

**Submission by Nauru on behalf of the
Alliance of Small Island States (AOSIS)**

**Guidance on the implementation of Article 6 of the Kyoto Protocol:
Views on revision of Joint Implementation Guidelines**

February 2013

AOSIS welcomes the opportunity to present further views on possible revisions to the joint implementation guidelines, taking into account experiences in the first commitment period, proposals by the Joint Implementation Supervisory Committee (JISC) and the decisions taken in Doha. The successful functioning of the Kyoto Protocol and the evolution of the flexible mechanisms is of great importance to AOSIS and AOSIS is interested in participating actively in these discussions.

These views should be read in conjunction with AOSIS's earlier submission in April 2012 on the review of the joint implementation guidelines.

I. Role of Joint Implementation under Article 6: assistance in meeting internationally legally binding commitments under Article 3

Article 6 of the Kyoto Protocol was established specifically for the purpose of assisting Annex I Parties in meeting their quantified economy-wide commitments under Article 3 of the Protocol. Article 6 provides that *"for the purpose of meeting its commitments under Article 3, any Party included in Annex I may transfer to, or acquire from, any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks"*

Therefore, for Parties to be eligible to transfer or acquire units generated under Article 6, they must have in place internationally legally binding commitments for the relevant commitment period. In the first commitment period, no Party without a legally-binding commitment was permitted to issue AAUs or generate ERUs and the same must be the case in the second commitment period.

At present, no Annex I Party yet has an internationally-legally binding commitment under Article 3 of the Kyoto Protocol for the Protocol's second commitment period that would enable the issuance of AAUs or RMUs.

AOSIS looks forward to the Depositary's receipt of instruments of acceptance in respect of the Doha Amendment, pursuant to paragraphs 1 to 3 of the L.9 decision, from all Annex I Parties to the Kyoto Protocol to ensure the prompt entry into force of the Doha Amendment, and looks forward to notifications of Parties' provisional application of the Doha Amendment pending its entry into force.

II. Revision of Joint Implementation Guidelines

Decision 9/CMP.1 (the "Joint Implementation Guidelines"), together with related decisions on emissions trading and the registries, provide the current rules and modalities relating to Joint Implementation. These have been supplemented by subsequent decisions, including those

taken in Doha. A series of revisions to the JI guidelines have been proposed by the Joint Implementation Supervisory Committee (JISC) for consideration by the CMP.

The central purpose of any revision to the JI Guidelines should be to ensure the additionality of JI projects, in order to protect the environmental integrity of commitments taken under the Kyoto Protocol for the second commitment period. This will require greater standardization of procedures at the national level for JI projects, together with greater international oversight of methodologies, monitoring and review, and far greater transparency for projects at all stages of the project cycle.

Any revision should also ensure that the availability of JI continues to serve as an incentive for ratification of legally-binding commitments under the Kyoto Protocol and serve as an incentive for improved inventory reporting by Parties seeking to maintain eligibility to participate in the mechanism. Joint Implementation is intended to operate in a capped environment, in which the overall level of allowed emissions is fixed, but where only the location of the emission reductions undertaken changes (trading within Annex B Parties). In the absence of binding emissions caps for both investor Party and host Party – supported by full and binding reporting and review commitments for investor Party and host Party -- this fundamental aspect of JI cannot be secured.

III. Priorities for Joint Implementation review process

In considering revisions to the JI Guidelines, priority should be given to:

- clarifying that where provisions for the first commitment period reference Articles 3.7 and 3.8, for purposes of the second commitment period, relevant references are to Articles 3.7 bis, 3.7 ter, 3.7 quarter, Article 3.8 and 3.8 bis, to ensure that the process for the calculation of second commitment period assigned amount is consistent with the decisions taken in Durban and Doha.
- maintaining the current incentives for ratification and reporting provided by Track I eligibility criteria
- putting in place the shared attributes agreed in Doha for the operation of JI in the second commitment period, to enable the registration of new projects in the second commitment period
- enhancing transparency and accountability, including through opportunities for public input on baselines and project proposals

IV. Governance / Joint Implementation Supervisory Committee / Governance

The Article 6 Supervisory Committee, established under 9/CMP.1 and 10/CMP.1, oversees implementation of JI. This Joint Implementation Supervisory Committee (JISC) is comprised of: (a) 3 members from Parties included in Annex I that are undergoing the process of transition to a market economy; (b) 3 members from Parties included in Annex I that are not economies in transition; (c) 3 members from Parties not included in Annex I; and (d) 1 member from the small island developing States.¹

¹ 9/CMP.1, Annex, paragraph 4.

The JISC has suggested that as part of the review of the operation of JI in the second commitment period, the CMP may wish to establish an **entirely new** governing body for a consolidated single track under JI. It proposes that this new governing body be comprised of 14 members, 10 from Annex I and 4 from non-Annex I Parties.²

The JISC's proposal would specifically delete from the governing body the current seat designated for a member nominated by small island developing States (SIDS). It would also establish a two-thirds majority voting procedure that would enable Annex I Party constituency nominees to outvote non-Annex I Party nominees.

All Parties to the Kyoto Protocol have an interest in ensuring the smooth functioning and environmental integrity of project-based activities under the Kyoto Protocol. The composition of the JISC is representative and this representative aspect plays an important role in transparency and legitimacy. AOSIS is of the view that there is no need to replace the JISC or alter its membership. Joint Implementation should continue to be overseen by a body comprised of representatives of both developed and developing country Parties, under the umbrella of the Protocol and SIDS must continue to have a dedicated seat on this body, consistent with the usual practice of the UNFCCC and decisions previously taken by the CMP.

V. Key attributes of JI in the second commitment period

In Doha, the CMP agreed on a series of six key attributes to characterize the operation of joint implementation for the second commitment period:

- (a) Single unified track for joint implementation projects;
- (b) Closely aligned or unified accreditation procedures between joint implementation and the clean development mechanism that take into account differences in the respective modalities and procedures of the two mechanisms;
- (c) Clear and transparent information regarding all relevant public information required for joint implementation projects by stakeholders, accredited independent entities and host Parties in English on the UNFCCC website in accordance with decision 13/CMP.1;
- (d) an appeals process under the authority and accountable to the CMP against decisions of the JI Supervisory Committee;
- (e) clear, transparent and objective requirements to ensure that projects are additional to what would otherwise occur; and
- (f) mandatory requirements for host Parties with respect to the approval of baselines, monitoring and reporting, including clear, transparent and objective requirements for the setting of standardized baselines by host Parties.

These key attributes should assist in improving Joint Implementation in the second commitment period.

² FCCC/KP/CMP/2012/5, paragraph 13 (Revised set of key attributes and transitional measures and draft revised joint implementation guidelines, prepared by the JISC); FCCC/KP/CMP/2012/4 (Annual report of the Joint Implementation Supervisory Committee to the CMP) (19 October 2012), see paragraph 25(b).

Single track: In consolidating JI's two tracks, the paramount consideration should be to maintain and enhance systems to ensure the additionality of projects under Article 6, to protect the environmental integrity of the Kyoto targets and the reputation of the mechanism.

Eligibility requirements: The full set of eligibility requirements required of host Parties for Track I Joint Implementation projects, including internationally legally binding commitments for the relevant commitment period, satisfaction of all reporting obligations under Articles 5, 7 and 8 and the suspension of eligibility where these requirements are not met, should be applied to all participants under a single consolidated track.

Appeals: The appeals process that is created should allow stakeholders, any Party and accredited observer organizations to appeal from the granting of approval to projects by within a fixed timeframe.

Additionality: Article 6 requires that emission reductions under JI must be additional to any reductions that would have taken place in the absence of the project. Concerns have been raised with respect to the additionality of some ERUs issued under Track I, due to the flexibility that has been granted to Parties to set their own methodologies for baseline determination and monitoring, the existence of different national procedures in place in different countries to determine project eligibility, the fact that monitoring and verification of emission reductions has been subject only to national rules and procedures, and the fact that national procedures for decision-making are more transparent in some Parties than in others.

To increase public confidence in the additionality of ERUs, a more centralized and harmonized approach to assessing additionality, establishing baselines and monitoring is needed, with mandatory guidelines agreed at the international level and approved by the CMP. As part of this process, baselines should be frequently adjusted, reviewed and updated. Baselines should also be subject to appeal by stakeholders, NGOs, and all Parties, including the host Party upon supply of an evidentiary basis for such appeal as all Parties, SIDS and LDCs in particular, will suffer if non-additional projects are credited.

Positive lists: the JISC has suggested that in the context of the review of JI, it may be useful to recognize concepts of positive lists of project types that would automatically be deemed additional. Positive lists can be problematic; the proposed use of positive lists in the context of JI raises concerns beyond those sought to be addressed by positive lists in the context of small scale projects and are harder to justify in the context of Annex I Parties than they may be in the context of developing country projects. It would not be appropriate to allow positive lists to be established unilaterally at the national level for the purpose of demonstrating additionality as this may run the risk of using the UNFCCC process to subsidize or support preferred technologies.

JISC review of project proposals: to improve transparency and accountability, it would be useful for all projects to be reviewed by the JISC at the project registration stage. Where review is delayed by the time of ERU issuance, this may increase risks and uncertainty for project participants.

New projects - prospective crediting only: given the current price of ERUs, it is unlikely that the availability of Joint Implementation is driving projects that would otherwise not take place. In part to address this, new projects should not be permitted to seek credit for reductions that have taken place before the project has been submitted for registration.

Review of ongoing projects for additionality: a process should be established to review the additionality of ongoing projects that seek to issue ERUs for the second commitment period.

Shorter crediting periods: consideration should be given to shorter crediting periods for new projects and/or for certain categories of existing projects on renewal, given the rapidly decreasing cost of many technologies and the development of legislation and policy tools that now require the uptake of cleaner technologies. Long crediting periods may operate to render some projects non-additional over time, in violation of Article 6, and may create difficulties in the transition to the 2015 agreement.

Minimizing the opportunity for conflicts of interest: consideration should be given to ways to ensure that for the second commitment period, projects should not be validated and verified by the same accredited independent entity that is compensated by a project proponent.

Monitoring reports: to enhance transparency, guidelines should provide for an opportunity for public comment on monitoring reports.

VI. Expedited issuance, transfer and acquisition under Article 6

Paragraph 16 of the Doha AWG-KP outcomes decision (L.9) provides that the SBI shall consider modalities for expediting the continued issuance, transfer and acquisition of ERUs under Article 6 for the second commitment period, for Parties with a commitment inscribed in the third column of Annex B as contained in annex I to decision L.9.

The Annual Report of the JISC suggests that with regard to emission reductions and removals that occur after the first commitment period, and before the issuance of AAUs and RMUs, the CMP may wish to either:

- a) Option 1 - adopt procedures that allow host Parties to issue ERUs for reductions or removals in the second commitment period, with the amount of units issued subsequently deducted from the host Party's national registry for the commitment period upon AAUs or RMUs having been established for the Party.³
- b) Option 2 - allow emission reductions and removals achieved by existing and new JI projects between 1 January 2013 and either the end of the true-up period or the establishment of assigned amount for a host Party for a second commitment period under the Kyoto Protocol, whichever is sooner, to be issued by host Parties as ERUs under the Track 2 procedure by converting AAUs or RMUs from the first commitment period, with such units to be used only for compliance with commitments for the second commitment period.

AOSIS does not support either of the options proposed by the JISC for the early issuance of ERUs.

In AOSIS's view, issuance of ERUs and RMUs cannot and should not take place until after Parties' reports to facilitate the calculation of assigned amount have been submitted by 15 April 2015 and after a sufficient period of time has been provided to enable these reports to be reviewed and approved by expert review teams to enable a final calculation and recording of

³ See FCCC/KP/CMP/2012/4, Annual Report of the Joint Implementation Supervisory Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, paragraph 21.

assigned amount. This will ensure that base year inventories have been properly calculated and submitted, and assigned amounts and commitment period reserves have been calculated consistent with Articles 3.7 bis, 3.7 ter, 3.7 quarter, Article 3.8 and 3.8bis.

If the Doha Amendment has not yet entered into force by the time the report is submitted, it may then be useful to consider modalities for enabling the issuance of ERUs into national registries for projects between Parties that have presented their instruments of acceptance and that have given notice of their provisional application of the Doha Amendment pending its entry into force.

Option 1, proposed by the JISC, is inconsistent with Article 6. The stated purpose of Article 6 states is to assist Annex I Parties in meeting their commitments under Article 3. It is not appropriate to allow for the issuance of ERUs before Parties have adopted legally-binding commitments - particularly as certain Annex I Parties have already announced that despite their agreement to the AWG-KP outcomes decision and Doha Amendment, they may choose not to ratify second commitment period commitments.

Option 2 is also not supportable. There is no legal basis to allow for the conversion of AAUs valid in the first commitment period to ERUs valid for the second commitment period. In addition, Option 2 would undermine the carryover rules just agreed in Doha. In Doha, the CMP decided that surplus AAUs from the first commitment period will only be valid for use against second commitment period commitments **after** they have been carried over consistent with the relevant carryover rules following the true up period. In addition, the CMP decided in Doha that surplus first commitment period AAUs that are not retired or cancelled must be carried over to a previous period surplus reserve account, where they will be subject to certain restrictions. The JISC proposal to allow the conversion of surplus first commitment period AAUs directly to second commitment period ERUs would circumvent these new rules, undermining the environmental integrity of Kyoto commitments.

Also under existing Kyoto rules for both commitment periods, surplus RMUs are not allowed to be carried over from the first to the second commitment period, due to the impermanent nature these units represent. The JISC proposal to permit the conversion of RMUs valid in the first commitment period to ERUs valid in the second commitment period would circumvent this prohibition on carryover, similarly undermining the environmental integrity of Kyoto commitments.

VI. Share of the proceeds for adaptation

The Adaptation Fund, established under Article 12.8 of the Protocol, benefits from a share of the proceeds from CDM project activities. Through the Doha decision, the Parties agreed that a share of the proceeds for adaptation would now be levied upon the first international transfers of AAUs and immediately upon the conversion of AAUs and RMUs to ERUs.

Although the decision taken in Doha is clear on this mechanism, there may be value in setting out the process for this levy more clearly in the form of decision text. [The conversion of units is not likely to take place until much later in the second commitment period.]

Only a small amount of funding is likely to be generated through the share of proceeds on JI in the second commitment period. This is due to (1) the relatively small number of JI projects compared to CDM projects; (2) reduced demand for ERUs in the second commitment period; and (3) the broadening participation of Annex I Parties in the EU-ETS, which places limits on the ability of operators to tender international credits from Joint Implementation toward compliance

obligations. As of 2012, roughly 400 million units had been issued through JI; a 2% share of these units would have yielded 8 million units with what is currently a low market price due to the low ambition of Annex I Party commitments and the fact that these commitments are not yet internationally legally binding.

The share of the proceeds from these sources is likely to be largely symbolic and there is no legal basis to support the expediting of the issuance of AAUs for CP2 prior to entry into force.

VII. Implications for other decisions

The revised JI Guidelines will need to reflect agreements reached in Doha, and address:

- review of report to facilitate calculation of assigned amounts for the second commitment period
- procedures for the share of the proceeds upon the conversion of RMUs and AAUs to ERUs
- application of 3.7 ter in the calculation of assigned amount