to overcome the current issues. RA Government, as a party to the Agreement, had to ensure just elections and if the Government finds that the elections were transparent, it can present its position regarding this process. It is important to have a SC interested in the Program and activities that arise from Program interests.

The RA Prime Minister shared all of Alex Rassin's opinion and expressed his discontent toward SC noting that the latter is not able to reach a joint solution by 15 persons leaving a stain on RA Government's rating.

The RA Prime Minister questioned SC members whether they are able to resolve the current issue as the situation affects the authority of RA Government.

Karen Zadoyan mentioned that 7 SC members are ready to discuss the issue jointly with 8 members and reach a consensus.

Davit Sargsyan stated that being familiar with the situation he is confident that the sides will not be able to reach a unanimous agreement.

Tigran Sargsyan, RA Prime Minister, asked if it is possible that SC conducts new elections.

Poghos Shahinyan expressed his disagreements regarding this proposal, stating that in case of new elections the opinion of 8 members is neglected and a precondition is created that every time minority disagrees with the election results new elections will have to be held and this will be a continuous process. The solution is that the 15 members assemble and hold new election of Governance Committee delegates.

Victor Yengibaryan asked why MCA-Armenia SCNO and SC 8 members are against the recount.

Ara Hovsepyan stated that MCA-Armenia SNCO's position was presented from the beginning and SNCO supported SC elections as well as recounting of votes, however, MCA-Armenia SNCO is not the body that is competent to make such decision.

The RA Prime Minister proposed to invite the representatives of 400 organizations electing SC members and hold new elections.

Poghos Shahinyan stated that each SC member had spent time, met with their voters thus it is also necessary to learn about other SC members' opinions.

Aram Voskanyan stated that if elections are held once again and one of the parties expresses discontent, the process will have to repeat again. Thus, he proposed to give some time to SC for resolving the issue through internal discussions.

The RA Prime Minister stated that it is necessary that first of all the civil society believes and trusts SC. If there is no solidarity among the 15 members even in the future, RA Government will initiate new elections.

Armen Gevorgyan proposed to give time to SC for joint solution of a problem by December 16, afterwards if there is no solution, hold new elections approving SC rules in advance.

Nerses Yeritsyan proposed to invite all the listed NGOs to take part in elections.

The Prime Minister Tigran Sargsyan agreed to the proposal.

When the discussions were over it was **unanimously decided** to give time to the Millennium Challenge Account-Armenia's Stakeholder Committee to jointly discuss and solve the issue by December 16, 2009.

The following assignments on item 6 were recorded; i) For the MCA-Armenia's Stakeholder Committee – hold SC meetings, discuss the situation and try to give a solution to the problem; ii) For Ara Hovsepyan, Chief Executive Officer of the MCA-Armenia SNCO – present information on agreements achieved by SC, current state of SC and future steps at the next Governing Council Session to be held on December 16, 2009.

Agenda item 7 a) was presented by Ara Hovsepyan, Chief Executive Officer of the MCA-Armenia SNCO.

It was unanimously decided to approve the draft Contract on Construction of Spitak gravity system under MCA-Armenia Irrigated Agriculture Infrastructure Activity.

When the agenda items were expired, the meeting was adjourned.

MCA-ARMENIA GOVERNING COUNCIL CHAIRMAN,

RA PRIME MINISTER

T. SARGSYAN

The minutes were taken by:

Nora Martirosyan
Legal Counsel/GC Secretary,
MCA-Armenia SNCO