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## Implementation Questions of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) in Georgia\*\*

*The World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) is an international treaty established by WHO to address the global health issue of tobacco consumption, necessitating implementation at the national legislative level.*

*The article explores the global problem of tobacco use and how it led to the creation of an international treaty to regulate it. It discusses how the FCTC was planned and Georgia's role in it. The analysis covers the legal side of the FCTC, including international and local rules for putting it into action. The article also talks about the challenges that have made it difficult to meet the FCTC's obligations from both legal and political viewpoints. This is the first attempt to explain the FCTC and the issues it faces in being adopted and carried out in Georgia.*

**Keywords:** FCTC, tobacco control, global health law, implementation of international norms, tobacco epidemic.

### 1. Introduction

Over the past few decades, tobacco use has emerged as a significant challenge to global public health. The tobacco epidemic has claimed the lives of 100 million people in the last century, surpassing the number of casualties from both world wars.<sup>1</sup> In 1998, former WHO Secretary-General Gro Harlem Brundtland described tobacco use as “one of the greatest public health disasters in human history.”<sup>2 3</sup>

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<sup>1</sup> WHO Report on the Global Tobacco Epidemic, 2008.

<sup>2</sup> Brundtland GH., Speech at Tsinghua University, Beijing, China. November 22, 1998.

<sup>3</sup> Note: It was Ms. Brundtland who initiated the first modern convention – the Framework Convention on Tobacco Control (hereinafter the FCTC), which aims at reducing the global tobacco epidemic. (in Georgian)

Tobacco claims the lives of over 8 million people annually, including approximately 1.3 million non-smokers exposed to second-hand smoke. Roughly 80% of the world's 1.3 billion tobacco users reside in low- and middle-income countries.<sup>4</sup> Addressing this critical global challenge requires countries to embrace decisive actions and adhere to the WHO's Framework Convention on Tobacco Control (hereinafter "FCTC") as well as the United Nations Sustainable Development Goals.<sup>5</sup> The ultimate goal of the WHO is to end the tobacco epidemic in the 21st century with the "Endgame for Tobacco" policy.<sup>6 7</sup>

Roughly 15% of global deaths are estimated to be linked to smoking;<sup>8</sup> in Georgia, it is 22%, given the higher than average prevalence of tobacco use (28%).<sup>9</sup> Annually, tobacco consumption in Georgia leads to the deaths of 11,400 individuals, with at least 2,100 being passive smokers.<sup>10</sup> Furthermore, the comprehensive yearly negative economic impact linked to tobacco use surpassed 825 million GEL in 2018 (equivalent to approximately 330 million USD at that time), constituting 2.43% of the gross domestic product.<sup>11</sup>

For decades, the socio-economic and health challenges stemming from tobacco consumption in Georgia have been tied to the degree of successful and prompt execution of international obligations outlined in the FCTC.

## **2. The Legal Nature and Main Directions of the FCTC**

The title "framework convention" in a treaty signifies the unity of general international norms to be incorporated within national legislation. The word "framework" is present in the titles of international conventions, it is seldom used e.g., the UN Framework Convention on Climate Change

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<sup>4</sup> WHO, Tobacco-Key Facts, <<https://www.who.int/news-room/fact-sheets/detail/tobacco>> [27.05.2020].

<sup>5</sup> WHO/EURO, Tobacco Control & the Sustainable Development Goals, <[https://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0020/340193/TOBACCO-CONTROL-AND-THE-SUSTAINABLE-DEVELOPMENT-GOALS\\_Edited.pdf](https://www.euro.who.int/__data/assets/pdf_file/0020/340193/TOBACCO-CONTROL-AND-THE-SUSTAINABLE-DEVELOPMENT-GOALS_Edited.pdf)> [01.09.2023].

<sup>6</sup> WHO, Director-General Considers the Tobacco EndGame. Dr. Margaret Chan, DG WHO, New Delhi, 11.09.2013, <[https://www.who.int/dg/speeches/2013/tobacco\\_endgame\\_20130911/en/](https://www.who.int/dg/speeches/2013/tobacco_endgame_20130911/en/)> [01.09.2023].

<sup>7</sup> Note: the term "tobacco finishing" or the so-called the "Tobacco End Game" policy was first used by WHO Director-General Ms. Margaret Chan at a conference held on September 10-12, 2013 in New Delhi, India. At this conference, it was announced for the first time that by 2050, countries must be able to end the tobacco epidemic, meaning the consumption of any tobacco product would become less than 5%. The author of this article personally participated in the conference. In addition, at that time the head of the WHO mission in India was Mrs. Nata Menabde, who later served as the executive director of the WHO office in the United Nations in 2015-2022.

<sup>8</sup> Ritche H, Roser M., Smoking, Our Worlds Data source, revised substantially in Nov 2019, <<https://ourworldindata.org/smoking>> [01.09.2023].

<sup>9</sup> Georgian National Center for Diseases Control and Public Health (NCDC). Tobacco National Survey, 2020. Retrieved from <<https://ncdc.ge/#/pages/file/fa339295-6e09-4139-9d89-2ed16a91fe82>> [01.09.2023].

<sup>10</sup> United Nations Development Programme, Tobacco Control Policy Investment Case – Georgia, United Nations, New York, 2018 (in Georgian).

<sup>11</sup> Ibid.

or the Framework Convention for the Protection of National Minorities, etc. Hence, framework conventions set forth broad regulatory norms and obligations, while protocols typically aim to establish more specific regulations and obligations.<sup>12 13</sup> The Framework Convention on the Ozone Layer and its Montreal Protocol (1985) on Substances that Deplete the Ozone Layer (Montreal Protocol of 1987) or the Framework Convention on Climate Change (1992) and its Kyoto Protocol (1997) are some examples in this regard.<sup>14</sup>

The FCTC, adhering to general norms, outlines specific requirements and deadlines for parties to adopt suitable and effective legislative, executive, administrative, or other measures to implement the relevant articles.<sup>15</sup>

Specifically, Article 11 of the FCTC stipulates that parties must align with international norms to meet tobacco packaging and labeling requirements within a three-year timeframe.<sup>16</sup> In accordance with Article 13, the prohibition of tobacco advertising, promotion, and sponsorship must be enacted within five years, aligning with the constitution or constitutional principles of the respective country.<sup>17 18</sup>

We emphasize certain obligations from the FCTC that are supported by evidence as curbing tobacco consumption:<sup>19</sup>

- Price and non-price measures;
- Protection from exposure to tobacco smoke;
- Regulation of tobacco product disclosures;
- Packaging and labelling of tobacco products;
- Education, communication, training and public awareness;
- Ban of Tobacco advertising, promotion and sponsorship;
- Demand reduction measures concerning tobacco dependence and cessation;
- Fight against Illicit trade in tobacco products;
- Sales to and by minors;

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<sup>12</sup> *Bodansky D.*, The Framework Convention/Protocol Approach, WHO/NCD/TFI/99.1, 1999, 15 <[https://apps.who.int/iris/bitstream/handle/10665/65355/WHO\\_NCD\\_TFI\\_99.1.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/65355/WHO_NCD_TFI_99.1.pdf?sequence=1&isAllowed=y)> [01.09.2023].

<sup>13</sup> *Martz-Luck N.*, Framework Conventions as a Regulatory Tool, *Gottingen Journal of International Law* 1 (2009) 3, 439-458.

<sup>14</sup> *Ibid.*

<sup>15</sup> WHO Framework Convention on Tobacco Control, 21/05/2003, <<https://matsne.gov.ge/ka/document/view/3800638>> [05/06/2006] (in Georgian).

<sup>16</sup> *Ibid.*, Article 11 (in Georgian).

<sup>17</sup> *Ibid.*, Article 13 (in Georgian).

<sup>18</sup> Article 13 of the Framework Convention stipulated that countries should ban advertising, promotion and sponsorship of tobacco products within 5 years of becoming a member of the Convention. However, the US delegation categorically disagreed with such an imperative ban. Due to this position, in the last 6th round of negotiations, the adoption of the framework convention was practically impossible, as the text had to be adopted by consensus (in Georgian).

<sup>19</sup> WHO Framework Convention on Tobacco Control, 21/05/2003, Articles 6-20. <<https://matsne.gov.ge/ka/document/view/3800638>> [05/06/2006] (in Georgian).

- Provision of support for economically viable alternative activities;
- Protection of the environment and the health of persons;
- Tobacco industry liability;
- Research, surveillance and exchange of information.

The first paragraph of Article 2 suggests that for enhanced human health protection a party has the discretion to implement measures more stringent than what the FCTC mandates.<sup>20</sup> Similar regulations are included in other conventions, e.g., UN conventions “Against Corruption”,<sup>21</sup> “Against Transnational Organized Crime”,<sup>22</sup> “Against Illegal Transit in Narcotic Drugs and Psychotropic Substances”,<sup>23</sup> and others.

While the FCTC does not outline specific consequences for failing to meet obligations, a state's reputation being damaged is an important factor that affects its vested interest. In this regard, the reports submitted by parties on the FCTC implementation serve as a valuable mechanism. These reports are presented to the Conference of the Parties (COP) through the FCTC Secretariat, following a similar process as observed in other conventions.<sup>24 25 26</sup>

Should a dispute arise between parties in the application of the FCTC and prove unresolvable through negotiations, the COP may potentially initiate a special arbitration procedure. It's important to note that such a situation has not arisen thus far.<sup>27</sup> Using the “Paris Agreement” of the United Nations Framework Convention on Climate Change as a comparable international agreement, it's noteworthy that in the initial six months of 2018 alone, the Permanent Court of Arbitration oversaw 17 environmental and energy disputes involving both private commercial entities and public subjects.<sup>28</sup>

The FCTC does not allow parties to make reservations, a provision found in certain other conventions. For example, reservations are not allowed in the UN Convention on the “Law of the

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<sup>20</sup> Ibid, Article 2. (in Georgian)

<sup>21</sup> United Nations Convention Against Corruption, UN Office on Drugs and Crime, New York, 2004, <[https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf)> [01.09.2023].

<sup>22</sup> United Nations Convention Against Transnational Organized Crime and the Protocols thereto, <[https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THERETO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf)> [01.09.2023].

<sup>23</sup> United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, <[https://www.unodc.org/pdf/convention\\_1988\\_en.pdf](https://www.unodc.org/pdf/convention_1988_en.pdf)> [01.09.2023].

<sup>24</sup> WHO Framework Convention on Tobacco Control, Article 21, 21/05/2003 (in Georgian). <<https://matsne.gov.ge/ka/document/view/3800638>> [05/06/2006].

<sup>25</sup> *Korkelia K.*, International Agreement in International and Domestic Law, Tbilisi University Publishing House, 1998, 93-95. (in Georgian)

<sup>26</sup> *Shaw M.*, International Law, Cambridge University Press, 2008, 49-51.

<sup>27</sup> WHO Framework Convention on Tobacco Control, Article 27, 21/05/2003, (in Georgian) <<https://matsne.gov.ge/ka/document/view/3800638>> [05/06/2006].

<sup>28</sup> International Chamber of Commerce (ICC), Resolving Climate Change Related Disputes through Arbitration and ADR, 2019, 53 <<https://iccwbo.org/content/uploads/sites/3/2019/11/icc-arbitration-adr-commission-report-on-resolving-climate-change-related-disputes-english-version.pdf>>.

Sea”, the “Rome Statute of the International Criminal Court”, the “Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption”, etc.<sup>29 30 31 32</sup>

The right to make reservations is a mechanism for expressing the sovereignty of nations. It provides numerous countries with the chance to join multilateral agreements. The Vienna Convention “On the Law of Treaties” (hereinafter “Vienna Convention”) outlines the methods and procedures for challenging reservations that run counter to the objectives of the international treaty. Additionally, the convention acknowledges the presumption of the absence of reservations implied by the international treaty.<sup>33 34</sup>

The parties participating in the formulation of the FCTC explicitly chose not to allow reservations.<sup>35</sup> This decision appears to be driven by the intention to safeguard the Convention's objectives and fundamental principles, as well as to preempt potential challenges from the tobacco industry and countries under its influence. For instance, a representative of the US delegation cited the prohibition of reservations as a key factor in America's decision to abstain from joining the FCTC.<sup>36</sup> The delegation held the view that the prohibition of reservations and the broad restrictions on tobacco advertising, promotion, and sponsorship outlined in Article 13 were deemed incompatible with the Constitution of the USA. This obstacle was surmounted on March 1, 2003, during the conclusive phase of negotiations when the draft text of the FCTC received approval. Subsequently, in May 2003, it was presented and officially approved by the WHO General Assembly.<sup>37 38 39</sup> As of August 25, 2023, the USA has not become a member of the FCTC.

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<sup>29</sup> United Nations, Final Clauses of Multilateral Treaties, Handbook, 2003, 47. <<https://treaties.un.org/doc/source/publications/FC/English.pdf>>.

<sup>30</sup> United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982. <[https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en)>

<sup>31</sup> International Criminal Court, Rome Statute of the International Criminal Court, Rome, 17 July 1998. <<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>>

<sup>32</sup> Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, Concluded 29 May 1993, NCCH. <<https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>>

<sup>33</sup> Shaw M., International Law, Cambridge University Press, 2021, 797-806.

<sup>34</sup> Articles 19-23, Vienna Convention on the Law of Treaties, 23/05/1969, <<https://matsne.gov.ge/document/view/2608263?publication=0>> [11/12/2014]. (in Georgian)

<sup>35</sup> WHO Framework Convention on Tobacco Control, Article 30, 21/05/2003, <<https://matsne.gov.ge/ka/document/view/3800638>> [05/06/2006]. (in Georgian)

<sup>36</sup> Jacob, G., “Without Reservation”, Chicago Journal of International Law, 5(1), 2004, 288-302. <<https://chicagounbound.uchicago.edu/cjil/vol5/iss1/19>>

<sup>37</sup> World Health Organization, History of the WHO Framework Convention on Tobacco Control, Geneva, 2009. <[https://iris.who.int/bitstream/handle/10665/44244/9789241563925\\_eng.pdf?sequence=1](https://iris.who.int/bitstream/handle/10665/44244/9789241563925_eng.pdf?sequence=1)>

<sup>38</sup> WHO Framework Convention on Tobacco Control, Article 13, 21/05/2003, <<https://matsne.gov.ge/ka/document/view/3800638>> [05/06/2006]. (in Georgian)

<sup>39</sup> Note: The parties compromised and at the 6th last round of negotiations, with an attempt of WHO General Secretary Gru Harlem Brutland and communications with the White House, the text retained the non-reservation, however, Article 13 stated that each Party, in accordance with its constitution or constitutional principles, undertakes to ensure a comprehensive ban on tobacco advertising, promotion and sponsorship. (in Georgian)

The existing count of parties to the FCTC, which stands at 182 out of the 193 UN member states, suggests that the stipulations and commitments within the FCTC are agreeable to a significant number of members. Nevertheless, certain countries, prior to signing or ratifying the FCTC, submitted declarations to the WHO on particular issues or related to the country, without officially making reservations.<sup>40</sup>

Amendments to the FCTC can be enacted through the prescribed procedure outlined in Article 28 of the FCTC.<sup>41</sup> Unlike some conventions, where these procedures may not be explicitly specified, the adjustments can be made in alignment with Article 40 of the “Vienna Convention”.<sup>42</sup> As of August 25, 2023, amendments or annexes have not been added to the FCTC.

It is also possible to withdraw from the treaty at any time after two years from the date on which the FCTC has entered into force by a party. The withdrawal shall take effect upon expiry of one year from the date of receipt by giving the Depository a written notification, or on such later date as may be specified in the notification of withdrawal.<sup>43</sup> As of August 25, 2023, none of the parties has left the FCTC.

The text of the FCTC was adopted by consensus. However, concerning the adoption of a Protocol, as per Article 33 of the FCTC, if consensus cannot be reached for protocol adaption, it can be accepted by a three-fourths majority vote of the COP attendees.<sup>44</sup> The only protocol, the “Protocol on the Elimination of Illegal Trade in Tobacco Products”, which developed within the FCTC, was adopted by consensus.<sup>45</sup>

### **3. International legal and local norms for implementing the international agreement and the FCTC**

Based on one of the main principles of international law, “Pacta sunt servanda,” states are bound to fulfill the obligations they undertake in good faith pursuant to a bilateral or multilateral treaty.<sup>46 47 48 49</sup>

The Vienna Convention explicitly states that a state cannot claim the invalidity of its consent to be bound by a treaty due to a violation of a provision of its internal law regarding the competence to

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<sup>40</sup> United Nations Treaty Collection, WHO Framework Convention on Tobacco Control, Registration 27.02.2005, #41032, Signatories: 168, Parties: 182. <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IX-4&chapter=9&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4&chapter=9&clang=_en)> [19.09.2020].

<sup>41</sup> WHO Framework Convention on Tobacco Control, Article 28, 21/05/2003, <<https://matsne.gov.ge/ka/document/view/3800638>> [05/06/2006] (in Georgian).

<sup>42</sup> Article 40, Vienna Convention on the Law of Treaties, 23/05/1969, <<https://matsne.gov.ge/document/view/2608263?publication=0>> [11/12/2014] (in Georgian).

<sup>43</sup> Ibid, Article 31. (in Georgian)

<sup>44</sup> Ibid, Article 33. (in Georgian)

<sup>45</sup> UN Treaty Collection, a Protocol to Eliminate Illicit Trade in Tobacco Products, Seoul, 12 November 2012. Entered into force since 25 September 2018, <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IX-4-a&chapter=9&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4-a&chapter=9&clang=_en)>

<sup>46</sup> Eriashvili N. (ed.). International Law, Just Georgia, 2010, 106. (in Georgian)

<sup>47</sup> Aleksidze L. Modern international law, publishing house “Innovation”, 2010, 95. (in Georgian)

<sup>48</sup> Article 26, Vienna Convention on the Law of Treaties, 23/05/1969, <<https://matsne.gov.ge/document/view/2608263?publication=0>> [11/12/2014]. (in Georgian)

<sup>49</sup> Shaw M., International Law, Cambridge University Press, 2008, 50.

conclude treaties unless the violation was clear and involved a rule of its internal law of fundamental importance.<sup>50</sup>

The procedure described above does not possess a universally accepted definition within both international treaties and academic literature. As a result, a variety of terms, including “implementation,” “execution,” “realization,” “use,” “protection,” etc. are utilized.<sup>51 52</sup> In this instance, the term “implementation” will be employed, as it more effectively highlights the process required to incorporate the majority of international agreements into the country's legislation. Following the enactment of the prescribed legislation, we will then proceed with the term “realization.” When addressing the FCTC, it becomes imperative to effectuate pertinent legislative changes.<sup>53</sup>

The signing of the FCTC is a confirmation of a strong political will of a country at an international level. Georgia signed the treaty on February 20, 2004.<sup>54</sup> Ratification of the FCTC took about two years because of a certain barrier created by the Minister of Economy at that time and later by the State Minister of Reforms.<sup>55</sup> The legal issue arose when the State Minister of Reforms initiated the repeal of the Georgian law titled “On Issuing Licenses in the Sector of Food Products and Tobacco Production.” It is worth noting that this law was revoked just two weeks after the ratification of the FCTC on December 28, 2005.<sup>56 57</sup> Although Article 15 of the FCTC suggested the introduction of a license, this obligation was not mandatory. According to Article 15, paragraph 7 of the FCTC, each party was encouraged to undertake suitable measures to prevent illegal trade, which might include the implementation of licensing.<sup>58</sup> After this record had been correctly interpreted, the barrier was removed.

At the first stage, only the text of the FCTC was ratified by the Parliament on December 16, 2005, and the consideration of amendments to the legislation was postponed for the near future.<sup>59</sup> The

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<sup>50</sup> Article 46, Vienna Convention on the Law of Treaties, 23/05/1969, <<https://matsne.gov.ge/document/view/2608263?publication=0>> [11/12/2014]. (in Georgian)

<sup>51</sup> Vienna Convention “On the Law of Treaties”, 23/05/1969, <<https://matsne.gov.ge/document/view/2608263?publication=0>> [11/12/2014]. (in Georgian)

<sup>52</sup> Gaverdovsky A.S., Implementation of international law. Kyiv, 1980, 265. (in Russian)

<sup>53</sup> Eriashvili N. (ed.). International Law, Just Georgia, 2010, 24. (in Georgian)

<sup>54</sup> Decree # 5 of the President of Georgia dated January 12, 2014, R. About granting authority to Adamia, <<https://matsne.gov.ge/ka/document/view/34762?publication=0>>. (in Georgian)

<sup>55</sup> Biographical Dictionary of Georgia, Kakha Bendukidze, <<http://www.nplg.gov.ge/bios/ka/00011484/>>. (in Georgian)

<sup>56</sup> On the Revocation of the Law of Georgia “On Issuing a License in the Field of Food Products and Tobacco Production”, # 2575, 28/12/2005, <<https://matsne.gov.ge/ka/document/view/904?publication=0>>. (in Georgian)

<sup>57</sup> Article 15, paragraph 7, WHO Framework Convention on Tobacco Control, 21/05/2003, <<https://matsne.gov.ge/ka/document/view/3800638>> [05/06/2006]. (in Georgian)

<sup>58</sup> Paragraph 4 of Article 15, Law of Georgia “On International Agreements of Georgia”, Department of Parliament, 44, 11/11/1997, <<https://matsne.gov.ge/document/view/33442?publication=16>> [22.12.2018]. (in Georgian)

<sup>59</sup> On ratification of the World Health Organization Framework Convention on Tobacco Control, #2301, 16/12/2005, <<https://matsne.gov.ge/ka/document/view/43474?publication=0>>. (in Georgian)

instrument of ratification of the FCTC was handed over to the UN as the depositary on February 14, 2006. The FCTC entered into force and became binding for Georgia after 90 days, on May 15, 2006.<sup>60</sup>

The package of legislative amendments necessary to implement the FCTC was soon withdrawn by the State Minister of Reforms and the process of legal implementation of the FCTC was prolonged. Only in 2008 the package was accepted by the Parliament.<sup>61</sup>

The set of amendments represented the initial effort to fulfill the commitments outlined in the FCTC. While it was not all-encompassing, and the administrative mechanism appeared to be lacking, it marked a significant starting point when contrasted with Georgia's 2003 Law on Tobacco Control. Advertising, promotion and sponsorship of tobacco products were not prohibited (the deadline for Georgia as a party to the FCTC was until May 15, 2011).<sup>62</sup> The problems concerning the enforcement part remained unsolved.<sup>63</sup>

In 2010, only the title of the law “On Tobacco Control” was changed and the laws of Georgia “On Food and Tobacco” and “On Trade in Tobacco Products” were repealed.<sup>64 65 66</sup> By abolishing these laws, the state came into the resistance with the implementation of Article 15 of the FCTC.

Tobacco control activities intensified in 2013 when the Governmental Commission was established in March, and in July when the government approved the corresponding state strategy, and again in November with approval of the national action plan on tobacco control for 2013-2018.<sup>67</sup> <sup>68 69</sup> They did meet the requirements of the second paragraph of Article 5 of the FCTC. In 2013, the Mission of the FCTC Secretariat provided relevant notes and proposals to the Government of Georgia.<sup>70</sup>

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<sup>60</sup> United Nations Treaty Collection, WHO Framework Convention on Tobacco Control, Registration 27.02.2005, #41032, Signatories: 168, Parties: 182, <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IX-4&chapter=9&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4&chapter=9&clang=_en)> [19.09.2020].

<sup>61</sup> Amendments and Additions to the Law of Georgia “On Tobacco Control in Georgia”, #941, 30/12/2008, <<https://matsne.gov.ge/ka/document/view/17608?publication=0>>. (in Georgian)

<sup>62</sup> Ibid. No steps have been illustrated concerning the complete prohibition of tobacco advertising, promotion, and sponsorship, except for the principle that acknowledges the right to live in an environment free from tobacco advertising and to be shielded from its impacts.

<sup>63</sup> On making additions and amendments to the Code of Administrative Offenses of Georgia, #3136, 05/12/2003, <<https://matsne.gov.ge/ka/document/view/13144?publication=0>>. (in Georgian)

<sup>64</sup> On Tobacco Control, #4059-RS, 15/12/2010, <<https://matsne.gov.ge/document/view/1160150?publication=7>> [15/07/2020]. (in Georgian)

<sup>65</sup> On Food and Tobacco, #2212, 29/12/2010, <<https://matsne.gov.ge/document/view/11938?publication=11>>. (in Georgian).

<sup>66</sup> On trade in tobacco products, #3013, 29/12/2010, <<https://matsne.gov.ge/document/view/12982?publication=3>>. (in Georgian).

<sup>67</sup> On forming the government commission to strengthen tobacco control measures in Georgia, Resolution of the Government of Georgia #58, 15/03/2013, <<https://matsne.gov.ge/document/view/1874677?publication=0>>. (in Georgian)

<sup>68</sup> On approval of the state strategy for tobacco control of Georgia, Resolution of the Government of Georgia, #196, 30/07/2013, <<https://matsne.gov.ge/document/view/1978972?publication=0>>. (in Georgian)

<sup>69</sup> 2013-2018 Tobacco Control Action Plan, Resolution of the Government of Georgia, #304, 29/11/2013, <<https://matsne.gov.ge/document/view/2096830?publication=0>>. (in Georgian)

<sup>70</sup> Assessment of Implementation Needs of the World Health Organization Framework Convention on Tobacco Control in Georgia, Convention Secretariat, Geneva, June 2013. (in Georgian).



The two-year (2015-2016 years) negotiations with the Parliament of Georgia proved unsuccessful. Consequently, before the conclusion of the Parliament of the 8th convocation in June 2016, the legislative initiative was endorsed by Mrs. Guguli Magradze, the First Deputy Chairperson of the Integration Committee on the European Union. The author of the legislative package was the Tobacco Control Alliance.<sup>71</sup> The government was actively resistant to enacting meaningful legislative reforms in tobacco control, primarily due to business interests.<sup>72</sup>

The 9th convocation of the Parliament, subsequent to the resolution on November 30, 2016, proceeded with the regulation initiated by the 8th convocation. The Parliament's Bureau introduced a set of proposals aimed at aligning tobacco control legislation with the provisions of the FCTC.<sup>73</sup>

At the beginning of 2017, the Public Defender issued a special report discussing the situation with regard to Tobacco Control and appealed to the Parliament to incorporate the FCTC into current legislation as soon as possible.<sup>74</sup>

Following several months of parliamentary deliberation, led by Mr. Akaki Zoidze, the head of the Health and Social Affairs Committee, and driven by a robust political commitment from the parliament, comprehensive and impactful tobacco control measures were endorsed in the third reading on May 17, 2017. The majority of these measures took effect on May 1, 2018.<sup>75</sup> Also, it was possible to implement the administrative measures reform. Consequently, the process of law enforcement became more flexible and effective, which provided 96% compliance of the law through the appropriate public monitoring.<sup>76 77</sup> The reform is in compliance with the guidelines for the implementation of the FCTC and some requirements of Articles 8 to 14. However, the complete prohibition of tobacco advertising, promotion and sponsorship provided in Article 13 of the FCTC was achieved on September 1, 2018, after seven years.<sup>78</sup>

Article 5.3 of the FCTC remains unfulfilled. To implement this provision, the law “On Tobacco Control” mandated the government to endorse the normative act titled “Protecting the State Policy Related to Tobacco Control in Public Institutions and Establishing the Rule of Communication of

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<sup>71</sup> The decision of the Bureau of the Parliament of Georgia on the initiation of the procedure to review the draft of the normative act, Parliament of Georgia, #417/4, 13.06.2016, <<https://info.parliament.ge/file/1/BillReviewContent/123029?>>. (in Georgian).

<sup>72</sup> The government is against Guguli Maghradze for the bill on tightening tobacco control, Business Media Georgia, 15.07.2016, < <https://bm.ge/ka/article/mtavroba-tambaqos-kontrolis-gamkacrebaze-guguli-magradzis-kanonproeqtis-winaagmdegia/4919>> (in Georgian).

<sup>73</sup> Resolution of the Parliament of Georgia on the advisability of continuing the review procedures of bills submitted to the Parliament of the previous convocation, Kutaisi, 30.11.2016, #37-1c, <<https://info.parliament.ge/file/1/BillReviewContent/136733?>>. (in Georgian)

<sup>74</sup> The special report on the situation in the field of tobacco control, Public Defender (Ombudsman) of Georgia, 2017, 37-38. (in Georgian).

<sup>75</sup> Regarding Amendments to the Law of Georgia “On Tobacco Control”, Parliament of Georgia, 07-3/592/8, <<https://info.parliament.ge/#law-drafting/12109>> (in Georgian).

<sup>76</sup> Ibid., “About changes in the Code of Administrative Offenses of Georgia” (in Georgian)

<sup>77</sup> Bakhturidze G., Assessment of the impact of the law on tobacco control on the health and economy of the population of Georgia, Tbilisi, December 2019, <<https://www.ncdc.ge/Handlers/GetFile.ashx?ID=92a34feb-3a6b-4895-b623-042279397f18>> (in Georgian).

<sup>78</sup> Article 13, Paragraph 2, WHO Framework Convention on Tobacco Control, 21/05/2003, <<https://matsne.gov.ge/ka/document/view/3800638>> [05/06/2006] (in Georgian)

State Servants with the Tobacco Industry” by June 1, 2018. Although work on the document recommenced in December 2022, as of August 25, 2023, the Ministry of Finance has not yet approved the document uploaded to the government portal. It is noteworthy that in November 2019, the Parliament concluded its work on the final report concerning the enforcement of the law “On Tobacco Control”.<sup>79</sup> By the resolution on April 13, 2021, the Parliament provided a positive assessment of the state of enforcement of the law “On Tobacco Control” and instructed the government to take appropriate measures to ensure the timely adoption of the above-mentioned normative act.<sup>80</sup>

Ultimately, while some nations fully adhere to the FCTC and others fall short, there is a noticeable improvement in the global situation. Specifically, the worldwide prevalence of tobacco use declined from 22.8% to 17% between 2007 and 2021. This reduction translates into 300 million fewer smokers today. However, 44 countries, representing up to 2.3 billion inhabitants, have not made progress in any of the directions outlined in the MPOWER strategy endorsed by the World Health Organization (M – monitoring tobacco use, P – protection from tobacco smoke, O – offering support to quit tobacco use, W – warning about the dangers of tobacco, E – enforcement of the ban on tobacco advertising, promotion, and sponsorship, R – raising taxes on tobacco). Additionally, the introduction and regulation of novel tobacco products present a significant challenge.<sup>81</sup> Since 2018, Georgia has stood out as one of the successful nations in implementing comprehensive tobacco regulations, ensuring their enforcement, and in turn witnessing declining trends in tobacco consumption.<sup>82</sup> Nevertheless, the regulation of novel tobacco products continues to pose a challenge.

#### **4. Conclusion**

The FCTC of the World Health Organization is the first WHO international health treaty which aims at reducing the global burden of tobacco use.<sup>83</sup>

Georgia actively participated in the development of the FCTC, but its ratification and subsequent implementation proved to be challenging, primarily due to a lack of political will and significant influence from the tobacco industry on the government. The FCTC Secretariat consistently aimed to assist member developing countries, including Georgia, in meeting their obligations under the FCTC, offering relevant missions and providing technical or financial support. However, compliance with Article 13, which required a complete prohibition of advertising, promotion, and

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<sup>79</sup> Healthcare and Social Issues Committee of the Parliament of Georgia. Post legislative scrutiny (PLS) on the Law of Georgia “on Tobacco Control”. Final Report. 2019, 12-13, <[http://www.parliament.ge/ge/ajax/downloadFile/132417/jandacvis\\_komit\\_broshura\\_GEO](http://www.parliament.ge/ge/ajax/downloadFile/132417/jandacvis_komit_broshura_GEO)>.

<sup>80</sup> Resolution of the Parliament of Georgia “On Tobacco Control” regarding the state of enforcement of the Georgian law # 455-Ims-Xმპ, <<https://matsne.gov.ge/ka/document/view/5148191?publication=0>> [14/04/2021]. (in Georgian)

<sup>81</sup> World Health Organization, WHO Report on the Global Tobacco Epidemic, Protect People from Tobacco Smoke, 2023 <<https://www.who.int/initiatives/mpower>>

<sup>82</sup> *Bakhturidze G., Peikrishvili N., Gvinianidze K.*, Impact of Comprehensive Smoke-free Policy on SHS Exposure and Health Condition of the Georgian Population, *Tobacco Prevention&Cessation*, 7(70), 2021, 1-6. <<https://doi.org/10.18332/tpc/143329>>

<sup>83</sup> WHO Framework Convention on Tobacco Control, 21/05/2003, <<https://matsne.gov.ge/ka/document/view/3800638>> [05/06/2006] (in Georgian).

sponsorship of tobacco products, was initiated by Georgia only in September 2018 instead of the original deadline of May 15, 2011.

Furthermore, the fulfillment of other FCTC obligations took a considerable amount of time. Comprehensive legislative changes for the implementation of FCTC Articles 8-14, along with improvements in relevant administrative mechanisms, were made only after 12 years of FCTC membership. The primary obstacle to FCTC implementation was the government's economic team. However, according to the “Vienna Convention” and the Georgian Law “On International Agreements,” institutions of the executive power are the primary bodies responsible for making international agreements, despite violating the law both before and after the Convention entered into force.

Even after the FCTC's requirements became obligatory, and to this day, the government has failed to meet the demands outlined in Article 5.3 of the Framework Convention and Article 4, paragraph 6 of the law “On Tobacco Control”. For over five years, the government has not approved the relevant normative act, which would ensure transparency in relations between representatives of executive structures and the tobacco industry. Efforts towards implementing other obligations under the FCTC and fully harmonizing them in national legislation are also lacking in effectiveness.

Urgent attention should be given to the legal regulation of novel and tobacco related products (among them are non-nicotine e-cigarettes/hookahs, herbal smoking products, and so on). This recommendation comes from the World Health Organization (WHO), the Parties to the FCTC, and the European Union. However, the adoption of such regulation continues to present a challenge for Georgia. It is crucial to heed the WHO's call and encourage countries to promptly transition from tobacco control measures to “tobacco endgame” policies. This transition aims to rapidly reduce the consumption of tobacco products, especially among future generations, thereby minimizing socio-economic and health burdens as much as possible.

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