



**3rd Meeting of the SOPAC Council Committee of the Whole (SCW)
on the Regional Institutional Framework
Banyan Room, Holiday Inn, Suva, Fiji
Wednesday, 16th July 2008**

AGENDA ITEM	TITLE
6	CONSIDERATION OF PROGRESS REPORT TO THE FORUM

Consideration of (the following) Progress Report to the Forum

Draft Dated 4th July 2008

**SOPAC Council Committee of the Whole on the Regional Institutional Framework
Progress Report to the 2008 Pacific Islands Forum Leaders Meeting**

Submitted by:

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Preamble

Following the 2007 Leaders Meeting, the SOPAC Governing Council considered paragraph 19(b) of the Communiqué which states *“the need to rationalise the functions of SOPAC with the work programmes of SPC and SPREP, with the view to absorbing those functions of SOPAC into SPC and SPREP”*.

The Council agreed to accept the challenge offered by the 2007 Leaders Communiqué. In arriving at their decision the Council noted *inter alia* that:

- The core business of SOPAC is excellence in applied scientific and technical information and knowledge of earth systems, and demonstrating how this knowledge contributes to sustainable development for its island Members.
- SOPAC has grown substantially over the past 35 years in many aspects into a well-established, and well respected regional organisation serving its Pacific Island Members in developing natural

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resources, principally non-living resources, in a sustainable manner and strengthening resilience through integrated solutions in its three programme areas: Ocean and Islands management, Community Lifelines development and Community Risk management.

- Council is fully cognisant of the need to maintain the momentum established by the Leaders decision, in order to ensure the continuity in both the quality and effective delivery of service in meeting the needs of the people.

During the debate on this issue Members generally agreed that the processes for rationalisation neither disrupt service delivery; nor subject SOPAC's current work programmes to fragmentation; and that the excellent science being mobilised through the STAR network must be retained as a highly valued resource for the region.

The SOPAC Governing Council agreed to establish a Committee of the Whole (SCW) on the Regional Institutional Framework to meet during the coming intersessional period between Council meetings. At its first meeting it would consider and agree on its Terms of Reference.

During the first half of 2008 the Committee met 3 times, 19th March, 4 June and 16th July. Representatives attended from the following Member countries: Australia, Cook Islands, Federated States of Micronesia, Fiji Islands, Kiribati, Marshall Islands, Nauru, New Zealand, Papua New Guinea, Tonga and Tuvalu together with the CEO of the SOPAC Secretariat. Observers from the USA, France, PIFS, and including the CEOs of the SPC and SPREP Secretariats attended the second and third meetings.

The agreed summary records of the three Committee meetings are annexed to this report.

Terms of Reference for the Committee of the "SOPAC Council as a Whole" (SCW)

The SOPAC Governing Council during its 36th Annual Session meeting made the following decision:

- Agreed to accept the challenge offered by the 2007 Leaders Communiqué which states "the need to rationalise the functions of SOPAC with the work programmes of SPC and SPREP, with the view to absorbing those functions of SOPAC into SPC and SPREP".
- Agreed the following course of action as a way forward in responding to the Leaders decision:
 - (i) Agreed that a Committee of the "SOPAC Council as a Whole", be established and adequately resourced, to guide and advise the Director during the consultative process with the Terms of Reference to be agreed at its first meeting.
 - (ii) Agreed that the Director of SOPAC engage in a consultative process with the Director General of SPC and Director of SPREP, with the option of engaging the SG of PIFS as appropriate, providing regular briefings to the Chair of SOPAC Governing Council in the preparation of a draft road map to be submitted to the SOPAC Governing Council for consideration and approval with the intent of a final road map submitted to the Forum by 2010.
 - (iii) Agreed that during this consultative process some of the issues to be considered will include:
 - Proposing possible options for rationalisation and possible organisational models for the new arrangements taking into account realities such as the wider range of technical programmes, the possible rationalisation of certain common support services, the geographic location, and the Membership differences.
 - Examining the costs and benefits of the options considered during the process, the technical programmes, the Memberships, and the external supporting agencies, identifying opportunities for improved service delivery.
 - Proposing a realistic timing for implementation that would need to be taken into account including practical, legal, contractual obligations, and or any other problems that might require prior resolution as a result of rationalisation.
 - Finding a mechanism that will enable the benefits of STAR to be continued.
 - (iv) Agreed to emphasise to all stakeholders, especially Members, donor partners, and Secretariat staff, that in the interim the Commission would continue with its current work and efforts to

secure resources for sustained service delivery keeping in mind consultations with the Director General of SPC and Director of SPREP.

- (v) Agreed to immediately respond by writing to the Forum Chair, Chairs of the SPC and SPREP Governing Councils, Chair of STAR, donor partners and key stakeholders advising of the outcomes of its consideration of the issue at the 2007 Council Meeting.

To implement the SOPAC Council decision (Summary Record of 36th SOPAC Session, paragraph 252(ii) a, the Committee agreed that its Terms of Reference is as follows:

- Examine the work programme of SOPAC with a view to identifying which activities they consider may be rationalised and absorbed within SPC and/or SPREP.
- Examine how these activities of priority to the Island Member States may be delivered more effectively and efficiently, including governance and funding aspects.
- Consider and comment on progress reports from the Director on her discussion with the CEOs of SPC and SPREP and other key SOPAC stakeholders, as the CEOs consider options toward preparing a draft roadmap.
- Ensure adequate resources are provided for the Director to carry out the tasks required.
- The Chair of the Committee to report to Council at its next session.

SOPAC Director's Work Programme

At the first SCW meeting it was agreed that the Director was expected to:

- Hold the first in a series of trilateral discussions with the CEOs of SPC and SPREP, in time to report the outcome to the second SCW meeting tentatively scheduled for mid-May.
- Present a more elaborate 'rationalisation at a glance' picture capturing the substance of trilateral discussions that would show the trends emerging in terms of institutional arrangements, at the May meeting.
- Provide a progress report on the legal assessment; and findings on contractual agreements SOPAC currently has with donors; also at the May meeting.
- Further articulate the preferred institutional arrangements after SCW advice received at the May meeting.
- Elaborate on a draft roadmap to implement or achieve the preferred institutional arrangement(s).
- Commission benefit-cost analyses between the second and third meetings (tentatively scheduled for mid-July) on the narrowed field of institutional arrangement options.
- Prepare documentation to report on progress to the SOPAC Governing Council in October 2008.

Consideration of Overarching Issues

During its meetings the Committee had discussions around a number of issues are summarised below

The Road Map and Responsibilities – Whilst SOPAC Council has decided to have ownership and take the lead in this process, equally important is the imperative that wherever the components of the current SOPAC work programme are to be placed institutionally there is a need to be assured from that governing body or bodies that service support to island Members currently provided through SOPAC will continue and will improve.

In SOPAC's programme the underlying conceptual framework is that applied geoscience, technology and social science are integrated into unified and multifaceted outputs allowing for evidence-based policy and strategy formulations. It allows for better informed and more realistic decisions regarding policies and strategies by clients and Members to achieve desired outcomes such as improved coastal management, resource use, and disaster risk management. This conceptual framework is not unique but it is critical, and recognition of it is essential in the proposed rationalisation, absorption and new institutional arrangements exercise.

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Rationalisation First, Then Absorption Follows – Necessarily, initial tasks of the road map process are dominated by examining issues surrounding rationalisation; (i) what are the guiding principles; (ii) an examination of the SOPAC, SPC and SPREP work programmes to determine what elements of the SOPAC work programme may be rationalised and (iii) what the preferred new institutional arrangements might be.

SCW, having reached agreement on what rationalisation will look like (what the preferred future institutional arrangements will be), will also by that time need to determine the process of absorption and have addressed and resolved any legal and contractual implications.

Managing the Change Process (the Road Map) to ensure a Sustainable Outcome – Before the change process can be determined, finalised and managed, the outcome of the change process needs to be considered and agreed upon in order that sustainability is addressed and assured. It will also be necessary to set a timeline framework for the change process.

Improved Service Delivery and Effectiveness – In order to guide further development of the road map, SCW continues to revert to the issue of “improved service delivery and effectiveness”, and recognises that this must be demonstrated as it remains an underlying purpose of the regional institutional framework.

Plans for Absorption – “Due Process” within the context of SOPAC Council responding positively to the Leaders Communiqué, will require that each of the proposed recipient organisations (SPC) and /or SPREP must develop a plan for absorption to: (i) support their claims in regard to SOPAC’s work programmes; (ii) demonstrate how they will absorb, sustain and improve service delivery and effectiveness; and (iii) retain the services to the region of STAR. The SOPAC Director cannot take responsibility for the development of these plans, as there is no ultimate accountability since the position will have been terminated depending on the institutional arrangements outcome. The SOPAC Director will however, be required to provide any necessary data and information, particularly that pertaining to current circumstances, and which may well be used as a starting point to measure improved service delivery and effectiveness.

Due Diligence – The application of “Due Process” will require SCW to ensure due diligence checks on each of the plans for absorption, as an independent means of validation. These checks must be completed before the SCW can make a decision. As the SOPAC Director will not have responsibility for developing these plans, she will be an option for facilitating the due diligence checks.

Trilateral Meetings between SPC, SPREP, and SOPAC

At the first SCW Meeting it was agreed the SOPAC Director begin trilateral consultations with the CEOs of SPC and SPREP at the earliest opportunity and that the trilateral exercise would be a first step in which the CEOs can bring together their knowledge of what each organisation was doing, and narrow the options for the new institutional arrangement.

During the first half of 2008 the CEOs met twice (16/18th April and 5 June). In addition two trilateral meetings at Programme Level have been convened (15/16th May and 23/24th June).

As of the date of this report considerable time has been dedicated to these trilateral meetings by the participating organisations. In addition to preparatory time, some 11-16 senior staff have been committed over a four-day period supported by an independent Facilitator. Discussions at this level have progressed well but remain incomplete. Staff from each of the Secretariats have acknowledged the immediate benefits gained from the opportunity to become better informed about the respective work programmes.

It is clear from the meetings that the ultimate objective, regardless of the final institutional arrangement, is that SOPAC’s work programme should remain intact and net improvement in service delivery realised. Furthermore, during discussions there was no clear elaboration on the issue of how “all round” improvement of service delivery would be realised. It was acknowledged that during the discussions SOPAC staff had not expressed any preference toward either of the potential receiving organisations.

At the conclusion of the 2nd Programme Trilateral Meeting it was agreed that:

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- Meaningful progress from this point could only be achieved by having the respective, receiving organisations (SPC and SPREP) develop plans outlining how they will absorb all of the services and functions of SOPAC and demonstrate how the delivery of services and functions of SOPAC and the receiving organisation will be improved as a result of absorption.
- The full merits of the trilateral proceedings combined with the absorption plans would need to be considered by the CEOs and ultimately by the respective governing bodies of SPC, SPREP and SOPAC.
- SPREP coordinate, out-of-session, the ToR for developing SPC and SPREP plans for absorption.
- SOPAC to collate and make available all relevant documents.

Legal Considerations

The third SCW meeting received a draft legal assessment prepared in accord with the following Terms of Reference. Members have yet to consider the report. The objective of this assessment is to address the full range of legal issues that the SOPAC Members must consider, should the eventual outcome be dissolution or suspension of the Commission.

The Agreement Establishing SOPAC (1990), in Article 4 establishes the legal status, privileges and immunities of the Commission. Article 16 addresses the issues of dissolution and suspension.

Terms of Reference – The Consultant is required to carry out the following tasks and report to the SOPAC Director:

- (i) Examine the legal obligations, if any, that the SOPAC Council has to the Pacific Islands Leaders Forum, and thereby any requirements for a response from SOPAC Council to a Pacific Islands Forum Leaders Communiqué.
- (ii) In regard to dissolution and suspension (Article 16):
 - Clarify the legal processes and their implications that differentiate between dissolution and suspension of the Commission; and in regard to a resolution to suspend the Commission, describe possible options for suspension being terminated and the organisation revived.
 - A decision to dissolve or suspend requires ratification by two thirds of the Members. Examine the process(es) that will be required at the national level to enable countries to ratify such a decision.
 - Consider options for the eventuality that two thirds of the Members are not in a position to ratify by the time of the next annual session, and thereby not able to make a decision on the date of dissolution or suspension of the Commission.
 - Provide options for the Commission to consider in order to decide on the manner in which the assets and obligations of the Commission should be liquidated, distributed or borne.
- (iii) Comment on the possible legal implications for SPC and SPREP of absorbing any, or all, of SOPAC's work programme functions.
- (iv) Provide comments on any other legal issues the Consultant may consider relevant.

The Road Map for a Way Forward and Possible Timelines

The SCW considered the following as a way forward and possible timelines to progress the Council decision on this matter.

Step 1: Rationalisation

The first step to rationalise the SOPAC work programme and its activities with those of SPC and SPREP has commenced through trilateral meetings. In the first SCW the SOPAC Director presented "Rationalisation at a Glance". The Committee appreciated that there were various ways and levels of detail, that one could consider in this task to rationalise SOPAC's work programme.

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Key to this step is addressing the applied technical and scientific aspects of SOPAC's work programme, as these are considered excellent and must not be allowed to be put at risk or compromised. It must be demonstrable and not intuitive that: (i) the integrity of the applied science and technical services are maintained; (ii) linkages, and synergies exist; and (iii) improved service delivery will result.

It is agreed at various levels that that SOPAC's work programme must be kept "together" in one institution and thus not jeopardise the established practice in SOPAC of the production of "integrated solutions" across the programme of work. Indeed, the linkages and synergies should demonstrate new and a broader range of integrated solutions.

Step 2: Institutional Arrangements

SCW 1 was presented with 5 options for future institutional arrangements:

- Option 1: Fragmentation: In effect a process not unlike an auction, implicitly adhoc, and with the possibility that elements of the work programme will be lost. The record of the Council discussion clearly indicates that this option must not emerge.
- Option 2: SOPAC work programme absorbed fully into SPC: This option of course was considered at length in 1999-2000, and the outcome at that time was in effect the status quo. In the interim institutional arrangements have changed in both organisations, for example SOPAC Council now has a well-developed Strategic Plan 2005-09 and new work programme structure. It is timely to review this option drawing upon the 1999 review report.
- Option 3: SOPAC work programme absorbed fully into SPREP: This option has never been considered at length and clearly this task must be undertaken before the Committee can complete its work.
- Option 4: SOPAC work programme absorbed substantively into either SPC or SPREP with the balance into the other: Clearly, arrangements to bring into effect this option will emerge as a result of the outcome of consideration of Options 2 and 3.
- Option 5: SOPAC work programme remains stand alone: Arrangements to bring into effect this option will emerge as a result of the outcome of consideration of Options 2 and 3, which may provide the opportunity to rationalise the services of all three technical organisations under Pillar Two.

The ongoing trilateral discussions will report to SCW with regard to the preferred institutional arrangement as these discussions mature. In the meantime copies of this Progress Report and other reports of the SCW will be shared with Members and Observers that are participating in this process.

Step 3: Development of Plans for Absorption

The SCW recognises that plans for absorption should be developed and agreed upon before a decision can be made by SOPAC Council, as the handover organisation, to the governing body of the receiving organisation. The CEO trilateral has outlined their preference that the plans for absorption be non-competitive and currently a Terms of Reference framework is being developed.

It is expected that these plans should be developed over a period of two to three months. The SCW acknowledged that it can only encourage these CEOs to carry out this work. However in realising this, the SCW hoped that the relevant governing bodies appreciate the need to sanction this work.

The CEOs of SPC and SPREP should take responsibility for these plans, and will be supported as necessary by the CEO of SOPAC.

Step 4: Due Diligence

Both plans for absorption would be subject to independent due diligence checks initiated by the SCW. It is expected these checks should require no more than one to two months. When the plans for absorption and their accompanying due diligence checks are completed they will be considered by the SCW.

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Step 5: Other Assessments Completed

SCW should have received and considered any other assessments commissioned by them no later than when they consider the plans for absorption and the due diligence checks.

Step 6: SCW Finalises its Work

By July/August 2009 SCW should be in a position to prepare recommendations to Council.

Step 7: Absorption

By the end of October 2009, all relevant governing bodies should have completed their consideration of this matter leaving implementation (absorption) to commence by 1 January 2010. It may be useful to consider having these three governing bodies meet concurrently in the same location in 2009 in order to have a one day high-level joint session to endorse the way forward.

In accord with the timelines in the Council decision, the SCW will continue its work, and report to the SOPAC Council to be held from 22 to 29th October in Funafuti, Tuvalu. In the interim the SCW will need to convene as required to consider responses to this report from the Leaders Meeting and the SPREP and SPC governing council meetings to be held during the late August to mid October period.

In the future, beyond the SOPAC Council meeting, it is anticipated the SCW will need to continue to meet to finalise its work by July/August 2009.

Conclusion

Clearly, this is a progress report by the Committee established by SOPAC Council to respond to Council's decision in respect to the Leaders Communiqué in regard to the regional institutional framework (paragraph 19(b))

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