



F C T C

WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

S E C R E T A R I A T

**NEEDS ASSESSMENT FOR THE IMPLEMENTATION OF THE
PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS
IN FIJI**



Secretariat of the WHO FCTC

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Acknowledgments

The Secretariat of the WHO Framework Convention on Tobacco Control (Convention Secretariat) thanks the Government of Fiji for the invitation to undertake this joint needs assessment mission, which was completed through collaborative efforts with the Ministry of Health and Medical Services (MHMS) and the World Health Organization (WHO).

The mission has been conducted with the generous financial assistance of the governments of Norway and the United Kingdom of Great Britain and Northern Ireland.

Table of Abbreviations and Acronyms

DPP	Office of the Director of Public Prosecutions
FPF	Fiji Police Force
FRCS	Fiji Revenue and Customs Service
MHMS	Ministry of Health and Medical Services
MOP	Meeting of the Parties
NGOs	Non-Governmental Organizations
PCLEC	Pacific Community for Law Enforcement Cooperation
PIF	Pacific Islands Forum
PIFRSF	PIF Regional Security Framework
PILON	Pacific Islands Law Officers' Network
UIM	Unique identification markings
UN	United Nations
TFRs	Tax Free Regions
TCEU	Tobacco Control Enforcement Unit
WHO	World Health Organization
WHO FCTC	WHO Framework Convention on Tobacco Control

Introduction

The Protocol to Eliminate Illicit Trade in Tobacco Products

The Protocol to Eliminate Illicit Trade in Tobacco Products (Protocol) is the first protocol to the WHO Framework Convention on Tobacco Control (WHO FCTC), and a new international treaty in its own right. It was adopted by consensus on 12 November 2012 at the Fifth session of the Conference of the Parties (COP) to the WHO FCTC (Seoul, Republic of Korea, 12– 17 November 2012). It came into force on 25 September 2018.

The Protocol builds upon and complements Article 15 of the WHO FCTC which addresses means of countering illicit trade in tobacco products, a key aspect of a comprehensive tobacco control policy.

Illicit trade increases the accessibility and affordability of tobacco products, thus fuelling the tobacco epidemic and undermining tobacco control policies. It also causes substantial losses in government revenues, and at the same time contributes to the funding of transnational criminal activities.

The objective of the Protocol is the elimination of all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO FCTC. The Protocol, in particular, aims to secure the supply chain of tobacco products, measures widely considered to be the “heart” of the Protocol.

The Protocol requires the establishment of a global tracking and tracing regime within five years of entry into force of the Protocol, comprising national and/or regional tracking and tracing systems and a global information sharing point located in the Convention Secretariat.

Other provisions to ensure control of the supply chain cover licensing, due diligence, record keeping, security and preventive measures, as well as measures in relation to internet and telecommunication-based sales, duty free sales, free zones and international transit.

The Protocol also covers important matters concerning offences, with provisions on liability, prosecutions and sanctions, seizure payments and special investigative techniques, as well as the disposal and destruction of confiscated products.

Another key group of substantive articles address the issue of international cooperation, such as measures on information sharing, technical and law enforcement cooperation, protection of sovereignty, jurisdiction, mutual legal and administrative assistance, and extradition.

The needs assessment exercise

At its Second session in November 2021, the Meeting of the Parties (MOP) to the Protocol to Eliminate Illicit Trade in Tobacco Products, through decision [FCTC/MOP2\(7\)](#),¹ requested the Convention Secretariat, as required and within its limited resources, to support Parties in assessing their needs and obtaining appropriate assistance, using the whole range of available tools.

Through decision [FCTC/MOP2\(11\)](#),² and considering that the mobilization of funds to support the implementation of the Protocol requires a detailed needs assessment at the national level, the MOP adopted the Strategy for mechanisms of assistance and mobilization of financial resources to support the implementation of the Protocol.

In accordance with these two decisions of the MOP, the Convention Secretariat developed a needs assessment process and methodology to assist Parties in identifying the objectives to be achieved under the Protocol, the resources available to achieve these objectives and any gaps in resources required for the implementation of the Protocol. The development of this methodology has been guided by the needs assessment methodology, used for the WHO FCTC.

The Protocol needs assessment exercise is carried out jointly with the respective Government pursuant to an official request received by the Convention Secretariat.

The needs assessment exercise is composed of three phases: (i) the pre-needs assessment phase, in which the Convention Secretariat studies relevant documents and Party reports; (ii) the needs assessment mission, during which an international team interacts with the various national stakeholders and other relevant International intergovernmental and Non-Governmental organizations; and (iii) the post-mission and follow-up phase, in which the Convention Secretariat finalizes the needs assessment report in cooperation with national stakeholders and works with the Government and international partners to develop plans to accelerate the implementation of the Protocol with a focus on the recommendations of the needs assessment. Support might include the development of a national strategy to guide the implementation of the Protocol.

¹ <https://iris.who.int/bitstream/handle/10665/369084/fctc-mop-2-7-en.pdf?sequence=1>

² <https://iris.who.int/bitstream/handle/10665/369140/fctc-mop-2-11-en.pdf?sequence=1>

Executive summary including key findings and recommendations

The Protocol to Eliminate Illicit Trade in Tobacco Products (Protocol) was adopted in 2012 by Parties to the WHO FCTC to specifically address the problem of illicit tobacco trade. Fiji ratified the Protocol in April 2019.

At the request of the Government of Fiji, through the Ministry of Health and Medical Services, a needs assessment exercise for the implementation of the Protocol was conducted jointly by the Government of Fiji, the Convention Secretariat and the WHO from 17 to 21 March 2025.

In preparation for the needs assessment mission, the Convention Secretariat reviewed existing national legislations and documents pertinent to the Protocol's implementation.

During the mission, consultations were conducted with representatives from government ministries and agencies, as well as intergovernmental and non-governmental organizations³. These discussions aimed to examine key elements of the institutional and legal framework, and to identify the current status, main gaps, and needs in the Protocol's implementation in Fiji.

Post-needs assessment assistance can be provided by the Convention Secretariat to the Parties that have conducted needs assessments, based on the reports and priorities identified, subject to the availability of resources.

This needs assessment report presents an article-by-article analysis of the progress the country has made in implementation of the Protocol; the gaps in implementation that exist and the recommended actions that can be taken to fully implement the Protocol.

The key elements that need to be put in place to enable Fiji to fully meet its obligations under the Protocol are summarized below. Further details are contained in the main section of the report.

First, with regard to the existing domestic **legal framework**, the Protocol requires Parties to adopt and implement effective legislative, executive, administrative or other measures to ensure the full implementation of the Protocol. The joint needs assessment mission noted that although some progress had been made in internalizing relevant provisions of the Protocol into the national legal framework, there are a number of aspects that need to be addressed in order for Fiji to ensure full implementation of the Protocol. The broad areas of the framework that need to be reviewed are (i) general obligations, (ii) licencing, (iii) due diligence and other supply chain measures, (iv) tracking and tracing and (iv) offences and sanctions.

Second, with regards to enforcement **coordination**, the Protocol requires Parties to facilitate effective coordination among its competent authorities, agencies and services. Strengthening multisectoral coordination at the national level is crucial for improving the effectiveness of authorities in combating illicit tobacco trade, given the diverse measures required to implement the treaty.

It is recommended that Fiji establish a national coordinating mechanism to bolster the Protocol's implementation among relevant authorities. This includes, but is not limited to, the Ministry of Health and Medical Services (MHMS), Fiji Police Force (FPF), Fiji Revenue and Customs Service (FRCS), the Ministry of Trade, Co-operatives, Small and Medium Enterprises and Communications, the Ministry of Justice, the Ministry of iTaukei Affairs, and the Ministry of Finance.

³ See annex.

Furthermore, Fiji should maximize the Protocol's international cooperation provisions and review domestic law enforcement coordination mechanisms to ensure clear and coherent roles and responsibilities.

Third, with regard to the **supply chain control measures**, Articles 6-13 of the Protocol require Parties to establish and implement measures such as a licensing system, due diligence, and a tracking and tracing system. Additionally, Parties are required to ban the sale of tobacco and tobacco products via the Internet, telecommunication, or any other evolving technology.

In terms of **licencing**, it is recommended that Fiji expand the licencing system to cover the manufacture, import or export of tobacco manufacturing equipment, as well as the exporting and brokering of tobacco, tobacco products and manufacturing equipment under a competent authority. Further, Fiji is invited to consider expanding the licencing system to cover sale of green *suki* leaves and other tobacco leaves outside the scope of the legislative definition and consider increasing the *suki* retailing licencing fee. Besides the licencing of these activities, Fiji is also recommended to create a mechanism to detect fraud in the licencing system and undertake regular reviews of the system.

Regarding **due diligence and other supply chain measures**, it is recommended that Fiji establish a requirement for due diligence, requiring businesses and individuals to verify their business relationships, including customers. In addition, in the area of supply chain measures, it is recommended that Fiji ban the sale of tobacco and tobacco products via Internet, telecommunication or any other evolving technology and continue to prohibit the presence and manufacturing of tobacco and tobacco products inside free zones.

In the area of **tracking and tracing**, it is recommended that the first step Fiji should take is to evaluate the steps needed to implement a system at the national level to align with the requirements of Article 8 of the Protocol. The tracking and tracing system should be comprehensive, independent from the tobacco industry and under full control of the government, complete with the use of unique identification markings (UIMs) that allow for interaction through the global interface. In this vein, Fiji is invited to seek technical assistance from other Parties and the Convention Secretariat.

Regarding **offences and sanctions**, the Protocol requires Parties to adopt legislative and other measures to establish unlawful conduct including criminal offences and to investigate and prosecute offences, as well as seizure payments measures. It is recommended that Fiji expand unlawful conduct to include offences involving manufacturing equipment. Further, it is recommended that Fiji ensure that more effective, proportionate, and dissuasive sanctions, including criminal sanctions, to address illicit tobacco trade activities are implemented along with allowing for the levying of an amount proportionate to lost taxes and duties where tobacco, tobacco products and/or manufacturing equipment have been seized. Finally in this area, it is recommended that Fiji ensure that all confiscated tobacco, tobacco products and manufacturing equipment have been destroyed in an environmentally friendly manner.

Fourth, regarding **international and regional cooperation**, the Protocol mandates that Parties ensure effective collaboration among competent authorities, agencies, customs, police, and other law enforcement bodies. Additionally, Parties must enhance cooperation through multilateral, regional, or bilateral arrangements to prevent, detect, investigate, prosecute, and punish individuals or entities involved in illicit tobacco trade.

Based on the findings of the joint needs assessment mission, it should be noted that cooperation levels among competent authorities at national, regional, and international levels could be improved. Enhancing this cooperation would amplify the benefits of the Protocol's implementation for Fiji.

Fiji is encouraged to (i) maximize the implementation of the Protocol's international cooperation provisions (Part V) and (ii) explore opportunities for stronger collaboration among enforcement agencies at the global and regional levels.

Fifth, in view of the technical nature of many of the measures required by the Protocol, particularly the implementation of a tracking and tracing system, it is advisable for Fiji to engage and seek **technical assistance and other support** from all relevant organizations with expertise on the subject matters relevant to implementation of the Protocol, including but not limited to the World Bank, the World Customs Organization, the United Nations Office on Drugs and Crime, the Organisation for Economic Cooperation and Development and Interpol.

Sixth, regarding the **involvement of the civil society**, Article 4.7 of the WHO FCTC emphasizes the crucial role of civil society in achieving the Convention's objectives and its protocols. Currently, a few NGOs are actively involved in tobacco control. However, NGOs focused on transparency, anti-corruption, and money laundering have not yet engaged in addressing illicit tobacco trade. It is recommended that Fiji broadens civil society engagement to support Protocol implementation, particularly by involving organizations working on transparency, anti-corruption, and money laundering.

Sixth, regarding **capacity-building for full implementation of the Protocol**, the Protocol mandates that Parties collaborate with each other and/or through competent international and regional organizations to provide training, technical assistance, and cooperation in scientific, technical, and technological matters. The joint needs assessment mission highlighted the necessity of enhanced training on illicit tobacco for government officials, particularly those involved in enforcement. Therefore, it is recommended to:

- Raise awareness among public officials of the WHO FCTC, the Protocol and related international obligations to ensure its effective implementation.
- Disseminate the existing legal framework for combating illicit trade in tobacco products to relevant stakeholders to improve law enforcement.
- Strengthen the capacities of enforcement stakeholders, including cross-border law enforcement cooperation authorities, judicial authorities, police, anti-corruption and anti-money laundering authorities on the key provisions of the Protocol.

In summary, based on the preliminary assessment conducted, the Convention Secretariat would like to express its praise to Fiji for the efforts made so far in implementing the Protocol and would like to share the present assessment as an opportunity to reflect on key areas of intervention that would benefit the objective of eliminating illicit tobacco trade.

Addressing the issues raised in this report will make a substantial contribution to meeting Fiji's obligations to the Protocol and to improving the readiness of the institutional and legal framework to address the challenge posed by illicit trade in tobacco products. The needs identified in this report represent priority areas for action. As Fiji addresses these areas, the Convention Secretariat, in cooperation with WHO and other relevant international partners, is available and committed to providing technical assistance, to facilitating the process of engaging potential partners and identifying internationally available resources for implementation of the Protocol.

The full joint needs assessment report, which follows this summary, can also be used as the basis for any proposal(s) that may be presented to relevant international partners to support Fiji in meeting its obligations under the Protocol.

Country overview

Fiji ratified the WHO FCTC in 2003⁴ and the Protocol in 2019,⁵ becoming the first country in the Pacific to ratify its provisions.

Over the past two decades, Fiji has made substantial efforts to curb the use of tobacco products in the country. In 2010, Fiji passed its principal piece of legislation in this area: the Tobacco Control Act.⁶ The Tobacco Control Act, which has been amended five times, covers a broad range of tobacco control areas including those that are relevant to the implementation of the Protocol, such as licencing of certain tobacco-related activities, restrictions on smoking in public places, prohibition of tobacco advertising, promotion and sponsorship, health warnings on tobacco products and enforcement mechanisms to combat the trade of illicit tobacco products.

An additional piece of legislation, the Tobacco Control Regulations (2012)⁷ provide further details on the implementation of the Tobacco Control Act, including licence and registration conditions and enforcement processes. Additional pieces of legislation, such as the Customs Act (1986),⁸ the Excise Act (1986)⁹ and the Crimes Act (2009)¹⁰ further restrict and sanction illicit trade in tobacco products.

Fiji is engaged in the growing of tobacco and the manufacturing, export and import of tobacco products, particularly cigarettes. Growers include small Fijian companies, such as Oceania Tobacco Company (Lautoka), and small-scale farmers, who are primarily engaged in the growing of *suki*, which is dried and either hand-rolled for retail or sold in the form of rope, chopped or dried leaves by small, local retailers. Currently, while *suki* retailing falls under the licencing system, activities related to *suki* are outside the scope of taxation under the Excise Act and is largely unregulated and cheap to access. One international tobacco company, the British American Tobacco (BAT Fiji), operates in Fiji, engaged in the growing of tobacco and the manufacturing and export of tobacco products. Fiji permits and does not regulate the sale of tobacco products via Internet.

In Fiji, free zones are referred to as Tax Free Regions (TFRs). Under the Tax Free Zones Act (1991),¹¹ in these areas, companies can operate without being subject to income tax and duties, provided that they have been granted a TFR operating licence.¹² The minimum level of investment stands at US\$ 250 000. Several TFRs in operation, including the entire island of Vanua Levu (inclusive of Taveuni, Rabi, Kioa and other Islands), Rotuma, Kadavu, the Lomaiviti and Lau Islands and the area between the Nausori Airport side of the Rewa river (excluding township boundary) to the Ba side of the Matawalu River. There are also plans to open an additional TFR in Navutu in Lautoka as a recovery strategy post-COVID-19. Currently, Fiji does not allow the storage, manufacturing or sale of tobacco and tobacco products in these zones.

⁴ WHO Framework Convention on Tobacco Control, United Nations, Treaty Series, vol. 2302 (2003), available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IX-4&chapter=9&clang=en.

⁵ Protocol to Eliminate Illicit Trade in Tobacco Product, United Nations, Treaty Series, vol. 3276 (2012), available at https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtmsg_no=ix-4-a&chapter=9&clang=en.

⁶ Tobacco Control Act 2010, No 63 of 2010, as amended.

⁷ Tobacco Control Regulations 2012, LN 11 of 2013, as amended.

⁸ Customs Act 1986, No 11 of 1986, as amended.

⁹ Excise Act 1986, No 13 of 1986, as amended.

¹⁰ Crimes Act 2009, No 44 of 2009, as amended.

¹¹ Tax Free Zones Act 1991, No 57 of 1991, as amended.

¹² Fiji Revenue and Customs Service. *Tax Talk – Tax Free Region*. Government of Fiji (n.d.). Available at https://www.frcs.org.fj/wp-content/uploads/2018/11/Tax-Talk_Tax-Free-Zone_V2_sr161118_.pdf.

A number of government actors are involved in implementing Protocol provisions in Fiji. The Ministry of Health and Medical Services (MHMS) is primarily responsible for public health-related measures. Within the MHMS, the Tobacco Control and Enforcement Unit (TCEU) is the focal point within the government for ensuring that provisions of the Protocol are carried out in the country and oversees work with other government agencies to implement measures to curb the trade of illicit tobacco – an inherent public health problem given that it increases access to tobacco products, thus undermining the work of the MHMS to implement effective tobacco control measures. Meanwhile, the Fiji Revenue and Customs Service (FRCS) enforces customs and excise laws, monitors illicit trade at borders and collects tobacco-related taxes. Under its mandate, the Fiji Police Force (FPF) can investigate and enforce laws against smuggling, tax evasion, money laundering and organized crime related to illicit tobacco. However, based on consultations with authorities, investigations and enforcement of such laws is largely limited. Once perpetrators are apprehended, prosecutions are handled by the responsible agency (e.g., MHMS, FRCS, etc.). The Office of the Director of Public Prosecutions (ODPP) handles cases where defendants appeal their sentences.

Other government agencies involved in the country's efforts against the trade of illicit tobacco include the Ministry of Trade, Co-operatives, Small and Medium Enterprises and Communications, the Ministry of Justice, the Ministry of *iTaukei* Affairs and the Ministry of Finance.

Fiji participates in a number of regional cooperation efforts. As a member of the Pacific Islands Forum (PIF), Fiji is part of a collective effort among Pacific nations to tackle transnational crime, including the illicit trade of tobacco. The PIF includes a Regional Security Framework (PIRSF) that provides a platform for coordinated regional responses to crime, including trafficking and smuggling. PIRSF focuses on strengthening regional law enforcement capacities, sharing intelligence, and coordinating enforcement actions among member states to address issues like organized crime, illicit tobacco trade and trafficking in persons. Fiji is also a participant in the Bali Process, a regional framework for countering illicit trade and related crimes, the Pacific Community for Law Enforcement Cooperation (PCLEC) and the Pacific Islands Law Officers' Network (PILON).

Status of implementation of the Protocol and recommendations for future efforts

This section comprises the findings and recommendations for Fiji's future efforts to fully implement the Protocol. Findings and recommendations are organized by Protocol article.

Part II. General obligations

Article 4. General obligations

In general terms, Article 4 outlines some basic aspects necessary to ensure the effective implementation of the Protocol's measures. This includes adopting and implementing measures to control and regulate the supply chain of goods to prevent and combat illicit trade, facilitating technical assistance and financial support, and ensuring regional and international cooperation enhancing the effectiveness of customs and police authorities. In this regard, a key element is the coordination between authorities and other national agencies responsible for the implementation of different aspects of the Protocol.

Additionally, Parties must ensure the maximum possible transparency with respect to any interactions they may have with the tobacco industry.

Status

While there are many government bodies working to eliminate trade in illicit tobacco products, multi-sectoral cooperation and coordination in the country is limited in some technical areas, reducing effectiveness of relevant authorities and services. Irregular coordination exists between agencies in enforcing the law. For example, the FPF can only be involved in cases when there is an official request by another enforcement agency and there are no regular convenings of enforcement agencies to evaluate efforts and develop recommendations for improvement. Further, there is no centralised database recording enforcement initiatives and details of prosecuted individuals that is shared among enforcement agencies.

Recommendations

It is recommended that Fiji improve multi-sectoral cooperation and coordination to increase the effectiveness of competent authorities and services for preventing, deterring, detecting, investigating, prosecuting and eliminating all forms of illicit trade in tobacco, tobacco products and manufacturing equipment.

Additionally, it is recommended to develop a road map to accelerate the Protocol's implementation and ensure maximum transparency in any interactions with the tobacco industry.

Article 5. Protection of personal data

Article 5 stipulates that Parties are to protect the data of individuals, taking into account international standards, when implementing the Protocol, irrespective of nationality or residence.

Status

While Fiji does not have a general data protection law, the Constitution of Fiji¹³ guarantees a right to privacy, including the confidentiality of personal information and the Cybercrime Act¹⁴ addresses cyber-related offenses and includes provisions for law enforcement surveillance.

The Cybercrime Act regulates the collection, use, and disclosure of personal data in certain instances. This law is designed to protect the privacy rights of individuals and sets out specific rules on how personal data should be handled by government agencies, businesses and other organizations.

In this context, government agencies must ensure that data related to licencing, violations, etc. are handled in compliance with this law.

Recommendation

It is recommended that Fiji take steps to ensure that the data of individuals is protected under the Constitution of Fiji and the Cybercrime Act while implementing the Protocol.

Part III. Supply chain control

Article 6. Licence, equivalent approval or control system

Articles 6.1 and 6.2

Article 6.1 of the Protocol requires that Parties establish a licencing or equivalent approval or control system under a competent authority that covers (a) the manufacture of tobacco and manufacturing equipment and (b) the import or the export of tobacco products and manufacturing equipment.

Further, Article 6.2 of the Protocol requires that Parties licence certain activities, including wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment, among others.

Status

A licencing system has been established under the Tobacco Control Act¹⁵ and its Regulations.¹⁶ This system covers manufacturing, retailing, distributing, importing, wholesaling and warehousing of tobacco and tobacco products. Further, the licencing of retailing *suki* is also covered, but excludes other activities involving it.

The licencing system does not cover any activities relating to manufacturing equipment. Further, it does not cover brokering nor exporting of tobacco and tobacco products.

In consultations with authorities in Fiji, relevant agencies noted that *suki* remains largely unregulated. While the licencing system covers the retailing of *suki*, the fee for this is quite low. Further, loopholes are manipulated as the selling of green leaves and any tobacco leaves falling outside the definition of “native

¹³ The Constitution of Fiji 2013, 7 September 2013.

¹⁴ Cybercrime Act 2021, Act No. 3 of 2021.

¹⁵ Tobacco Control Act 2010, No 63 of 2010, as amended.

¹⁶ Tobacco Control Regulations 2012, LN 11 of 2013, as amended.

tobacco, grown and air-cured by farmers in Fiji” is not an activity requiring a licence, allowing farmers to sell to distributors in an unregulated manner.

Recommendations

It is recommended that Fiji expand the licencing system to cover the retailing, manufacture, distribution, import and export of tobacco manufacturing equipment. It is also recommended that the licencing system be expanded to cover the brokering and export of tobacco and tobacco products.

Fiji is also invited to consider expanding the licencing system to cover the sale of green suki leaves and any other tobacco leaves falling outside of the definition stated above to close the loophole indicated by authorities.

Article 6.3(c)

Article 6.3(c) requires the competent authority to monitor and collect licence fees. Further, the authority should consider using the fees levied to administer and enforce the licensing system effectively, or alternatively, use them for public health efforts or any related activity in accordance with national law.

Status

The MHMS is the competent authority monitoring and collecting licencing fees in Fiji. As of 2022, the Tobacco Control Act¹⁷ stipulates that the Minister has the authority to prescribe fees for licences, replacing the previous fee schedule.

As mentioned above, while the fees required for other activities are significantly high as to limit the market, the *suki* retailing fee is quite low.

Recommendation

Fiji is invited to consider increasing the suki retailing licence fee.

Articles 6.3(d) and (e)

Article 6.3(d) requires the competent authority to implement a mechanism to detect fraud in the licencing system while Article 6.3(e) requires it to undertake regular reviews of the system.

Status

There is currently no mechanism to detect fraud in the licencing system and no requirement for the MHMS to undertake regular reviews of the system.

Recommendations

It is recommended that Fiji create a mechanism to detect fraud in the licencing system and undertake regular reviews of the system.

¹⁷ Tobacco Control Act 2010, No 63 of 2010, as amended.

Article 7. Due diligence

Article 7 of the Protocol requires that the Party ensures that all actors involved in the supply chain of tobacco, tobacco products and manufacturing equipment conduct due diligence concerning their business relationships. Article 7 explains due diligence requirements, including, but not limited to, comprehensive customer identification, the monitoring of sales to safeguard that quantity meets demand and a description of intended market of sale, among others.

Status

Currently, there is no requirement for businesses and individuals to verify their business relationships, including customers under due diligence principles.

Recommendation

Fiji should ensure that all measures under Article 7 are implemented to ensure due diligence procedures are carried out by all actors involved in the supply chain of tobacco, tobacco products and manufacturing equipment.

Article 8. Tracking and tracing

Article 8 of the Protocol requires that a tracking and tracing regime be established that is controlled by the Party for all tobacco products that are manufactured in or imported onto its territory taking into account its “own national or regional specific needs and available best practice”.

Articles 8.3-8.6 and 8.10 describe the requirements for an effective tracking and tracing system.

The primary requirement is that unique identification markings (UIMs) are affixed to the packaging of cigarettes within a period of five years and other tobacco products within a period of ten years of entry into force of this Protocol for that Party. These UIMs should contain pertinent information, including (a) the date and location of manufacture; (b) the manufacturing facility; (c) a product description; and, where applicable, (d) the intended market of retail sale.

Further information such as (a) the machine used to manufacture tobacco products; (b) the production shift or time of manufacture; (c) the name, invoice, order number and payment records of the first customer who is not affiliated with the manufacturer; (d) any warehousing and shipping; (e) the identity of any known subsequent purchaser; and (f) the intended shipment route, the shipment date, shipment destination, point of departure and consignee might be required by other Parties to assist them in determining the origin of tobacco products, the point of diversion where applicable, and to monitor and control the movement of tobacco products and their legal status (Article 8.4).

This information should be recorded at the time of production, first shipment, or import (Articles 8.5). The scope of the system extends up to the point that all duties, relevant taxes and other obligations have been discharged at the point of manufacture, import or release from customs or excise control.

Articles 8.8, 8.9, 8.11 and 8.12 regard information-sharing, cooperation and implementation obligations in the context of the tracking and tracing system.

These provisions require that each Party make information recorded from the tracking and tracing system accessible through a secure electronic interface with its national and/or regional central point and allow for certain information sharing (Articles 8.8 and 8.9).

Under Article 8.8, each Party must ensure that recorded information from the tracking and tracing system is accessible upon request through a “standard electronic secure interface with its national and/or regional central point.” Article 8.9 outlines the conditions under which the Party must share information and the regulations therein.

Article 8.11 requires that Parties cooperate with each other and competent international organizations in “sharing and developing best practices for tracking and tracing systems”.

The Protocol also established that all obligations of tracking and tracing assigned to a Party shall “not be performed by or delegated to the tobacco industry” (Art. 8.12) and Parties shall interact with the tobacco industry/those representing its interests only insofar as is “strictly necessary” in the implementation of a tracking and tracing regime (Art. 8.13). Parties may require the tobacco industry to “bear any costs associated” with tracking and tracing obligations (8.14).

Status

Fiji has not yet implemented a tracking and tracing system.

Fiji has some requirements for product labelling, but it does not yet have a fully implemented system using UIMs. FRCS mandates that tobacco manufacturers and importers affix tax stamps to products to indicate the payment of duties. However, these stamps lack digital tracking features or unique serialization required under Article 8.3.

Information regarding the date and location of manufacture is available through customs and tax declarations not systematically linked to a tracking system. Information regarding the manufacturing facility is available through licence applications while information regarding first independent customer is partially available for tax and customs reporting, as are product descriptions. Warehouse and shipping details are required for imports and exports but not systematically linked for tracking purposes.

This system of recording is not in full control of the government, though FRCS has a system of recording the number of products as reported to it by the tobacco industry. Meanwhile, BAT has its own system that FRCS has no access to.

Recommendations

MHMS and FRCS should work together to take steps to implementing a tracking and tracing system. As noted to competent authorities during consultations, the costs of establishment and operation of this system should be borne by the tobacco industry.

This comprehensive tracking and tracing system should be independent from the tobacco industry and under full control of the government, complete with use of UIMs that allow for interaction through the global interface and contain all information as required under Article 4.1 (and 4.2) of the Protocol.

In connection with this recommendation, Fiji is invited to seek technical assistance from the WHO FCTC Secretariat and other Parties.

Article 9. Record-keeping

Under Article 9.1, each Party must require that *“all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment maintain complete and accurate records of all relevant transactions”*. Article 9.2 enumerates the specific information to be recorded, including (a) general information on market volumes, trends, forecasts and other relevant information; and (b) the quantities of tobacco products and manufacturing equipment in the licensee’s possession.

Article 9.4 stipulates that, if feasible, Parties shall require retailers and tobacco growers (excluding non-commercial traditional growers) to maintain complete and accurate records of all relevant transactions.

Articles 9.5-9.7 regard the storage and sharing of records. Parties must adopt measures to ensure all records are (a) maintained for a period of at least four years; (b) be made available to competent authorities; and (c) maintained in a uniform format (Article 9.5). Further, a system must be established for sharing record details with other Parties (Article 9.6). Finally, Article 9.7 obliges Parties to cooperate with each other and international organizations in *“progressively sharing and developing improved”* record-keeping systems.

Status

Under the Tobacco Control Regulations,¹⁸ manufacturers, importers, wholesalers, distributors, retailers and *suki* vendors are required to maintain complete and accurate records of all relevant transactions.

The FRCS and the MHMS are responsible for ensuring that records are maintained in compliance with the Regulations. These agencies are mandated to conduct regular audits and inspections of records and tobacco products, particularly at the points of importation, manufacturing and distribution.

Recommendation

It is recommended that Fiji also require record-keeping of relevant transactions involving manufacturing equipment as well as brokering and exporting of tobacco and tobacco products in line with recommendations regarding Article 6 as described above.

Article 10. Security and preventive measures

Article 10.1 stipulates that Parties require all licenced natural and legal persons involved in the supply chain to take measures to *“prevent the diversion of tobacco products into illicit trade channels”*. This requires licenced persons to report on cross-border transfers of cash and payments in kind in *“amounts stipulated in national law”* and all suspicious transactions as well as only supplying products and equipment in amounts commensurate with demand.

Articles 10.2-10.3 detail the requirements for payments or transactions, including that they be only allowed in the currency and same amount of invoice and only through *“legal modes of payment from financial institutions located on the territory of the intended market”* and not *“through any alternative remittance system”*.

¹⁸ Tobacco Control Regulations 2012, LN 11 of 2013, as amended.

Status

To the extent of the legislation available and consulted in the context of the needs assessment mission, no requirement could be identified regarding the obligation for economic actors on the tobacco supply chain to report cross-border transfers of cash and payments in kind, or suspicious transactions. Concurrently, there do not seem to be any provisions regarding payment and transaction requirements involving tobacco in current legislation.

Recommendations

It is recommended that Fiji ensure the applicability of all measures under Article 10, including establishing security and prevention measures to apply to all actors subject to licencing requirements under the existing scheme.

It is further recommended that legislation regarding payment and transactions is introduced, to expressly include the following:

- (i) Allowing payments for transactions only in the currency and in the same amount as the invoice;*
- (ii) Only allowing legal modes of payment from financial institutions located on the territory of the intended market; and*
- (iii) Prohibiting any other forms of payment or alternative remittance system.*

Article 11. Sale by Internet, telecommunication or any other evolving technology

Article 11 requires that any transactions by Internet or similar means are subject to the same obligations as any others covered by the Protocol, and that Parties should consider banning retail sales by Internet.

Status

Fiji allows for and does not regulate the sale of tobacco and tobacco products through Internet, telecommunication or any other evolving technology as it is not addressed in any legislation.

Recommendation

It is recommended that Fiji ban the sale of tobacco through Internet, telecommunication or any other evolving technology.

Article 12. Free zones and international transit

Within three years of entry of force of the Protocol, each Party is required to implement “*effective controls on all manufacturing of, and transactions in tobacco and tobacco products in free zones*” by use of measures provided in the Protocol (Art. 12.1). Additionally, intermingling of tobacco and non-tobacco products in a single container (or equivalent) at time of removal from free zones shall be prohibited (Art. 12.2). Further, each Party shall adopt and apply “*control and verification measures*” to international transit or transshipment within its territory (Art. 12.3).

Status

Currently, Fiji does not allow the presence of tobacco nor tobacco products (storage, manufacturing, sale, etc.) in its free zones. In consultations with competent authorities, it was revealed that there are no plans to allow for the presence of tobacco nor tobacco products in these zones.

In general, the FRCS is empowered to inspect, seize goods and audit customs-declared products in the free zones.

Recommendations

It is recommended that Fiji continue to prohibit the presence of tobacco and tobacco products in its free zones. Should Fiji allow for the presence of tobacco and tobacco products in the future, it is recommended that it ensures that all customs' checks and authority extend to free zones and that the intermingling of tobacco products with non-tobacco products in transportation is prohibited when removed from free zones.

Part IV. Offences

Article 14. Unlawful conduct including criminal offences

Article 14 provides a detailed list of conducts that, when occurring in violation of any of the provisions of the Protocol, shall be rendered unlawful under the domestic legislation of each Party. Further, which of the same conducts constitutes a criminal offence is left to each Party to determine, in accordance with the applicable principles of domestic law.

The conducts listed in Article 14.1 (a) cover the whole spectrum of the supply chain of tobacco, including but not limited to “manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment” in contravention of the Protocol.

Each Party must also adopt legislative and other measures to ensure that the conduct enumerated in Article 14.1(a) without the payment of “applicable duties, taxes or other levies” or without bearing applicable unique identification markings or similar required stamps, markings or labels is unlawful under domestic law (Art. 14.1(b)(i)). Further, Parties must prohibit “any other acts of smuggling or attempted smuggling” (Art. 14.1(b)(ii)).

Parties must also prohibit any other form of “illicit manufacture of tobacco, tobacco products or manufacturing equipment” as well as tobacco packaging bearing false unique identification markings or similar required stamps, markings or labels (Art. 14.1(c)(i)). This prohibition is further extended to other commercial activities (wholesaling, brokering, selling, transporting, etc.) involving products that have been illicitly manufactured or bearing false markings.

Moreover, mixing of tobacco and non-tobacco products throughout the supply chain for the purpose of “concealing or disguising” such products (Art. 14.1(d)) as well as intermingling in a single container (or equivalent) at the time of removal from free zones (Art. 14.1(e)) shall be prohibited.

Parties shall ban the use of the Internet, telecommunication or other “evolving technology” to sell tobacco products in contravention of the Protocol.

Obtaining tobacco, tobacco products or manufacturing equipment from an unlicensed person shall be prohibited by persons who are licensed appropriately.

Articles 14.1(h)-(i) regard required offences involving hindering the performance of duties of public or authorized officers. First, Parties are required to prohibit “obstructing” such officers in the performance of “prevention, deterrence, detection, investigation or elimination” duties with regard to illicit trade (Art. 14.1(h)). Second, Parties are to specifically prohibit any “false, misleading or incomplete” statements to officers or “failing to provide any required information” in the course of the above duties (Art. 14.1(i)(i)). Further, mis-declaring description, quantity or value information on official forms in order to evade applicable duties, taxes and other levies (Art. 14.1(i)(ii)(a)) or prejudice control measures combatting illicit trade (Art. 14.1(i)(ii)(b)) shall be prohibited. Additionally, falsifying or failing to create or maintain records (Art. 14.1(i)(iii)) shall also be outlawed.

Article 14.1(j) requires that Parties ensure laundering of proceeds of the above conduct is established as a criminal offence.

Status

Fiji generally approaches international law using a dualist approach of ratification. Treaties whether ratified or not do not form part of the law until they are incorporated in local legislation.¹⁹

The primary instruments governing unlawful conduct are the Tobacco Control Act,²⁰ Customs Act,²¹ the Crimes Act²² and Financial Transactions Reporting Act.²³ Under these pieces of legislation, offences under Article 14(a)-(c), (g) and (h) of the Protocol are stipulated as unlawful conduct involving tobacco and tobacco products. Further, in accordance with Article 14(i) and (j) of the Protocol, fraud and money laundering are considered unlawful conduct.

Offences involving manufacturing equipment are not covered. In addition, as described above, the sale of tobacco and tobacco products through Internet, telecommunication and any other evolving technology is not unlawful nor is the intermingling of tobacco with non-tobacco products.

Recommendations

It is recommended that Fiji undertake a comprehensive review of its criminal law framework and any other relevant pieces of legislation to ensure express alignment with provisions under the Protocol.

Particular attention should be paid to ensure that all conduct, including that which involves tobacco manufacturing equipment, listed under Article 14 is rendered expressly illicit under national legislation.

Article 16. Prosecutions and sanctions

Article 16 stipulates that “effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions” be established for unlawful conduct enumerated in Article 14 (Art. 16.1).

¹⁹ Pacific Islands Legal Information Institute, *Pacific Human Rights Law Digest - Volume 1* (2015).

²⁰ Tobacco Control Act 2010, No 63 of 2010, as amended.

²¹ Customs Act 1986, No 11 of 1986, as amended.

²² Crimes Act 2009, No 44 of 2009, as amended.

²³ Financial Transactions Reporting Act 2004, No 22 of 2004, as amended.

Further, it calls on Parties to exercise any discretionary legal powers to “maximize the effectiveness of law enforcement measures”, especially with regard for the need for deterrence (Art. 16.2).

Status

Based on a review of legislation and consultations carried out in the context of the needs assessment mission, available sanctions applicable to persons engaging in unlawful conducts related to illicit tobacco products are ineffective, disproportionate and non-dissuasive. In general, the sanctions rely on the imposition of fines, which are relatively low.

Recommendation

It is recommended that Fiji undertake an assessment of the existing regulatory framework applicable to unlawful conducts related to illicit tobacco products, to ensure that the violation of any of the provisions of the Protocol is subject to effective, proportionate and dissuasive criminal and/or non-criminal sanctions.

Article 18. Disposal or destruction

Article 18 stipulates that “all confiscated tobacco, tobacco products and manufacturing equipment shall be destroyed, using environmentally friendly methods to the greatest extent possible, or disposed of in accordance with national law.”

Status

Based on consultations with competent authorities in Fiji, the only method of destruction of confiscated tobacco and tobacco products is incineration.

Recommendations

It is recommended that Fiji steps to ensure the use of more environmentally friendly methods other than incineration for the destruction and/or disposal of seized tobacco, tobacco products and manufacturing equipment.

There are multiple options for destroying and/or disposing of seized tobacco and tobacco products using environmentally friendly methods. Incineration should not be carried out in an “open” manner, rather should be carried out in a way that limits transmission of chemicals into the environment. Further, certain components should be considered for recycling. Concrete examples of practices of other Parties to the Protocol include:

- *Burning, shredding and rendering tobacco and tobacco products unusable by appropriate methods in recycling facilities;*
- *Destruction of tobacco products via incineration, with the heat used to generate electricity;*
- *Removal and recycling of all packaging materials and other components prior to shredding and incineration;*
- *Removal, recycling and processing of the plastic contained in cigarette filters into a variety of industrial products, such as pallets, acoustic absorbing noise barriers, and bricks;*
- *Removal, recycling and processing of the cellulose acetate contained in cigarette filters into material that could be integrated into computers, handheld devices, electrical vehicle and wind turbines to store energy.*

With regard to manufacturing equipment, it should be broken down for scrap with any useable metal recycled.

Part V. International cooperation

Articles 20, 21 and 22. Information sharing

Parties are required to share general information in a confidential manner for Party-only use (Art. 20.3).

Parties must also share information specifically for enforcement purposes to aid in the detection or investigation of illicit trade (Art. 21).

Finally, Parties are required to designate a competent authority responsible for confidentially sharing the above data (Arts. 22.1-2).

Status

The Tobacco Control Enforcement Unit of the Ministry of Health and Medical Services has been designated as the competent national authority for receiving and treating information exchanged.

Recommendation

It is recommended that Fiji continue to progressively improve its methods of exchanging information in a confidential manner.

Article 23. Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters

Article 23 requires Parties to assist each other with training, technical assistance and cooperation in scientific, technical and technological matters, directly or through international and regional organizations.

Status

Fiji participates in INTERPOL's Project Blue Pacific, which focuses on enhancing information sharing, technical assistance and capacity building among Pacific nations to combat various forms of organized crime, including the illicit trade of tobacco products.

Fiji also engages with the Pacific Islands Law Officers' Network (PILON), that fosters cooperation among law officers to address transnational crime. PILON facilitates discussions, training and technical assistance on the use of special investigative techniques, including controlled delivery, to tackle illicit trade in various commodities. However, it appears that illicit trade in tobacco is a lower priority than other forms of illicit trade.

Recommendations

Fiji has made diligent efforts to assist other Parties and seek assistance with training, technical assistance and cooperation in scientific, technical and technological matters, directly or through international and regional organizations. Fiji should continue to progressively enhance efforts to assist other Parties and seek assistance in these areas.

Article 24. Assistance and cooperation: investigation and prosecution of offences

Article 24 Parties must take all necessary measures to strengthen cooperation for the prevention, detection, investigation, prosecution and punishment of persons / businesses engaged in illicit trade, including through multilateral, regional or bilateral arrangements.

Status

Fiji has entered into a number of bilateral agreements in the areas described in Article 24 of the Protocol. In 2016, Fiji entered into a bilateral cooperation agreement on customs enforcement and anti-smuggling with Japan, while in 2019, Fiji entered into agreements with the United States and New Zealand, respectively, aimed at improving regional security and combating illicit activities, including the trafficking of illicit goods. In 2023, Fiji renewed the Vuvale Partnership with Australia, outlining cooperation between Fiji and Australia on matters of defence and security, including collaborative efforts to combat transnational crimes.

Further, as a member of the Pacific Islands Forum (PIF), Fiji is part of a collective effort among Pacific nations to tackle transnational crime, including the illicit trade of tobacco. The PIF includes a Regional Security Framework (PIRSF) that provides a platform for coordinated regional responses to crime, including trafficking and smuggling. PIRSF focuses on strengthening regional law enforcement capacities, sharing intelligence, and coordinating enforcement actions among member states to address issues like organized crime, illicit tobacco trade and trafficking in persons. Fiji is also a participant in the Bali Process, a regional framework for countering illicit trade and related crimes.

Recommendations

Fiji has made diligent efforts to strengthen cooperation for the prevention, detection, investigation, prosecution and punishment of persons / businesses engaged in illicit trade. Fiji should continue to progressively enhance efforts to assist other Parties and seek assistance in these areas.

Article 27. Law enforcement cooperation

Article 27 requires Parties to exchange information concerning criminal offences under the Protocol, including through cooperation among the relevant authorities, such as customs and police forces and establish channels of communication through bilateral or multilateral agreements. Article 27 also requires ensuring the existence of channels of information exchange between national authorities for the same purpose.

Status

On the regional level, Fiji exchanges information concerning criminal offences through its participation in regional law enforcement bodies. In addition to the bodies mentioned above under Articles 23 and 24, Fiji also exchanges information through participation in the Pacific Islands Chiefs of Police (PICP) and the Pacific Transnational Crime Coordination Centre (PTCCC) as part of the Pacific Transnational Crime Network (PTCN).

Within the country, it was noted in consultations with competent authorities that cooperation among relevant authorities is disjointed in this area, with no centralized database to record enforcement initiatives and prosecutions. Moreover, enforcement capacity and awareness of the trade of illicit tobacco as a crime is low.

Recommendations

Fiji has made diligent efforts to strengthen law enforcement cooperation on the regional level. Fiji should continue to progressively seek ways to further increase cooperation on this level.

In addition, on the domestic level, it is recommended that Fiji improve cooperation and capacity training among relevant authorities, including, but not limited to the MHMS, FPF and FRCS.

Articles 28, 29, 30 and 31. International cooperation on administrative and legal matters

Articles 28, 29, 30 and 31 include specific measures aimed at ensuring mutual assistance on matters of administrative and legal nature, as well as measures to ensure extradition for criminal offences under Article 14. The purpose of these provisions is to complement existing treaties dedicated to addressing the same matters, including among others the World Customs Organization conventions and the United Nations Convention Against Transnational Organized Crime.

Status

Fiji plays an important role in advancing regional security and cooperation across the Pacific region and is a member of multiple organizations and Party to bilateral and multilateral treaties and agreements, as described above. For matters outside the scope of these organizations, treaties and agreements, Fiji specifically engages in mutual legal assistance under the Mutual Legal Assistance in Criminal Matters Act²⁴ and satisfies requests for extradition under the Extradition Act.²⁵

Fiji is also a Party to both the UN Convention Against Transnational Organized Crime (UNTOC)²⁶ and the Convention Against Corruption (UNCAC).²⁷

Recommendation

At the regional level, it is recommended that Fiji continue to strengthen its international cooperation on administrative and legal matters.

At the global level, Fiji could seek additional opportunities for strengthened cooperation with global law enforcement agencies. Further, authorities could engage and seek technical and other support from relevant organizations with expertise on relevant subject matter as it relates to the Protocol, such as tracking and tracing.

Finally, it is important to raise awareness among public officials on the WHO FCTC, the Protocol, and related international opportunities to facilitate engagement with key actors in the Pacific region.

Article 32. Reporting and exchange of information

Under Article 20 of the Protocol, Parties are required to ensure – through the means of the WHO FCTC reporting instrument - the reporting of certain information regarding tobacco trade in their respective jurisdictions, including general information on the import, export and manufacturing of tobacco products,

²⁴ Mutual Legal Assistance in Criminal Matters Act 1997, No 28 of 1997, as amended.

²⁵ Extradition Act 2003, No 4 of 2003, as amended.

²⁶ 2225 UNTS 209 (2000).

²⁷ 2349 UNTS 41 (2003).

details on seized tobacco products and the modus operandi and concealment methods reportedly used in illicit tobacco trade.

Furthermore, Article 32 establishes an obligation for Parties to submit periodic reports regarding the implementation of the Protocol in their respective jurisdictions, including information pursuant to Article 20.

Status

Fiji has submitted its 2025 implementation report on 3 May 2025.²⁸

Recommendation

Fiji is encouraged to continue submitting periodic reports in alignment with Article 32 and relevant decisions by the Meeting of the Parties and include information pursuant to Article 20.

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²⁸ <https://extranet.who.int/fctcapps/fctcapps/protocol/implementation-database/parties/fiji>

Annex

List of government agencies, legislative bodies, intergovernmental organizations and non-governmental organizations participating in the joint needs assessment

Government ministries and agencies of Fiji

Consumer Council of Fiji

Fiji Police Force

Fiji Revenue and Customs Service

Ministry of Finance

Ministry of Foreign Affairs

Ministry of Health and Medical Services

Ministry of *iTaukei* Affairs

Ministry of Justice

Members of the Parliament of Fiji, Standing Committee on Foreign Affairs

Ministry of Trade, Co-operatives, Small and Medium Enterprises and Communications

Intergovernmental organizations

WHO Fiji Country Office

Nongovernmental organizations

Fiji Cancer Society

Seventh Day Adventist Church: The 10,000 Toes Campaign