

PETITION

**ATTN : HON. SEN MUTAHI KAGWE, THE CABINET SECRETARY
FOR HEALTH**

**COPIED TO : PROF. WILFRED LESAN, THE CHAIRPERSON TOBACCO
CONTROL BOARD, DR KEPHA OMBACHO, THE SECRETARY
TOBACCO CONTROL BOARD**

**SUBJECT : PETITION TO BAN MANUFACTURE, IMPORTATION AND
SALE OF ORAL NICOTINE POUCHES IN KENYA**

DATE : APRIL 15, 2021

We the health advocates in Kenya take note that the British American Tobacco (BAT) was allowed to unceremoniously introduce the LYFT nicotine pouches in Kenya towards the end of 2019. To our dismay, these products were sold haphazardly and even made available to school going children, as confirmed by the National Parents Association¹. By its own admission, BAT has inscribed that the oral nicotine pouches contain HIGHLY ADDICTIVE SUBSTANCE yet their sale was being done in the open.

Our surveillance team later discovered that these products were registered by the Pharmacy and Poisons Board (PPB) contrary to the Pharmacy and Poisons Act CAP244. And rightly so, your office asked for clarification from the Board in the manner in which these products were registered and licensed. To our surprise and

¹ <https://allafrica.com/stories/202008260248.html>

as a clear confession of illegality, the BAT in its letter dated **28th September 2020**, offered to respond on behalf of the PPB.

BAT's letter read in part

“We have been informed by the Pharmacy and Poisons Board that your Ministry has requested for information concerning LYFT and its regulation”

We are convinced that these products were illegally allowed into the Kenyan market and that PPB contravened the law. We applaud your swift action that saw the withdrawal of these products from the market.

We are however, concerned that BAT is still committed to have these products sold in the Kenyan market. A recent publication by The Bureau clearly indicated that BAT deliberately targeted young people² with its ADDICTIVE NICOTINE POUCHES and in an attempt to cover up or kill this story, the giant tobacco manufacturer attempted to bribe one of the journalists³ through their PR agency. As health advocates in the country, we find this trend to be very disturbing. It is a trend that will easily undo the gains the country has worked hard and rightly gained in the fight against tobacco use. As you may be aware, Kenya was among the first countries to sign and ratify the WHO Framework Convention on Tobacco Control (WHO-FCTC) in 2004 and has always been ranked among the regional and global leaders in tobacco control.

We notice with great concern that the British American Tobacco has had regular contacts and discussions contrary to Article 5.3 of WHO-FCTC and the Tobacco Control Act CAP 245A. *According to the guidelines for implementation of Article 5.3 of WHO-FCTC, in setting and implementing public health policies with respect to tobacco control, any necessary interaction with the tobacco industry should be carried out by parties in such a way as to avoid the creation of any perception or a real or potential partnership or cooperation resulting from or on account of such interaction.* We are deeply concerned that the outcomes of these regular meetings with the industry are public health unfriendly. We are equally aware that the firm is increasingly seeking the audience with the Ministry of Health in an effort to push

² <https://www.thebureauinvestigates.com/stories/2021-02-21/new-products-old-tricks-concerns-big-tobacco-is-targeting-youngsters>

³ <https://www.thebureauinvestigates.com/stories/2021-02-21/bats-pr-agency-tried-to-bribe-bureaus-kenyan-reporter>

for lighter regulations of its products or seeking unnecessary grace period to offload its stocks of over 400,000 LYFT nicotine cans or even to push for the review of the tobacco control policies in the country in the guise of accommodating their new products. As health proponents in the country, we are strongly opposed to this proposal. Instead, the Ministry should stand firm in protecting the health of our young people who are the targets of the tobacco industry.

Globally, the tobacco industry is known to use these tactics in order to circumvent pre-existing policies that it does not agree with. This is clearly displayed when BAT decided to sue the Kenyan government because it didn't agree with the Tobacco Control Regulations 2014.

We the undersigned organizations involved in tobacco control, health promotion and general wellbeing of humanity in the country, do register our displeasure for the following reasons:

- a.) Universal Health Coverage is one of the government's Big 4 Agenda. Right to the highest attainable standards of health, is enshrined in the Kenyan constitution under the Bill of Rights⁴ and the government has a legal obligation to protect its people more so the Kenyan youth against these tobacco products and their derivatives known to cause preventable diseases and avoidable premature deaths of millions of people globally every year.

- b.) Kenya is a signatory to the World Health Organization's Framework Convention on Tobacco Control (WHO-FCTC), which is an international treaty that was developed in response to the globalization of the tobacco epidemic. ***Principle 4 of the Guidelines for implementation of Article 5.3 of the WHO-FCTC states that because their products are LETHAL, the tobacco industry should not be granted incentives to establish or run their businesses. It goes further stating that any preferential treatment of the tobacco industry would be in conflict with tobacco control policy.***

⁴http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=const2010#KE/CON/Const2010/chap_4

Additionally, the claims by the tobacco industry that their HIGHLY ADDICTIVE nicotine products are less harmful are false. In fact, the World Health Organization, has authoritatively stated that there is no sufficient evidence to substantiate these claims. In its report on smokeless tobacco products, WHO alludes that ***there is no evidence to recommend that any smokeless tobacco product should be used as part of a harm reduction strategy. Marketing of smokeless tobacco products with harm reduction claims should not be permitted unless validated by an independent regulatory authority on review of evidence to be submitted by the manufacturer***⁵.

Based on the above, we as tobacco control and health promotion actors in the country are calling upon the Ministry of Health not to heed to BAT's call.

Instead, we urge the Ministry to:

- a) Remain steadfast and fully implement tobacco control policies and measures to prevent imminent addiction and tobacco epidemic in the country.
- b) Completely BAN LYFT for it is not a pharmaceutical drug. In essence, it is causing serious addiction among our young people as well contributing to the alarming increase of non-communicable diseases in the country.
- c) To investigate and take action against Pharmacy and Poisons Board, if found culpable for wrongfully registering and licensing the LYFT nicotine pouches.

⁵<https://apps.who.int/iris/bitstream/handle/10665/42658/9241590556.pdf?sequence=1>

d) Strictly observe Article 5.3 and its guidelines that require parties to not grant incentives, privileges or benefits to the tobacco industry to establish or run their businesses.

As we look forward to your positive response and action, we reaffirm our commitments to work with your Ministry to mitigate unnecessary deaths resulting from the use of tobacco.

Yours:

- 1. Kenya Tobacco Control Alliance (KETCA)**
- 2. International Institute for Legislative Affairs (IILA)**
- 3. National Taxpayer Association (NTA)**
- 4. Kenyan Network of Cancer Organizations (KENCO)**
- 5. Den of Hope Youth Group (DoH)**
- 6. Consumer Information Network (CIN)**
- 7. Scad Kenya**
- 8. Social Liberation and Health Promotion Network (SLAHP)**