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Authors

Jackson, Rachel R
Rowell, Andrew
Gilmore, Anna B, PhD

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RESEARCH ARTICLE

“Unlawful Bribes?”

A documentary analysis showing British American Tobacco’s use of payments to secure policy and competitive advantage in Africa

RR Jackson^{1*}, A Rowell¹, AB Gilmore¹

¹ Tobacco Control Research Group (TCRG), Department for Health, University of Bath, Claverton Down Road, Bath BA2 7AY, United Kingdom

* RR Jackson was at the TCRG at the time the work was undertaken

Key words: tobacco industry, policy influence, alleged bribery, anti-competitive, FCTC, Africa, WTO

Note: The use of the phrase “unlawful bribes” in the title is taken from BAT’s written admission at an employment tribunal hearing.

Acronyms	
AIT	Anti-Illicit Trade
BAT	British American Tobacco
CORA	Corporate and Regulatory Affairs
CTU	Continental Tobacco Uganda
DRC	Democratic Republic of Congo
ECAA	East and Central Africa Area
ECA AIT	East and Central Africa Anti-Illicit Trade
ECALT	East and Central Africa Leadership Team
FCTC	Framework Convention on Tobacco Control
JTI	Japan Tobacco International
KRA	Kenya Revenue Authority
LTC	Leaf Tobacco & Commodities Uganda
MTK	Mastermind Tobacco Kenya
SALT	South African Leadership Team
SFO	Serious Fraud Office
TTCs	Transnational Tobacco Companies
UKBA	United Kingdom Bribery Act
WHO	World Health Organization

ABSTRACT

Background

Progress in tobacco control in Africa has been slower than anticipated and there is little research on tobacco industry conduct in that region. This paper addresses this research gap using documents provided through a whistle-blower and a Ugandan High Court case to examine the activities of the world's second largest transnational tobacco company and the dominant tobacco company in Africa, British American Tobacco (BAT).

The United Kingdom (UK) Serious Fraud Office (SFO) recently considered a similar set of documents as part of its investigation into allegations of bribery by BAT. After five years of deliberation, it determined that “the evidence did not meet the evidential test for prosecution as defined in the Code for Crown Prosecutors”. The company remains under investigation in other jurisdictions, including Kenya.^[1]

In this paper, we take a public health perspective examining the scale, nature, purpose and targets of BAT's payments in Africa and explore the implications of these findings for tobacco control. In examining the nature of the payments, we code the extent to which they might be considered as meeting the United Kingdom Bribery Act (UKBA) definition of bribery and examine the extent to which they raise questions under the UKBA which may remain unanswered, or merit further investigation. We do not examine the extent to which these activities, or the evidence examined, meet the criteria for prosecution under the UKBA.

Methods

Content and thematic analysis of documents dated 2008 onwards. The timing, target, value, purpose, nature and evidence for each payment was coded. Payments in local currency were converted to the nearest whole US dollar equivalents. External sources (including parliamentary profiles, LinkedIn or social media profiles, media reports, and governmental or intergovernmental reports) were used to verify the existence, name and position of each named target. Literature on civil service structures, relevant legislation, parliamentary websites and media sources were used to code the target's role (politician, civil servant, journalist, farmers etc.).

For inclusion in the final analysis, payments required: a) at least two pieces of evidence, one of which must be financial; b) no inconsistencies in recorded payment value; and c) sufficient evidence to assess the nature of the payment.

Analysis of the broader document set explored BAT's approach to and the culture surrounding the payments, their apparent purpose and the nature of staff involvement. This drew on archival techniques and used extensive triangulation with

external sources including media reports, meeting minutes of intergovernmental bodies and parliamentary records.

Findings

Payments took multiple forms including hand-delivered cash, bank wire transfers, spending money, cars, campaign donations, per diems, and plane tickets. Yet because payments were invoiced, monetary figures are available for all. 236 payments totalling US\$601,502 met our inclusion criteria and occurred between July 2008 and May 2013, the majority (215, 91%) after the UKBA came into force. Of these 236 payments, 170 (total US\$591,383, range US\$30-110,000) were coded as raising questions under the UKBA terms of reference. These targeted a minimum of 88 individuals, including 56 politicians, 10 civil servants, those working with parliamentary committees, a magistrate and staff of competitor companies. The remaining 66 payments were coded as warranting further investigation under the UKBA and targeted, in particular, journalists and farmers.

Payments were used in two main ways. First, to obtain information on and influence policy. Examples include payments to a politician to change a parliamentary report to support BAT's position, to the focal points responsible for the Framework Convention on Tobacco Control (FCTC) in three countries, and to diverse targets in Uganda during passage of its Tobacco Control Act. Second, to spy on and undermine competitors across ten countries in East and Central Africa. This included complex operations such as the establishment of a fake trade union within a competitor company.

Staff use of aliases, external email accounts, deliberate "verbal" discussions of operations at management meetings, obtuse operation code names, and third parties to make payments suggests staff understood the potential illegality of their efforts. The involvement of diverse senior staff from different parts of the BAT Group, widespread use of data obtained via payments, the processing of payments via BAT's usual financial systems, and maintenance of "black ops" spreadsheets suggests that these payments could well have been a routine part of BAT's practice.

Conclusions

The available evidence suggests BAT's use of payments in Africa was extensive, systematised, and supported at a high level within parts of the company. Payments were used to buy political and competitive advantage. This could help explain BAT's dominance and the difficulties progressing tobacco control in Africa. The relatively low value of the payments shows how cheaply BAT could buy influence. The strict inclusion criteria and BAT's apparent efforts to disguise payments suggest this paper may underestimate their scale. This paper demonstrates that serious questions regarding these payments remain unanswered following the conclusion of the SFO inquiry and that further investigation or clarification is still warranted in the UK and other jurisdictions where BAT operates.

INTRODUCTION

Background to and purpose of this paper

The Framework Convention on Tobacco Control (FCTC), the world's first public health treaty developed under the auspices of the World Health Organization (WHO), establishes evidence-based tobacco control measures, which all 182 parties to the treaty are legally obliged to implement.^[2] Negotiations for the FCTC, which began in 1999, caused considerable alarm among transnational tobacco companies (TTCs),^[3] particularly British American Tobacco (BAT),^[4] the dominant company in Africa.^[5, 6]

As the only region where smoking rates are still growing, Africa has the most to gain from the FCTC because its effective implementation would stop the tobacco epidemic growing further. At the time of this research, BAT had the largest market share in two-thirds of countries across Africa, and a virtual monopoly in a number of these (e.g. 51.7% in Uganda,^[7] 78.8% in Kenya,^[8] 71.4% in South Africa^[9] and 79% in Nigeria).^[10] These countries' full compliance with the FCTC would threaten BAT's long-term profitability, which will depend increasingly on Africa as tobacco sales elsewhere decline.^[11]

Despite the TTCs' concerted efforts to stymie the FCTC's development,^[3, 12] the Treaty came into force in 2005^[2] and has led to significant advances in tobacco control.^[13, 14] Yet progress has been slower than expected, particularly in Africa.^[15] At the time of research, of the 44 (of 47) countries in the WHO Afro region that are parties to the Treaty, only two (Kenya and Uganda) had recently passed and none had yet implemented fully FCTC-compliant legislation.^[16] This lack of FCTC implementation is despite the strong regional commitment demonstrated during FCTC negotiations^[17] and some countries having invested more than a decade in attempting to implement it.^[16]

Reasons for this lack of progress are poorly understood. While academic analysis of tobacco industry documents released via litigation has provided important insight into tobacco industry conduct in high income countries, relatively little is known about its influence in Africa.^[18, 19] A breakthrough in understanding industry practices in the region came in November 2015, when a BBC Panorama documentary detailed allegations of BAT's involvement in bribery in Africa.^[20] It was unable, however, to provide a systematic analysis of BAT's conduct or to explore its relevance to public health. Moreover, BAT and those featured in the programme - three BAT staff and three payment recipients - issued denials about the allegations made (Box 1).

Box 1: BAT’s stated policy on corruption and responses given to the BBC by BAT and those named in the Panorama programme

BAT’s response to the bribery allegations outlined in Panorama (as detailed on the BBC website^[21])

BAT told the BBC:

"We do not and will not tolerate corruption, no matter where it takes place."

BAT said any company could fall victim to an employee acting inappropriately.

"We are rightly proud that any alleged breach of our very high expectations of transparency and honesty is swiftly investigated," its statement added. "Any proven transgression will lead to appropriate disciplinary action."

"Our accusers in this programme left us in acrimonious circumstances and have a vendetta against us, clearly demonstrated by the false picture they present of how we do business."

BAT’s stated policy on corruption (from its website)

On its website, BAT states:

"Corruption causes distortion in markets and harms economic, social and political development, particularly in developing countries. Our Standards of Business Conduct make clear that it is wholly unacceptable for our companies and employees to be involved or implicated in any way in corrupt practice".^[22]

BAT staff responses (as featured in the Panorama programme^[20])

- Area Director, East and Central Africa Area (ECAA), Gary Fagan, denied he “authorised or sanctioned the payment of bribes”.
- Legal Counsel, ECAA, Naushad Ramoly said he has never been involved in illegal activities or bribes.
- Area Head of Corporate and Regulatory Affairs (CORA) for ECAA, Julie Adell-Owino, “categorically denied” involvement in bribery and said BAT was mistaken when it admitted in the employment tribunal that the payments were bribes.

Payment recipient responses (as featured in the Panorama programme^[20])

- Godefroid Kamwenubusa, the FCTC focal point for Burundi: when asked whether he had taken thousands of dollars from BAT, replied “I don't think so.”
- Dr Kasirivu-Atwooki Baltazar Kyamanywa, a Ugandan politician and chair of key parliamentary committee: when asked whether he “took twenty thousand dollars from BAT”, replied “No, no, no, no that’s not true.”
- Dr Nzeyimana, a Rwandan FCTC official: admitted getting some money but said it had “nothing to do with tobacco” or BAT.

This paper therefore aims to address these research gaps by using a new document set to examine BAT’s conduct and use of payments in Africa and whether these might explain the lack of FCTC implementation in the region. It also addresses limitations in the Panorama documentary by systematically assessing the number, targets of, and purposes for which BAT has used payments in Africa, and whether these payments might raise questions and require further investigation. Given BAT’s public denials following the Panorama programme, it also critically examines BAT’s response to that programme’s allegations. Where people were named by Panorama, we have also named them, including their response to the allegations.

Given that research on tobacco industry conduct has been shown to enable progress in tobacco control policy-making,^[11] this work has the potential to significantly advance tobacco control in the region, thereby addressing the leading cause of preventable mortality.

Background to bribery investigations, the UKBA and SFO investigation

Bribery is variously defined in literature and legislation.^[23-27] Generally, it is understood to involve offering something of value to an individual (often money) in exchange for something (information, access, influence, etc.) that presumes or requires the recipient to perform a function that is outside or in violation of their formal, official, or recognised role. Evidence shows that bribery fuels corruption, undermines the rule of law and entrenches poor governance, thereby hindering economic development and government stability.^[28, 29]

Such evidence has underpinned the proliferation of anti-bribery legislation in recent years^[30] and the inclusion of Target 5 within Goal 16 of the United Nations Sustainable Development Goals, which aims to “substantially reduce corruption and bribery in all their forms”.^[31] The former includes the UKBA which came into force on 1 July 2011. It introduced a new form of corporate liability for failing to prevent bribery and applies to acts of bribery committed anywhere in the world by companies incorporated in the United Kingdom.^[32]

In December 2015, almost immediately after the BBC Panorama documentary detailed above, the UK SFO began investigating the matter. It then launched a formal criminal investigation into BAT and associated persons in August 2017. In January 2021, following over five years of investigation, it concluded: “The evidence in this case did not meet the evidential test for prosecution as defined in the Code for Crown Prosecutors.”^[1] In making its decision, the SFO would have to take into consideration the detailed sections of the UKBA, including Section 7, as well as the associated Guidance from Ministers (see **Box 2**^[33]). Whether or not the evidential bar for prosecution has been met does not alone imply acts of bribery did not occur, particularly given BAT’s complex subsidiary structure.

Box 2: The United Kingdom Bribery Act^[32]

The UKBA defines bribery as giving (Section 1) or receiving (Section 2) a financial or other advantage in connection with the improper performance of a function or activity that is expected to be performed impartially or in good faith.^[32, 34] The functions and activities (Section 3) are broadly defined and include “any function of a public nature” and “any activity connected with a business”.^[32] It also includes two specific offenses: bribing a foreign public official in order to obtain or retain business or an advantage in the conduct of business (Section 6) and failure of a commercial organisation to prevent bribery (Section 7).^[32, 34] The latter covers bribery where a person associated with a commercial organisation (C) “bribes another person intending (a) to obtain or retain business for C, or (b) to obtain or retain an advantage in the conduct of business for C.”

There are defences for a company under Section 7, which include whether there were “adequate procedures designed to prevent persons associated” with the company from “undertaking” bribery. In a letter to the *Financial Times* newspaper in September 2021, an expert lawyer on criminal fraud cases by the SFO stated: “The SFO has opted never to prosecute corporate offences using Section 7 of the Bribery Act where a company indicates it may resist.”^[35]

Section 9 of the UKBA outlines that detailed guidance from the Government regarding the UKBA and procedures which commercial organisations can put into place to prevent persons associated with them from bribing, must be published. Section 42 of this published guidance from the Ministry of Justice says, in part: “A bribe on behalf of a subsidiary by one of its employees or agents will not automatically involve liability on the part of its parent company, or any other subsidiaries of the parent company, if it cannot be shown the employee or agent intended to obtain or retain business or a business advantage for the parent company or other subsidiaries. This is so even though the parent company or subsidiaries may benefit indirectly from the bribe”.^[34]

METHODOLOGY

Document sources

The documentation analysed comes from two sources. The primary document set was provided by BAT whistle-blower Paul Hopkins, who was contracted to BAT’s parent company in London, but worked almost exclusively in East and Central Africa in various roles for 13 years (**Box 3**). These comprise: (a) documentsⁱ he accumulated during his employment with BAT (approximately 47,000 electronic documents dating from 2002 to his redundancy date, 4 March 2014) and (b) his own employment tribunal documents (529 pages in hard copy dated September 2002-March 2015). Analysis drew mainly on (a).

Box 3: Paul Hopkins’ job titles between 2002-2014*

- Business Risk Manager, East Africa, 2002-2004
- Business Risk Manager, Horn of Africa, 2004-2006
- Area Anti Illicit Trade Manager, initially Equatorial Africa, then Sub Saharan Africa Area, 2006-2010
- Area Anti Illicit Trade Manager, ECAA, 2010-2014

Source:^[36]

*From 31 March 2013 Hopkins was on “gardening leave” until made redundant on 4 March 2014.

The second document set (210 pages in hard copy dated April 2011-May 2013) was acquired during the course of research from a public civil suit in the Ugandan High Court brought by an ex-BAT Uganda employee, Solomon Muyita, who worked for BAT’s Ugandan subsidiary between 2010 and 2013 as its Leaf CORA Coordinator.^[37]

Both employees separately invoked BAT’s whistleblowing policy,^[36, 37] claiming to have been privy to what they described as multiple instances of “bribery”^[22] requested and/or sanctioned by senior staff.^[36, 37] Both claim to have been unfairly treated thereafter. Hopkins was made redundant on 4 March 2014 but refused an enhanced redundancy package because he was unwilling to drop a legal grievance against the company^[38] or sign a confidentiality agreement.^[36] His grievance, contesting his redundancy, was later heard at a private hearing at the London Central Employment Tribunalⁱⁱ, which, in the UK, is responsible for making decisions in legal disputes around employment law.

ⁱ These are primarily documents but also include some audio and video recordings.

ⁱⁱ BAT’s primary argument was that the Tribunal was not the appropriate jurisdiction to hear the case because, despite Hopkins’ UK contract, his work for BAT had largely been in Kenya. At a preliminary hearing, the Tribunal agreed with BAT that “there are not sufficiently powerful factors present to displace the territorial pull of the place of work” and therefore the “Tribunal does not have jurisdiction” to hear Hopkins’ case. Aware of BAT’s influence in Kenyan courts, Hopkins did not pursue the matter further, instead later publicly blowing the whistle on BAT’s operations. British American Tobacco, Grounds of Response,

BAT’s primary argument was that the Tribunal was not the appropriate jurisdiction to hear the case because, despite Hopkins’ UK contract, his work for BAT had largely been in Kenya.^[39] At a preliminary hearing, the Tribunal agreed with BAT that “there are not sufficiently powerful factors present to displace the territorial pull of the place of work” and therefore the “Tribunal does not have jurisdiction” to hear Hopkins’ case.^[40] Aware of BAT’s influence in Kenyan courts,^[41, 42] Hopkins did not pursue the matter further, instead later publicly blowing the whistle on BAT’s operations.^[20]

In a separate legal case, Muyita instigated action against the company’s subsidiary, BAT Uganda, claiming he was wrongfully dismissed for company-sanctioned activities,^[37] a claim contested by BAT, who said Muyita was “lying”.^[20] We have been led to believe this case has now been settled out of court but no one will go on the public record to confirm this. Despite extensive efforts, we have been unable to obtain a copy of BAT’s defence.

Document searching

Informal discussions with Hopkins and a review of his tribunal documents were used to understand his electronic filing system, identify key events and relevant files, and generate initial search terms. Having reviewed documents in key files we used Mac OSX Spotlight and EasyFind, document keyword search software, to search for words contained within the text and titles of documents.^[43]

Initial search terms included places, operation code names, names and aliases of BAT staff and third party contractors. RRJ and AR undertook the searching and initial detailed reading of documents and used this to generate new search terms and key dates, which were searched in turn until saturation was reached, and no new documents were being recovered.

Retrieved electronic and all hard copy documents were read in depth, videos watched and audio recordings listened to and used to create detailed timelines of events where suspect payments appeared to have been used. These listed, in chronological order, the documents and their key content including activities described, key personnel involved and their use of aliases. Timelines were constructed for each key series of events involving payments enabling us to make sense of key operations.

London Central Employment Tribunal Case no. 2201480/2014 between Mr. Paul Hopkins (Claimant) and British American Tobacco (Holdings) Limited (Respondent). 23 September 2014; Employment Tribunal Case Number: 2201480/2014 Preliminary Hearing, Paul Hopkins Versus British American Tobacco, Employment Tribunal Judgement. 27 March 2015. ; BBC. The Secret Bribes of Big Tobacco. First aired on 30 November 2015. Available from: <https://www.youtube.com/watch?v=wETSRZyUTeE>.

Analysis of payments

RRJ and AR recorded all payments associated with each timeline. Each was broken into its smallest component, such that individual payments were recorded wherever possible and lump sum payments only where breakdowns (disbursements to individuals or for specific information etc.) were not detailed. At this stage all payments detailed in Muyita’s documents were recorded as all were included in court evidence and described by him as “chronic wrongdoing” or “illicit” in nature.^[37]

However, for Hopkins’ documents, only payments detailed in at least two documents one of which had to be financialⁱⁱⁱ and for which there was sufficient information to assess of the nature of the payment were included.

We recorded 15 data items on six aspects of these payments – their timing, target, value, purpose, the evidence for the payment and nature. Coding frameworks were developed iteratively for each (Appendix Table 1) by all authors. Payments in local currency were converted to nearest whole US dollar equivalents based on the currency exchange rate (as reported at exchangerate.org.uk) for 31 December of the year of the payment.

We sought external sources (including parliamentary profiles, web or social media profiles, media reports, and governmental or intergovernmental reports) to verify the existence, name and position of each named target. To do this and code their role we drew on literature on civil service structures,^[44, 45] relevant legislation,^[46, 47] parliamentary websites,^[48, 49] and media sources (Appendix Tables 1 and 2).

To code the nature of the payments we took the definition of bribery outlined in the UKBA (**Box 2**), coding the extent to which each payment met that definition under two categories:

- (a) *“payment raises questions under the UKBA”* for a payment which appears to presume, require or encourage the recipient to perform an expected job role, function or activity improperly and seeks competitive or business advantage for the organisation making the payment and no benign explanation for the payment is clearly identifiable
- (b) *“payment warrants further investigation under the UKBA”* where, based on the information available, the payment appears unethical and may be consistent with bribery as defined by the UKBA, but requires further investigation to determine its status. (see Appendix Table 1 for full definitions and examples).

ⁱⁱⁱ A financial document was defined as: certified or proforma invoices, service provider reports giving detailed financial breakdown, internal spreadsheets of payments, approvals for payments communicated in email, internal expense claims (generally includes the claim and detailed breakdown of payment), bank wire transfers. (NB matching proforma and final invoices, matching spreadsheets detailing same payments and internal expense claims with attached financial document all count as just one document as detailed in Appendix Table 1).

Evidence for payments was categorised as financial (detailed in financial documents)ⁱⁱⁱ or supportive (detailed in non-financial documents providing context on or information specific to the payment) (see Appendix Table 1) and we recorded the number of pieces of financial and supportive evidence for each. Where financial documents mirrored each other (i.e. official and unofficial versions of the same spreadsheet or proforma and certified versions of the same invoice) they were counted as one. At this stage, payments with fewer than two pieces of evidence including at least one piece of financial evidence (N=4) and with inconsistencies in the specified amounts (N=8) were excluded.

For inclusion in the final analysis of payments, a payment therefore had to have a) at least two pieces of evidence, one of which must be financial; b) consistently recorded values; and c) sufficient evidence to assess the nature of the payment. Initial codingⁱⁱⁱ was undertaken by RRJ with double coding by AR. Final coding and decisions on inclusion were undertaken by all three authors.

We did not evaluate whether in totality the payment activity amounted to liability on the part of BAT under Section 7 of the UKBA. This would have required an assessment of proof of the “specific intention” of the agent to obtain material gain on behalf of the organisation (see section 42 of guidance); or assessment of whether, despite a particular case of bribery, a commercial organisation (in this instance BAT) nevertheless had “adequate procedures in place to prevent persons associated with it from bribing”, which the guidance suggests is a “full defence”.^{[34] [50]}

Document analysis

Analysis of the broader set of documents in the timelines was based on an approach to company document analysis^[51] and archival techniques^[52] previously adapted to analysing tobacco industry documentation^[53] in which documents were read and re-read over time by at least two and often all three authors, considered alongside other documents and triangulated with external sources, including media reports, meeting minutes of intergovernmental bodies, parliamentary records, and information obtained from company websites and Google searches.

Efforts were thus made to ensure documents were interpreted in context. Web profiles, media reports and online company documentation were used to verify the existence and roles of named BAT staff. A thematic analysis explored BAT’s approach to and the culture surrounding the payments, their apparent purpose and the nature of staff involvement.

To assess the purpose of the payments we drew on existing frameworks of tobacco industry political activity.^[19, 54] To assess staff involvement we developed a coding framework that explored both the extent to which the documentation indicated that staff were aware of the payment(s) and their purpose, and their role in the

payments; the two being inter-linked (Appendix Table 3). Staff whose only role was to sign off payments via the formal payment approval system^[55-60] were excluded from this analysis, even where the descriptions submitted for approval might have raised concerns.

For staff whose awareness of payments was coded as ‘documented or highly likely’, we examined their involvement, including their use of aliases and non-work email accounts, in detail and recorded if they were senior staff – whether they had held positions of leadership within BAT, specifically membership of the board of one of BAT’s local subsidiaries, the East and Central Africa Leadership team (ECALT), the East and Central Africa Anti-Illicit Trade (ECA AIT) Committee and/or the South African Leadership Team (SALT), or led a function at area or regional level. This was undertaken through online searches of annual reports and financial statements filed by BAT’s regional subsidiaries (Kenya, Uganda, Zambia, South Africa) and our own document set, in addition to the sources detailed above.

To compensate for the incomplete company records (not all BAT regional subsidiaries regularly post annual reports online, for example), search techniques for BAT documentation included using the Wayback Machine^[61] (<https://archive.org/web/>) and “Inurl” searches of organisations such as the Uganda Securities Exchange.

Throughout the research process, codes and themes were discussed and agreed iteratively with triangulation and prolonged engagement used to enhance validity. Coding of all payments and staff involvement was undertaken by two authors and reviewed by the third until consensus was reached.

Analysis of BAT’s response to the allegations

To assess BAT’s responses to the Panorama allegations we identified BAT’s public responses reported in any online or print media in the 30 days following the 30 November 2015 airdate via Google alerts, targeted Google searches, from BAT’s website and from our contacts across Africa. All written statements, whether identical to others or not, were recorded in a spreadsheet and categorised by theme. Second, we explored whether, by July 2019, the staff identified above as most involved were still with BAT, by examining LinkedIn profiles, BAT annual reports and other media.

Ethical approval

Ethical approval was obtained from the Research Ethics Approval Committee for Health of the University of Bath. In line with this, some activities, organisations or individuals are not detailed in the text, although the value and target of these payments is still included in the analysis. We were unable to undertake interviews because of security risks.

FINDINGS

Analysis of payments

Overview and quality of evidence

236 payments totalling US\$601,502 met our inclusion criteria and were analysed in detail -- 146 and 90 identified in the Muyita and Hopkins document sets, respectively; the strength of evidence being greater for the latter reflecting its far greater size and our ability to seek out additional information within it (**Table 1**). One payment detailed in the Hopkins documents is explicitly described (but no financial details are provided) in the Muyita dataset.

Payments occurred between July 2008 and May 2013 and were targeted at a minimum of 143 individuals, many receiving multiple payments. Of these, 121 were named in the documents and we obtained external verification for all bar 17 (17/121, 14%), twelve of whom were farmers on whom there is little public information (Appendix Table 2). We were able to externally verify all named BAT staff that played a key role in the payments.

Although payments took multiple forms including hand-delivered cash,^[37, 62-64] bank wire transfers,^[65] spending money,^[59] cars,^[66, 67] campaign donations,^[66] per diems,^[60, 68] and plane tickets,^[66] because payments were invoiced, monetary figures are available for all.

Table 1: Strength of evidence for payments			
Document set	Total no. of payments included	2+ pieces of financial evidence plus supporting evidence	2+ pieces of evidence including 1 financial
Paul Hopkins	90*	62	28
Solomon Muyita	146	2	144
Total	236	64	172
*One of these payments is also mentioned in the Muyita documents			

Of the 236 payments, 170 were coded as “*payment raises questions under the UKBA*”. These payments ranged from US\$356-\$110,000 and totalled US\$591,383 (**Table 2**). Analysis suggests these payments enabled BAT to secure advantage in or obtain information relating to ten countries -- Kenya, Uganda, Rwanda, Burundi, Comoros, Democratic Republic of Congo (DRC), Sudan, Tanzania, Malawi and Zambia -- and targeted a minimum of 88 individuals.

Politicians including government ministers (68 payments reaching 56 politicians), civil servants (15 payments to 10 individuals), journalists (13 payments to 13 individuals, all paid for ‘Christmas shopping [sic]’), and staff of competitor tobacco companies (67 instances to at least two individuals) were the most frequently targeted (**Table 2**). Beyond this, small numbers of payments targeted diverse individuals including a magistrate and those working with a Ugandan parliamentary committee that later altered its report in BAT’s favour. Of the 170 individual payments noted in Table 2, 149 (88%) occurred after the UKBA came into effect on 1 July 2011.

In addition to these 170 payments, 66 payments (totalling US\$10,119) met the inclusion criteria but their nature was coded as *“payment warrants further investigation under the UKBA”* (see Appendix Table 4 for details of these payments). Because of the limited information available and the people targeted (mainly farmers and journalists rather than politicians or civil servants), we had to conclude these payments might have potentially legitimate explanations.

Nevertheless, the ultimate purpose of at least some of these payments may have been unethical. Their descriptions by both document sources suggests they were seen as such internally – of the 66, two were identified in the Hopkins documents under an “illegal spend”^[69] list and 64 in the Muyita documents, claimed by him to be “illicit” or provide evidence of “chronic wrongdoing”.^[37]

Table 2: Overview of number, target and size of BAT payments coded as “raises questions under the UKBA” (data based on our analysis)

		PH documents		SM documents		Combined document set			
Who was paid [total no. person paid, minimum estimate]**		Total value of payments (US\$)	No. individual payments*	Total value of payments (US\$)	No. individual payments*	Smallest-largest individual payments (US\$)***	Apparent purpose of payment (CA = competitive advantage, PI = policy influence, SM = stakeholder management)****	Combined total value payments (US\$)	Combined total no. individual payments*
Politicians	National [53]	119785	9	13291	55	75-27,353	PI, SM (recruiting)	133,076	64
	Local [3]			431	4	75-158	CA, PI, SM (recruiting)	431	4
	Sub-total [56]	119785	9	13722	59	75-27,353	CA, PI, SM (recruiting)	133,507	68
Competitor staff	Mastermind Tobacco Kenya [1] **	272867	66			353-28,669	CA	272,867	66
	Leaf Tobacco & Commodities (Ltd) [1]	110000	1			110,000	CA	110,000	1
	Sub-total [2]	382867	67	0	0	353-110,000	CA	382,867	67
Journalists	Journalists [13]			937	13	56-178	PI (likely), SM (recruiting), unknown	937	13
Civil servants	Kenya Revenue Authority representatives [1]**	28749	5			1,746-16,179	CA, PI	28,749	5
	WTO delegates and Ministry of Trade representatives [3]			2505	4	93-1,300	PI, SM (recruiting)	2,505	4
	FCTC focal points [3]	26000	3			3,000-20,000	PI	26,000	3
	Ministry of Labour representatives [2]	11640	2			5,820	CA	11,640	2
	Uganda National Bureau of Standards representatives [1]			79	1	79	SM (recruiting)	79	1
	Sub-total [10]	66389	10	2584	5	79-20,000	PI, CA, SM (recruiting)	68,973	15
Individuals working with/supporting Parliamentary Committee	Working with Parliamentary Committees that were paid to alter report (i.e. legal counsel, researcher, economist, secretary, info officer) [5]			1025	5	205	CA	1,025	5
Other	Other(s) involved with Operation Snake [1]	2328	1			2,328	CA	2,328	1
	Magistrate [1]	1746	1			1,746	CA	1,746	1
	Sub-total [2]	4074	2	0	0	238-2,328	PI or SM (fragmentation), CA	4,074	2
All payments	Total [88]**	573,115	88	18,268	82	56-110,000	CA, PI, SM	591,383	170

* These figures will likely underestimate the total number of payments as lump sum payments where individual disbursements were not detailed were counted as one payment. ** A large number of payments were made to KRA and MTK staff, but it is unclear whether just one or multiple individuals were targeted. Consequently, the number of individuals targeted in these two organisations, and the total, may be an underestimate. ***The range of payments includes lump sum payments where it is not known how many individuals were paid, and this may therefore inflate the upper range of individual payments within subsections (for the totals this does not apply as US\$110,000 was an individual payment. ****Definitions given in Appendix Table 1. Stakeholder management took two forms – stakeholder recruitment (recruiting stakeholders, developing &/or managing positive relationships) and fragmentation (weakening tobacco control or those who favour tobacco control).

Document analysis

A culture of systematised but hidden wrongdoing

In addition to its scale, other findings suggest that the use of payments was a routine part of BAT's practice, that staff understood its dubious nature and yet, rather than preventing it, implemented measures which worked to hide both individual and company involvement.

Using service providers

Payments were usually made via organisations referred to as "service providers"^[70] - third-parties contracted to undertake consultancy services for the company. The documents suggest that, in addition to their normal consultancy services which included educating stakeholders on the illicit tobacco trade,^[71] these providers orchestrated payments under BAT's direction. It appears these companies' main, if not sole, client was BAT and, in at least one instance, had been set up by an ex-BAT employee.^[70, 71]

Over the period covered in this analysis, we identified six companies based in, and performing this role for, BAT in East and Central Africa.^[71-75] Nevertheless, staff in BAT's London headquarters appear to have been involved in varying capacities, including processing service provider invoices,^[76-79] witnessing,^[75] auditing^[80-83] and agreeing plans for service provider contracts.^[84-87]

Using aliases and unofficial email accounts

In addition to Hopkins and Muyita, some company staff and service providers frequently used aliases and/or unofficial email accounts when discussing the activities (**Table 3** details senior staff use of such practices). It was nevertheless possible to ascertain their identities.

One area director, circulated an alternative email address for "sensitive mail"^[88] from his work email. A marketing executive for BAT in Kenya, sent Hopkins a private email address in July 2011, so he could receive data.^[89] Julie Adell Owino, BAT's Head of CORA for ECAA, who was named in Panorama, used the alias "Amanda" from her unofficial email account when requesting payments to government ministers and civil servants,^[90, 91] but signed off as "Julie" instead of "Amanda".^[92, 93]

Using operation code names and official and unofficial descriptions of payments

When discussing activities, BAT employees and service providers often used fictitious descriptions or operation code names rather than describe the actual activity.^[66, 94-98] For example, "Operation Snake" was the codename used when referring to a plan to increase labour unrest in a rival Kenyan tobacco company (see below).

A similar approach was taken in financial documentation. For example, between 2012 and 2013, Hopkins maintained two versions of a spreadsheet tracking, in his words, “illegal spend”.^[66, 69, 99] The ‘official version’, shared between BAT staff on their company emails, listed monthly expenditures, giving plausible official descriptions with an alphanumeric code noted next to each.^[69, 99]

The second version detailed the real purpose of these expenditures with the alphanumeric code providing a means of linking the two (**Table 4**).^[66, 69] This version was shared via BAT staff private email accounts.^[69] Service providers used the official payment descriptions when invoicing BAT.^[66, 99-114] For example, the official version “FCTC Workshop in Indian Ocean Islands” could be linked to the real purpose “Payments to minister for CORA comoros” [sic].^[66]

The introduction of the UKBA

The 2010 UKBA came into force on 1 July 2011.^[115] Documents from 2010 onwards signal BAT’s awareness of the UKBA and the need to comply.^[116, 117] In August 2011, updates to BAT’s Standards of Business Conduct in light of the UKBA were circulated to senior company lawyers around the world.^[118]

Nevertheless, as outlined below, and notwithstanding his denials (**Box 1**), documents suggest that one senior BAT lawyer named in Panorama (Naushad Ramoly, then BAT Head of Legal for the East and Central African Area) continued to be actively engaged in, as well as support operations involving, payments that our study coded as *raising questions under the UKBA*. Ramoly denied he “authorised or sanctioned the payment of bribes” to the BBC in the Panorama programme.

BAT also continued to make payments to obtain competitor data after the UKBA came into force (**Table 5**). And while the only four contracts we identified as post-dating the UKBA required the service provider to “conduct the Services and Business in accordance with the UK Bribery Act 2010”, BAT staff continued to actively involve these service providers in its questionable activities.^[71, 73, 74, 119]

Table 3: Key senior BAT staff* and their level of involvement

BAT Region	Nature of role eg finance, legal etc	Seniority: membership of subsidiary boards, regional leadership teams or committees (no. of years of membership)**				Use of alias name or unofficial email address	Involvement (based on documentary analysis. For coding see Appendix Table 3. For detail see main text)	Still at BAT (current to July 2019)
		Board Level	ECALT	SALT	ECA AIT Committee			
BAT East and Central Africa Area (ECAA)	General	Yes (5 years)	Yes (2 years)		Yes (3 years)	Yes	Discussed implementing budget-lines for payments; Openly discussed payments & no attempt to stop; Attended senior meeting where activities involving payments were tabled and appear to have been discussed	Yes
	Corporate and Regulatory Affairs (CORA)					Yes	Authorised payment; Requested payment; Included on emails where intel or outcomes obtained from payments are discussed (but payments not mentioned)	No
	Legal		Yes (2 years)		Yes (3 years)	Yes	Authorised payment; Interfered with attempts to audit payment practices; Openly discussed payments & no attempt to stop; Attended senior meeting where activities involving payments were tabled and appear to have been discussed; Included on emails where intel or outcomes obtained from payments are discussed (but payments not mentioned)	No
	General		Yes (1 year)		Yes (4 years)	None found	Attended senior meeting where activities involving payments were tabled and appear to have been discussed; Used or planned use of information acquired via payment (but may not have been aware of payment or purpose)	No
	Finance	Yes – 2 boards (6 years)	Yes (6 years)		Yes (3 years)	None found	Attended senior meeting where activities involving payments were tabled and appear to have been discussed; Used or planned use of information acquired via payment (but may not have been aware of payment or purpose); Included on emails where intel or outcomes obtained from payments are discussed (but payments not mentioned)	No
	Corporate and Regulatory Affairs (CORA)		Yes (1 year)		Yes (1 year)	None found	Attended senior meeting where activities involving payments were tabled and appear to have been discussed; Used or planned use of information acquired via payment (but may not have been aware of payment or purpose); Included on emails where intel or outcomes obtained from payments are discussed (but payments not mentioned)	No

	General	Yes (2 years)	Yes (3 years)		Yes (2 years)	None found	Attended senior meeting where activities involving payments were tabled and appear to have been discussed; Used or planned use of information acquired via payment (but may not have been aware of payment or purpose); Included on emails where intel or outcomes obtained from payments are discussed (but payments not mentioned)	No
	Marketing		Yes (2 Years)		Yes (one year)	Yes	Attended senior meeting where activities involving payments were tabled and appear to have been discussed; Used or planned use of information acquired via payment (but may not have been aware of payment or purpose); Included on emails where intel or outcomes obtained from payments are discussed (but payments not mentioned)	Yes
BAT Globe House, based in London	Anti-Illicit Trade					None found	Aware of payments & no attempt to stop; Praised outcomes achieved via payments (but extent to which they had knowledge of payment is unclear/unknown)	No.
BAT Southern Africa Area	Corporate and Regulatory Affairs (CORA)					Yes	Authorised payment; Requested data to be acquired via payment	No
BAT Uganda	General	Assumed	Yes (one year)		Yes (one year)	None found	Authorised payment; Aware of payments & no attempt to stop	No
	General					Yes	Managed payments &/or sources being paid; Included on emails where intel or outcomes obtained from payments are discussed (but payments not mentioned)	No
BAT Zambia	General	Yes (5 years)				None found	Requested data to be acquired via payment	No

*Numerous other BAT staff were involved but their awareness of the payment(s) was not coded as 'documented or highly likely' (see Appendix Table 3).

** Years may be non-sequential, Details may be incomplete given partial BAT documentation available online (see text).

We were able to externally verify all named individuals.

Table 4: Examples of official and unofficial descriptions of payments as recorded on linked spreadsheets

Description on official invoice and spreadsheet (for official use)	Unofficial description on second spreadsheet
"FCTC Workshop Indian ocean islands" [sic]	"Payments to minister for CORA comoros" [sic]
"FCTC Workshop Rwanda"	"Rwanda minister payment-Cora"
"Fctc [sic] Market survey"	"1st Class Ticket to Ministers Wife" [sic]
"FCTC Engagement Workshop Burundi"	"Payments To Minister on engagement activities Burundi/CORA"
"Nyalı Project"	"Kra [Kenya Revenue Authority] Sipca [sic] File-KRA stamp position info"
Source:[66, 99]	

Table 5: Mastermind Tobacco Kenya (MTK) intelligence obtained by BAT

MTK Intelligence	Frequency obtained by BAT
Monthly sales (by brand and region in Kenya)	Monthly from Jan 2009-Feb 2013 (NB annual sales was obtained in 2008 but not monthly)
Export sales (usually to Zambia, Malawi, Uganda, Tanzania, DRC and Sudan)	Monthly from Feb 2010-Aug 2012 and Jan-Feb 2013
Leaf export volumes (to countries around the world)	Monthly from Jan 2011-April 2011 and Jan 2012-April 2012
Update on business strategy/business affairs	Various
Marketing meeting minutes	Various
Revenue stamp stock	Various
Customs declarations	Various
Information on company insurance	Various
Intel on company court proceedings	Various
Distributor price lists	Various
Company communication with Kenya Revenue Authority re: outstanding excise tax	Various
Personal affairs of MTK staff	Various

Senior staff involvement

We identified 13 senior BAT staff as ‘documented or highly likely’ aware of the payment(s) (**Table 3**). Their seniority is indicated, *inter alia*, by their membership of company boards, regional leadership teams and/or committees. For example, of the eight staff involved from the ECAA, seven were represented on the ECALT, three of whom also held positions on the BAT Kenya Board and one on the BAT Uganda Board. Among the 13, four held director-level positions within regional teams or country subsidiaries.

These senior staff were involved, in varying and often multiple capacities, in the payments. Many authorised^[37, 62, 66, 69, 99, 120-131] or requested payments or intelligence to be acquired via payments.^[90, 123, 132-138] Others helped manage the payments.^[128] Some were aware yet failed to stop or admonish those involved,^[123, 133, 135, 136, 138] in some instances instead appearing to facilitate the payments and undermine linked audit efforts.^{[139] [135]}

For example, an audio recording of Hopkins and Gary Fagan, the Area Director for East and Central Africa and BAT Kenya Board member, made in January 2010, reveals the director openly discussing payments and budgets for payments referring to the “need to have provision for this somewhere”.^[133]

Similarly, Ramoly, a senior lawyer, is listed in Hopkins’ spreadsheets as having approved a series of payments which both pre- and post-dated the coming into force of the UKBA.^[66, 69, 99] He is also heard in a December 2012 recording (after the UKBA came into force) discussing multiple payments and an upcoming external Standards of Business Conduct audit with Hopkins.^[135] When Hopkins asked whether to tell the truth about the payments when questioned by the auditors, the lawyer explained that everything should be fine because “we have got an arm’s length in everything” and that while “under intense scrutiny”, he believed that payments to people other than government officials could continue.

Documentary evidence and Hopkins’ employment tribunal Grounds of Claim suggest staff subsequently attempted to interfere with this external Standards of Business Conduct audit, for example, by insisting that the service provider who had orchestrated payments be made unavailable for interview.^[38, 139]

Around the same time (between February and April 2013), the senior lawyer discussed the double spreadsheet system on email with Hopkins.^[140] Attaching both spreadsheets, Hopkins described the system, noting that one spreadsheet “has the total invoices and the official description of the spend and the ‘black ops’ have an Alpha code beside them which if you go to the second sheet and match the code you can see what the spend was really for. No codes means the description is a genuine AIT [anti-illicit trade] Op”. One of the lawyer’s email responses describes

this as “great work”.^[141] As outlined above, BAT and its staff denied involvement in bribes (Box 1).

The same senior lawyer appears to have tabled and discussed operations using paid informants in a key ECALT meeting in August 2011, suggesting they were fairly routine.^[142-147] The draft agenda for the meeting, setting the strategic direction for the leadership team for the next four years, included eight out of ten ECALT members leading the sessions.^[148] Parts of the meeting, which appear to have discussed activities involving payments, were deemed so sensitive that he asked that only ECALT members be present^[142-147] and the relevant PowerPoint slide gave no detail, stating only “verbal updates”.^[149]

Many of these same staff were also involved in using or planning use of information acquired via payments,^[120-122, 150-152] with such information being shared widely within the company, including back to BAT’s UK headquarters.^{[151] [153, 154]}

Other staff were also closely involved in the activities, but there was insufficient information to determine their exact level of awareness of the payments, in part because crucial correspondence (e.g. on data transfers and payments) was conducted verbally or on unofficial email accounts.

Such staff, for example, initiated or were cc’d on correspondence requesting data that was likely acquired via payments, or were involved in using or planning use of such data and which it would have been difficult to obtain otherwise.^[120-122, 124, 155-157] Some of these staff worked in other parts of the company including BAT Rwanda and BAT’s Southern Africa Area, again suggesting that use and knowledge of payments extended beyond BAT’s ECAA.^[132, 153, 154, 158-164]

Payment systems

A further indication that questionable payments were considered routine is the way they were processed internally. Muyita’s documents show that payments were processed via the formal BAT Uganda expenses system with descriptors often providing a clear indicator of their purpose (see above). Hopkins’ documents show evidence of cross-charging for payments between the different parts (country subsidiaries, regions and departments) of BAT.^[85-87, 120-122, 124, 165-173] For example, one CORA executive for BAT’s Southern African Markets, sent a cost centre number for cross-charging to the Southern Africa Area for competitor data obtained in Kenya and a private email address to send the information to.^[120-122]

Purpose of the payments

Our analysis suggests BAT used payments in two main ways: to spy on and sabotage competitor companies (competitive advantage), and to obtain information on and/or influence policy (policy influence). Subsidiary purposes were to manage relationships to BAT's advantage (stakeholder management) and to hide harm caused by the company and manage linked reputational risks (hiding harm) (Table 2, Appendix Table 4). Such efforts were mutually reinforcing, working collectively to secure political and competitive advantage and often occurred simultaneously during important periods for tobacco control policy development, as the examples below illustrate.

Competitor advantage: spying on and sabotaging competitor companies

BAT used payments to staff in other tobacco companies, civil servants and politicians to undermine competitor companies in diverse ways as the following examples illustrate. Most of these efforts targeted small African competitors with a key focus on paying to obtain data that might expose their involvement in tax evasion and smuggling. A secondary purpose was to use these data to build relationships and curry favour with authorities responsible for tax revenue and illicit trade. This is despite historical and growing contemporary evidence of BAT's involvement in the same activities.^[174-176]

BAT was also interested in obtaining intelligence on one of its major global competitors, Japan Tobacco International (JTI) and its operations covering Zambia, Tanzania,^[132, 158-160] Uganda, Rwanda and DRC.^[98, 177] Via "Operation Deep Jungle" BAT aimed to establish "a permanent source inside JTI Tanzania",^[98] worried that JTI and its subsidiary were facilitating smuggling into^[178, 179] and (among others) under-declaring imports into DRC.^[70, 116, 179, 180] JTI denied similar revelations some years ago.^[181, 182]

Mastermind Tobacco Kenya

Although, historically, BAT enjoyed *de facto* monopoly status in Kenya, in the late 1980s Mastermind Tobacco Kenya (MTK), an independent, family-owned company,^[183] emerged as a competitor and, by 2002, BAT's market share there had dropped from 90% to 71%.^[184, 185]

Obtaining confidential intelligence on MTK

BAT repeatedly paid MTK staff to obtain large amounts of confidential information (**Table 5**).^[186-191] This ranged from MTK's sales and export data (obtained on an almost monthly basis for four^[192-212] and two and a half years respectively),^[213-216] to MTK's tax affairs,^[189, 190, 217] and updates on the personal affairs of executive staff.^[218, 219] The intelligence garnered was shared widely, including with BAT's London headquarters, and used to undermine MTK,^[117, 120-122, 127, 150] ^[153, 154, 164] with BAT senior staff closely involved.^[120-122, 127, 150]

BAT also worked with influential Kenyan politicians and the media to publicly expose MTK's tax evasion (including non-payment of both excise and corporation tax) culminating in numerous tax demands from the Kenya Revenue Authority (KRA), and retaliatory legal action by MTK against the Authority.^[153, 154, 184, 220-224] For example, in July 2012, Hopkins emailed private email accounts of two senior BAT executives (blind copying a British-based BAT executive) from an alias email account regarding newspaper articles reporting MTK's "tax dodging" and stating "this is what I seeded last week".^[225]

Three months later, Hopkins emailed Fagan's private email address a copy of the High Court judgement concerning MTK. This included the judge's hand-written notes, suggesting the copy might have been illicitly or unethically obtained.^[42] Fagan replied: "Do we know if this was executed and complied with? Cheers, have a good weekend, Gary."^[226]

The documents suggest BAT was successful in undermining its competitor. One spreadsheet outlined tax demands to MTK of nearly 6 billion Kenya shillings from 2007-2010.^[227] Another outlined tax demands of 2.4 billion Kenya shillings from 2011-2012.^[228] Subsequent market reports suggest that, following this public exposure of MTK's tax evasion, MTK was denied a local production licence and its market share fell in Kenya while BAT's grew to 77 per cent.^[229, 230]

A variety of evidence suggests not only that the MTK operations were institutionalised within the company,^{iv} but that, while such efforts appeared to initially focus on the ECAA, by 2011 senior staff in BAT's Southern African region were requesting and receiving data on MTK's exports to Malawi and Zambia.^[120-122, 124, 126, 130] There are several emails from the service provider giving very specific prices to obtain different types of documents and data.^[231]

'Operation Snake' -- establishing a trade union to undermine MTK

BAT allocated 4,500,000 Kenya Shillings (US\$56,027) to a scheme, "Operation Snake", which ran from 2010-2012 and involved establishing a union within MTK to foment labour unrest within the company.^[66, 94, 99, 103, 232-234] This money was provided to a service provider to orchestrate payments and coordinate the operation through "covert means",^[94, 103] frequently reporting back to the company.^[94-96, 235]

^{iv} The MTK operations were fed into internal reporting systems, including the monthly "legal charter", where outcomes were recorded against market strategies. In the November 2012 legal charter document, Hopkins noted: "MTK Tax Case part one delivered with judgement against them of KES [Kenyan Shillings] 442,000,000". They were also included in a draft handover document Hopkins' prepared before his departure which outlined Operation Moss on "MM [Mastermind] court Cases," noting that there was also an attempt to "recruit the company secretary as a source of sensitive information". It states the handover document was also given to other senior London based officials, but it is unclear if they received it. Refs: Hopkins, P., ECA Area AIT handover. April 2013; Hopkins, P., Re: Alarm Legal Charter - Due Date at 09/11/2012, 7 November 2012; BAT Service Provider, [Ops Moss Report: Investigation into the resignation of Company secretary and MM Court cases], Undated

According to the service provider, over 100 MTK staff were recruited to the Kenya Union of Commercial Food and Allied Workers and a dispute was successfully lodged with the Kenyan Ministry of Labour and Human Resource Development by the Union after MTK “refused to deduct union fees”.^[94]

Payments included “handsome offer[s]” for “vocal employees”, sums to recruited union representatives,^[232] and “facilitation” payments for the magistrate and two civil servants from the Ministry of Labour and Human Resource Development handling the trade dispute.^[94, 232, 233] Operation Snake was also named as a key operation in Hopkins’ handover document.^[70]

Continental Tobacco Uganda

BAT is also the largest tobacco company in Uganda, with an 51.7% market share.^[7] Continental Tobacco Uganda (CTU), a subsidiary of MTK, and Leaf Tobacco and Commodities (LTC) are its main competitors there.^[236]

Both Muyita’s deposition^[37] and Hopkins’ employment tribunal^[38] Grounds of Claim allege that in 2012, BAT made payments that resulted in CTU’s operational licences to grow tobacco being revoked by the Ugandan Parliament, allowing BAT to further expand its virtual monopoly. Hopkins and Muyita both allege that US\$20,000 was paid to the chair of the Agriculture, Animal Industry and Fisheries Committee, while Muyita adds that an additional US\$6,391 was paid to committee members.

In Dec 2011, a group of farmers from the Bunyoro region of Uganda complained they were not being paid by CTU,^[237] prompting an investigation by the Parliamentary Committee on Agricultural, Animal Industry and Fisheries chaired by MP, Kasirivu-Atwooki Baltazar Kyamanywa. In 2012, prior to submitting the committee’s report to Parliament, Kyamanywa apparently approached Muyita stating that “we [BAT] might wish to review [the report] [...] if we wanted that we could amend it” and “for this to happen it would cost \$20,000”.^[238, 239]

The documents indicate that between July-October 2012, a payment of US\$20,000 to Kyamanywa was authorised,^[37, 62] and that a service provider claims it was sent part via bank transfer and part hand delivered in cash.^[63] In August 2012, the service provider emailed the draft parliamentary committee report to BAT staff via unofficial email accounts, noting “FYI finished draft. We also added no licenses for the season”.^[240]

Muyita’s documents also detail a linked payment in September 2012 of 18,590,000 Uganda Shillings (US\$6,931) to 19 MPs on and support staff linked to the same committee that Kyamanywa chaired while on a trip to the Bunyoro region to assess the claims against CTU.^[37, 62] One of the MPs listed as having received payment during this trip presented the Committee’s report in Parliament making clear

recommendations that CTU be prohibited from sponsoring farmers or growing tobacco for the following season.^[237]

Soon after, Parliamentary Hansard records and local media reports suggest that, following the Committee's recommendations, some of CTU's operational licenses were suspended and its export license for 2012 cancelled,^[237, 241-243] although Kyamanywa denied taking the "bribe" and being "corrupt". Speaking to BBC's Panorama in November 2015, when asked if he had taken the bribe from BAT, he said: "No, no, no, that is not true" (Box 1).

In April 2013, at the start of his whistleblowing process, Hopkins raised his concerns about this payment internally in a password-protected document emailed to a senior, London-based BAT lawyer (**Box 4**).^[244] This provided details of how BAT's payment systems work, the number of people involved and BAT's willingness to trade with MTK on the illegal tobacco market when it suits them.

Leaf Tobacco & Commodities Uganda

Leaf Tobacco & Commodities Uganda Limited (LTC), is a subsidiary of the Pan African Tobacco Group, founded by the industrialist Tribert Rujugiro Ayabatwa,^[245] one of Africa's richest men. In 2008, BAT paid an executive of LTC Uganda, \$US110,000 in exchange for "information on the illicit activities of Leaf Tobacco and Commodities Limited (Uganda), including the provision of details relating to: tax evasion, use of counterfeit tax stamps and cigarette smuggling operations".^[64, 246]

The same document acknowledged "the involvement of the Ugandan Revenue Authority" and "an immunity from prosecution agreement" which protected this executive as long as he cooperated with the Ugandan Revenue Authority. The contact signed a confidential contract confirming receipt of this payment and admitted in an October 2012 email "that the amount of USD 110,000/- was accepted".^[137] Another document suggests BAT had potential sources within the Uganda Revenue Authority whom it was looking to pay on a regular basis for information.^[128]

Box 4: Text of Hopkins' password-protected document to a BAT London-based lawyer

"In 2012 BAT was approached in Uganda by Hon Atwooki Kasirivu [Kasirivu-Atwooki Baltazar Kyamanywa], Chairman of the Ugandan Agricultural Parliamentary Committee. He informed persons in BAT (U) [BAT Uganda] that, for a sum, he would deny Leaf growing license's [sic] to our competitor, Mastermind (Kenya) Ltd for the up-coming and the next growing season.

"This info was passed to [name redacted – a very senior BAT Uganda staff member] and he was in favor [sic] but suggested that Area AIT [Anti-Illicit Trade] was informed. Area AIT received the info and briefed Naushad Ramoly, ECA Head of Legal, AIT & Security."

"Area AIT war-gamed both the positive and negative aspects as in positive we deny a known illicit trader of leaf as well as ITC as they had signed an MOU with Mastermind for leaf supply & negative, it would probably force Mastermind to illegally buy our leaf both to continue their production plus service their commitment to ITC."

"The sum required was \$20,000.00 and Naushad authorized [sic] that Area AIT arrange the payment through our AIT SP [Service Provider]. This was done in 2 payments and delivered to Hon Atwooki Kasirivu, \$15,000.00 first and the balance \$5,000.00 when the leaf licenses were denied."

"Area AIT was also told to keep [name redacted -- BAT Uganda senior staff member] informed of the progress which was done through [information redacted -- a BAT Uganda manager]. This payment, along with similar operations that AIT were asked to accommodate (Sipca [sic] Stamp Tender interruptions & political pressure etc) was covered by an Invoice from the AIT SP for a fictitious AIT op. Mastermind* were denied the licenses and are currently illegally buying our leaf crop."

Hopkins ended the note saying: "I would prefer for the sake of the company not to be committing info of this nature on docs or notes as face to face is best."

In its response to Hopkins's employment tribunal claim, BAT said of this letter and the follow-up meeting, that it took the matters raised by Hopkins "very seriously", had "conducted an internal investigation and appointed external counsel" and "took appropriate action in relation to its findings". The findings of the investigation or BAT's response have never been made public, even years later.^[39]

*Text presumed to refer to "Mastermind" because CTU is a subsidiary of MTK

SICPA

SICPA is a Swiss-based company that provides secure track and trace identification technology.^[247] With the 2012 adoption and 2018 entry into force of the FCTC's Illicit Trade Protocol, ^[248, 249] countries began to implement track and trace systems for tobacco^[250] which can document whether tobacco taxes have been paid, track tobacco products through their distribution chain and, where necessary, trace them back to determine where they entered the illicit channel. Because of the tobacco industry's long history of complicity in cigarette smuggling^[251-255] the Illicit Trade Protocol specifies that track and trace systems shall not be delegated to the tobacco industry.^[248]

Nevertheless, the TTCs' (BAT, JTI, Philip Morris International and Imperial Brands) response to this development was to collectively develop their own digital tax verification and track and trace technology system known initially as Codentify, to actively promote it to governments via third parties, to shape relevant regulation to make this easier, while actively opposing alternative track and trace systems, such as SICPA's.^[174] With evidence that they remain heavily involved in tobacco smuggling -- industry products account for around two-thirds of the illicit cigarette market^[174] -- such behaviour is likely driven by fear of exposure, accountability and ultimately the cost of excise payments and fines.

Hopkins alleged in his employment tribunal documents that he was "requested" by a section head in London "to disrupt and if possible stop other service providers of DTV and T&T [digital tax verification and track and trace] products from winning tenders in ECAA" because BAT wanted Codentify "to be adopted by as many countries as possible".^[36] Thus when, in 2012, Kenya held the first tender in Africa for a tobacco track and trace system,^[256, 257] BAT recognised its importance stating "if [the] KRA [Kenya Revenue Authority] go with Sicpa [sic] then Codentify... will be unviable for most of our ECAA [East and Central Africa Area] markets... and indeed unviable for some years."^[258]

In line with this, the documents indicate that BAT made payments of over US\$67,394 in a complex and ultimately unsuccessful effort to ensure this tender would lead to the implementation of Codentify rather than SICPA's pack identification technology.^[66, 99, 102, 103, 106, 107, 112, 114, 259, 260] It paid US\$28,749 to sources within the KRA^[66, 99, 102, 107, 259, 260] and US\$38,645 to Martha Karua, a former Justice Minister who was running a Presidential campaign at the time,^[66, 99, 102, 106, 112, 114] in exchange for intelligence on and for assistance with BAT's efforts to thwart SICPA's tender.^[95, 151, 257, 261-272]

Security camera footage and media reports suggest the Karua payment was negotiated between Ramoly and an aide of Karua's.^[36, 38, 273-275] Karua admitted a donation was made, but claims she believed it was a personal donation from Hopkins and not BAT. She said: "If any person within my campaign team, or beyond,

purported to accept the donation in exchange for influence of government procurement was acting beyond the scope of their authority, without my knowledge and in their individual capacity, not for me or my campaign”.^[274]

Documents suggest that Ramoly was both aware of and advised on these efforts, including editing a document outlining reasons SICPA should not be awarded the tender.^[265] One UK-based senior employee reviewed the specifics of the tender, although there is no evidence he knew of the payments in Kenya.^[151, 266, 276] Other details of BAT’s operation including the use of a front company, FractureCode, to bid in the tender,^[276-283] are outlined elsewhere.^[174]

Obtaining information on and influencing policy

Tobacco control policy

Between 2011 and 2013, BAT used payments in four countries -- Burundi, Rwanda, Comoros and Uganda – in attempts to obtain information on and influence tobacco control policy at both national and international level (Box 5). All four countries had been actively attempting to pass FCTC-based legislation, and the timing of payments links to efforts in each country to do so.^[7, 284-286] At the time of this research tobacco control legislation in all these countries bar Uganda remains entirely non-compliant with the FCTC.^[16]

In Rwanda, Comoros and Burundi payments were made to the FCTC focal points (individuals, usually civil servants,^[287] nominated by parties to the FCTC to act as a key point of information exchange on technical matters relating to the treaty). In Burundi it appears that, for only US\$3,000,^[66, 92, 99, 260] BAT was able to alter legislation prior to presidential assent^[288, 289] and have the Burundi delegate promote BAT’s interests at the fifth session of the FCTC’s Intergovernmental Negotiating Body^[90, 91, 290] where a draft Illicit Trade Protocol was agreed.^[248] BAT admitted in its Grounds of Response in Hopkins’ employment tribunal that Owino asked for these “unlawful bribes” to be made “to lobbyists”, although it denies they were approved by others within BAT.^[39]

Muyita’s documents provide further evidence that BAT’s activities could be designed to buy influence during the passage of legislation. They cover a two-year period (2011 to 2013) during which the Ugandan Tobacco Control Act was being negotiated and suggest BAT made large numbers of payments to diverse targets in Uganda during that time. Many appear to have been specifically paid as part of BAT’s efforts to obtain information on or secure influence over the Act. They include farmers and journalists, MPs, a local politician, and a tobacco inspector (**Box 5**).

In addition, BAT distributed payments for what it often referred to as “stakeholder management” during this period.^[55, 56, 58, 59] A BAT Uganda Expense Statement filed in May 2013, formally approved by one employee, shows that in December 2012,

BAT dispersed cash payments totalling 10,950,000 Ugandan Shillings (US\$4,335) to 50 “key stakeholders” including media representatives, politicians, and civil servants, each receiving between US\$59 and \$198 for “Christmas shopping [sic] and fuel”.^[59]

Other payments, for “stakeholder management”, included contributions towards a senior member of parliament’s “father burial expenses” and a payment to an individual in a tobacco control organisation in exchange for “presentations/advocacy materials”.

Payments to Ministry of Trade representatives

Documents suggest that, in 2011 and 2012, BAT paid two Ugandan representatives on the World Trade Organization’s Technical Barriers to Trade (TBT) Committee.^[37, 60, 68] Muyita describes one payment as a “cash gift...to compromise [the TBT representative] so that he could include BAT-preferred positions in [the] Uganda Governments' position paper on international tobacco regulations”.^[37] BAT Uganda Expense Statements (one approved by five BAT employees), and BAT Payment Certificates signed by the individuals receiving the money suggest the payments were made.^[60, 68] However, independent verification of these individuals attending TBT meetings could not be obtained.

Box 5: Payments used in BAT's efforts to influence national tobacco control policy

Burundi, Rwanda and Comoros

Payments in Burundi (US\$3,000 to Godefroid Kamwenubusa), [66, 90, 92, 99, 260] Rwanda (US\$20,000 to Bonaventure Nzeyimana) [65, 66, 93, 99, 102, 129, 291] and Comoros (US\$3,000 to Chaibou Bedja Abdou) [66, 99, 111, 129] - all civil servants and FCTC focal points -- were requested and authorised by Owino. [93, 129] [90, 92, 93]

In both Burundi and Rwanda, BAT used these payments to obtain draft tobacco control regulations; [90, 91, 93, 288-290] in Burundi also apparently being able to amend the legislation. [288] Service providers invoiced BAT for all three payments [66, 99, 102, 111, 260] and the documents show they hand delivered the payment in Burundi [291-293] and wired it to Nzeyimana's personal bank account in Rwanda. [65] During the Panorama programme Kamwenubusa and Abdou denied receiving any payment, while Nzeyimana admitted to receiving payment but claimed it had "nothing to do with tobacco" (Box 1).

Uganda

Uganda first tabled (2011) and ultimately passed (2015) its Tobacco Control Act amid significant industry opposition. [7, 294] Muyita claims "MPs promoting the draft Tobacco Control Bill" in July 2012 were paid to "persuade" them "to organise a joint public hearing to discuss the merits and detriments of the draft Bill." [62] Although there was no financial evidence of this US\$10,000 payment (which does not therefore feature in Table 1), on 24 July 2012, MPs held a public hearing at which the tobacco industry was heavily represented. [294] "Uganda Tobacco Control Bill Engagement Feedback Form[s]" detail two meetings in March 2011 between BAT Uganda staff and a MP, [295, 296] indicating that BAT was attempting to use the politician to gather intelligence on and try to influence the drafting of the Bill.

In December 2012, Muyita claims senior BAT Uganda staff endorsed 16,000,800 Uganda Shillings (US\$5,966) payment to MPs on the Parliamentary Committee on Tourism, Trade, and Industry. [297] Muyita claims this "illicit payment" was "in return for a favourable report" by the committee, which was gathering information to "inform the MP's debate on the draft Tobacco Control Bill." [37, 62] Documents also detail strategies for leveraging support from parliamentarians on this committee. [297]

Between December 2012 and April 2013, BAT also made 25 payments to farmers. Three of these farmers have been quoted in national media speaking out against the tobacco control bill [298, 299] and documents suggest the journalist authoring one of these stories was paid three times during this period. [299]

BAT's response to the allegations

Media analysis

Twenty-seven media responses to the specific bribery allegations revealed in the Panorama programme concerning Hopkins and Muyita were identified. Broadly in line with the statement made to the BBC (**Box 1**) these communicated three main messages. First, that Hopkins and Muyita could not be trusted (17 occurrences) because they left in “acrimonious circumstances”, had a “vendetta” against the company, and were creating a “false picture” of BAT.^{[300-302] [303]} Yet Hopkins was made redundant and offered an enhanced redundancy package if he signed a confidentiality agreement.^[41]

Second, they offered a generic anti-corruption statement (16 instances), insisting simply that “we [BAT] do not and will not tolerate corruption, no matter where it takes place.”^[21, 304-306] Third, BAT offered a general denial that this is how it conducts business (13 instances), stating “we categorically deny the suggestion that this is how BAT operates around the world”.^[21, 301]

In only two instances did BAT issue a specific denial. It claimed that an alleged payment to a Ugandan National Environmental Management Authority official after a fire in one of BAT's factories was not made “as alleged”, and that a payment to a farming family apparently poisoned by BAT's agro-chemicals was “legitimate”.

Neither of these are included in our analysis: the first did not meet our financial evidence criteria, the second did, but was coded as our lower level, “payment warrants further investigation under the UKBA”, despite Muyita's claim that it was an “illicit payment disguised as charity but intended to compromise the affected family and medical workers involved in their treatment and stop them from speaking to the media or government authorities.....which could potentially damage BAT's reputation”.^[37]

These specific denials stand in addition to BAT's stated policy on corruption (**Box 1**) and its defences made in the Ugandan court and UK employment tribunal.

Current staff positions

As of September 2021, only two of the 13 key individuals implicated in the payments remain at BAT (**Table 3**). The eleven others all left in the five intervening years. Owino, Hopkins' line manager who BAT admitted asked for “unlawful bribes” to be made,^[39] was the first to leave in 2012.^[38] Two others left in 2013 (Hopkins was put on “gardening leave” on 31 March 2013). The others left from 2014 onwards.^[307]

DISCUSSION

Key findings

This paper is the first to provide clear evidence that in Africa, BAT has made extensive and systematised use of payments which, we believe, raise questions under the UKBA or require further investigation. It shows that in under five years BAT made at least 236 payments totalling US\$601,502, with 215 (91%) of these after the UKBA came into force.

Our analysis suggests that 170 of these payments (totalling US\$591,383) targeted politicians (56) and civil servants (10) in particular, as well as staff of competitor companies, and appeared intended to secure political or competitive advantage in 10 African countries.

The scale, close involvement of multiple very senior staff across diverse parts of the company, the inclusion of what Hopkins was later to term “black ops”^[308] in senior management meetings, the routine use of data acquired via payments, and the processing of payments through the company’s usual financial systems, all suggest that the use of payments was a fairly routine part of BAT’s corporate practice.

Yet reference to the UKBA and extensive systems of subterfuge including use of aliases, unofficial emails, verbal discussions, and third parties to make payments as well as the use of double spreadsheet systems, suggests a common corporate awareness of wrongdoing and a strategy to work around it.

BAT’s public response to the allegations attempted to blame Hopkins and Muyita and give the impression that there had been no corporate involvement. Yet our analysis shows that BAT has in fact been very selective in its denials, only issuing denials about the *nature* of two specific payments without denying they occurred.

By contrast, its private actions, notably BAT’s admission in Hopkins’ employment tribunal of “unlawful bribes”^[38] in four countries and the fact that the majority of implicated staff have recently left the company, suggests BAT may privately have recognised and be attempting to address potential wrongdoing.^[39]

Strengths and weaknesses

The key strengths of this paper include its unique dataset, analytical approach, extensive triangulation with diverse additional sources enabling us to verify, for example, the names and roles of all, bar 17 of 121, named individuals receiving payment, and the strict evidential criteria set.

While there is consistency between and within the two datasets, they differ in the strength of evidence they offer, reflecting their very different natures.

Hopkins' dataset, comprising extensive electronic records of his time at BAT, provides contextual evidence and generally stronger evidence for each payment.

By contrast, Muyita's dataset comprises a small number of documents pre-selected by him to illustrate what he clearly perceived as the company's wrongdoing. As illegal activity is generally undocumented and BAT appeared to make efforts to hide its payments, many transactions likely remain unrecorded.

This is illustrated in Hopkins' document set when discussions about payments were moved from work to personal email accounts or from email to phone and are not therefore recorded. Given these practices, the fact that any of these payments are recorded is remarkable and we believe is a further indication of how routine they had become at BAT.

It is also likely, given their provenance, that the documents analysed give a restricted view of BAT's practices. They might, for example, focus more closely on BAT's use of payments that fit the UKBA criteria for bribery, rather than BAT efforts to prevent any potentially illegal activity. We believe, however, that the paper is likely to underestimate the extent of payments for a few reasons.

First, as outlined above, many possibly illegal transactions likely remain unrecorded. Second, the document set inevitably reflects the roles, limited geographic focus and periods of employment of the two whistleblowers. Yet, given that some high-level staff involved have previously or since worked in other geographical regions, it is possible that BAT has engaged in similar activities elsewhere. This is supported by evidence outlined below.

Third, the documents suggest hundreds of thousands more dollars were spent on similar payments, but as they did not meet our strict inclusion requirements these were excluded or coded only as "payment warrants further investigation under the UKBA". For example, numerous payments were excluded because there was either only one piece of financial evidence and/or insufficient evidence to assess the payment's nature, including some identified as "black ops and illegal spend."^[69]

One spreadsheet alone, for example, listed 10 payments totalling USD\$173,330 as "illegal" that were excluded from our analysis.^[66] Such payments include a number made to journalists, while separate evidence from South Africa suggests that BAT was paying journalists to produce favourable stories, suggesting our findings may give a conservative account of BAT's misconduct.^[309]

Finally, concerns about the security of research staff and interviewees precluded us from undertaking interviews that might have allowed us to identify other possibly illegal activities.

Linked evidence

Previous tobacco industry document research has never clearly documented instances of bribery. It has however been alleged.^[310] Evidence from Australia suggests that the tobacco industry may have used bribery in the 1970s to help bring down a minority Tasmanian government attempting to impose a tobacco tax, although the police inquiry cleared the politician in question.^[311] A 2000 court case brought by the European Union and its member states accused tobacco companies of bribing public officials as part of its global scheme to smuggle cigarettes.^[312, 313]

Mr Maithripala Sirisena who later became the President of Sri Lanka in 2015, alleged that, when trying to introduce large pictorial health warnings as Health Minister, BAT tried to bribe him, although this was “categorically denied” by the company.^[310, 314] BAT’s willingness to use illegal means to secure corporate advantage is amply demonstrated by its extensive involvement in cigarette smuggling.^[251-253, 255, 304, 305]

Most notably, our findings are consistent with an ongoing scandal in South Africa which suggests BAT used very similar tactics there including payments and surveillance to undermine competitors, buy favours with some government officials while actively undermining others investigating BAT.^[309, 315-318] The diverse evidence for this includes leaked documents, affidavits, research by investigative journalists and ex-government officials.^[309, 315-319]

Claims include that BAT committed “industrial espionage” including placing networks of informants within rival tobacco companies,^[316] undertook a “systematic campaign of harassment and disruption” to ensure that “BAT could retain its dominant market share”,^[319] made secret payments to agents, sometimes doing so via foreign currency cards loaded via BAT’s London office.^[315-317, 320]

For example, the book, *Tobacco Wars*, written by ex-South African Revenue Service official Johann Van Loggerenburg, outlines extensive detail of BAT’s alleged “corrupt” and covert operations there, including against Tribert Rujugiro Ayabatwa,^[245] the same person our analysis shows BAT targeted in Uganda.^[245] It is worth noting that three senior BAT staff involved in the activities outlined here were allegedly also involved in the SA operations too.^[321]

Our analysis suggests the purposes for which BAT was using payments are also entirely consistent with the existing literature on its conduct.^[251, 322-324] This includes evidence across diverse jurisdictions of anti-competitive behaviour such as price fixing^[325] and securing competitive advantage even in markets where it had de facto monopoly positions,^[326] ^[185, 322] attempting to obstruct effective health policies^[325] and securing reputational advantage.^[327, 328]

Perhaps most notably previous research shows the extremes BAT will reach to hurt competition, including having the Kenyan government pass legislation it had drafted to undermine MTK when it first emerged as a competitor in Kenya in the late 1980s.^[185] Its payment of officials attending WTO negotiations is supported by observations that countries, particularly those scoring highly on corruption indices, support tobacco industry positions and challenge innovative tobacco control legislation in WTO and may help explain why country representatives use tobacco industry arguments when doing so.^[329]

The practices detailed, including the use of third parties^[330] (in the form of service providers and of another company to front for BAT in the tax stamp tender in Kenya), project code names,^[331] and BAT's attempts to fuel doubt over the credibility of Hopkins and Muyita are also consistent with pre-existing evidence. This includes BAT's response to the 1996 whistleblower Jeffrey Wigand which involved distributing a 500-page dossier attacking Wigand's credibility.^[332]

Policy implications

The enormous, negative health and economic costs of tobacco and its consequent detrimental impact on development are already well established.^[333, 334] Our paper illustrates how a tobacco company's use of unethical payments can compound this problem by encouraging and entrenching poor governance and preventing progress in tobacco control policy implementation.^[311, 333, 334] This is illustrated by the finding that BAT sought influence over both national and global policy through payment of paltry sums when compared to the £9.3 billion operating profit it reported in 2018,^[335] and the £2 million annual pay increase requested in 2016 by its Chief Executive over much of the period of interest (2011-2019).^[336]

For example, it appears that for as little as US\$3,000 BAT was able to change tobacco control legislation in Burundi and through small payments to African civil servants, sought global influence -- over the FCTC, its Illicit Trade Protocol and WTO negotiations -- indicating the potentially far reaching ramifications of corruption.

These findings highlight the importance of anti-bribery legislation^[30] and of Goal 16 Target 5 of the United Nations Sustainable Development Goals -- to "substantially reduce corruption and bribery in all their forms".^[31] In operationalising this goal and relevant legislation, the role of western multinationals in driving, rather than simply responding to, corruption^[337] must not be overlooked -- of all the payments we document, only in one instance was there evidence of an official approaching BAT rather than vice versa.

The findings also have clear implications for public health and policy. BAT's extensive efforts to use payments to secure policy influence illustrated, for example, in the numerous payments made in Uganda during the passage of the Tobacco

Control Bill, help explain why the 44 parties to the FCTC in the WHO Afro region have struggled to implement fully FCTC-compliant legislation. Although Uganda and Kenya have now passed strong legislation, progress was slowed by intense industry opposition.^[294, 338]

Moreover, our evidence suggests that BAT's practices are also aimed at securing influence by ingratiating the company with and building its links to regulatory authorities. This was most notable in the area of illicit trade and was occurring despite overwhelming evidence of the tobacco industry's long history of complicity^[251-255] and evidence that such complicity continues, including in Africa.^[174-176, 182, 339-341] It is also clear that payments are being used as part of the tobacco industry's elaborate efforts to control track and trace systems and thereby undermine the Illicit Trade Protocol.^[250, 342]

The finding that BAT spent most on and went to elaborate lengths to undermine small African competitor companies may help explain BAT's unusually dominant position in Sub-Saharan Africa. It is also notable that there is evidence of BAT's complicity in the very practices BAT successfully sought to have its competitors punished for -- tobacco smuggling^[251-255] and poor treatment of tobacco farmers.^[343-346] These activities highlight other ways in which tobacco companies impact detrimentally on low- and middle-income country economies. The payments to journalists might explain why BAT's conduct fails to garner media attention, highlighting the importance of raising awareness among journalists of the tobacco industry's conduct.

CONCLUSION

This paper provides substantial evidence that BAT has made extensive use of payments in Africa, many of which raise questions under the UKBA. This conduct contrasts strongly with BAT's stated aim on its website that the company operates "to the highest standards of corporate conduct and transparency, benefiting governments, consumers, the environment and our people."^[347] It could also help explain the slow progress of tobacco control in Africa and BAT's unusually dominant position in the region.

While further research is now needed to examine the impacts of these payments, we believe there is enough evidence for relevant government institutions internationally to investigate further and hold the company accountable where necessary. Any investigation must specifically explore whether the practices revealed here are happening elsewhere where BAT operates.

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APPENDICES

Appendix Table 1: Overall payment coding framework				
Aspect of payment	Data point	Coding	Definition	
Timing	Date of payment	Month, Year	The date listed on the most relevant piece of financial evidence where possible, otherwise on the most relevant piece of supporting evidence	
	Whether before UKBA	Yes/No	Yes if before 1st July 2011 (date UKBA came into force)	
Target*	Name of target	As given in document		
	Job title/position of target	As given in document		
	Target's position (coded)	Politician		An elected member of a government or law-making institution associated with a specific political party. Subdivided into national and local.
		Civil servant		Anyone employed by government or a government agency in a non-political capacity
		Journalist		An individual employed by a media outlet
		Staff of competitor company		An individual employed by a tobacco/tobacco leaf company seen as a BAT competitor
		Tobacco farmer		A tobacco farmer or tobacco farmers' representative
		Armed forces and police		An individual working within the navy, army, air force or police force
		Individuals supporting parliamentary committee		An individual accompanying a parliamentary committee when that committee is acting in its official capacity
		Others		
	Verification of role	Yes		Person named in documentation and name and role verified using external data
		No		Person named in documentation but external verification of name and role not obtained
		Unknown		Neither person nor individual role named and verification therefore impossible
Not named			Individual role identified but person not named and verification therefore impossible	
Evidence used to verify role	see Appendix 1, Table 2		See Appendix 1, Table 2	
Amount	Amount paid (currency used)	As stated in document		

	Amount paid (USD)		Amount in USD rounded to nearest whole unit. When figures not originally given in USD, converted using currency exchange rate reported at exchangerate.org.uk for the 31 December of the year of payment.
Purpose	Purpose as described in documents (and source)	Text entry based on description in document(s)	
	Apparent purpose (coded)	Policy influence	To obtain information on and/or influence a policy.
		Likely policy influence	Where purpose not clearly stated but evidence, circumstances and/or timing suggest the purpose was policy influence
		Stakeholder management	To manage relationships with stakeholders to BAT's advantage. This included two forms: recruitment (recruiting stakeholders, developing &/or managing positive relationships) and fragmentation (weakening tobacco control and/or those who favour tobacco control).
		Competitor advantage	Undertaking activities, the ultimate purpose of which was to secure advantage over or undermine a competitor. Such activities included spying on and sabotaging competitors
		Hiding harm	Seeking to hide harm caused by and the linked, largely reputational, risks posed to the company
		Unknown	Where purpose could not be clearly coded
Evidence for payment	Description of evidence and named document(s) providing evidence	Lists evidence and records whether Financial or Supportive	<u>Financial evidence</u> : payment detailed in financial document, defined as: certified or proforma invoices, service provider reports giving detailed financial breakdown, internal spreadsheets of payments, approvals for payments communicated in email, internal expense claims (generally includes the claim and detailed breakdown of payment), bank wire transfers. (NB matching proforma and final invoices, matching spreadsheets detailing same payments and internal expense claims with attached financial document all count as just one document). <u>Supportive evidence</u> : non-financial document providing context on or information specific to the payment.
	Evidence for payment (coded)	2+ pieces of financial plus supportive evidence	See above
		2+ pieces of financial evidence	See above
		2+ pieces of evidence including 1 financial	See above
		2+ pieces supporting but no financial evidence	See above (exclude)

		1 piece financial, no supporting evidence	See above (exclude)
		1 piece supporting, no financial evidence	See above (exclude)
	Sufficient evidence for inclusion	Yes/No	Yes: If at least 2 pieces of evidence including at least 1 financial (ie the top 3 categories above)
Nature	Extent to which the payment might be considered as meeting the UKBA definition (see box 2, main text) of bribery.	Payment raises questions under the UKBA	Payment appears to presume, require or encourage the recipient to perform an expected job role, function or activity improperly & seeks competitive or business advantage for the organisation making the payment and no benign explanation for the payment is clearly identifiable (eg payment to competitor staff to provide confidential data; payment to politician or civil servant acting in their official capacity). Hence further questions are justified
		Payment warrants further investigation under the UKBA	Payment appears unethical and may be consistent with bribery as defined by the UKBA, based on the information available, but requires further investigation to determine its status. (eg payment of per diems/expenses to a tobacco inspector (a civil servant) accompanying a parliamentary committee but not playing a clear role within that committee; eg payment to journalist during key policy period included in a list of illicit payments, but exact purpose unclear). There are, therefore, grounds for investigating whether these payments fall within bribery, as defined by the UKBA.

* For further information on the coding and verification of the targets and the sources used for these purposes see Appendix 1 Table 2

Appendix Table 2: Detailed coding and verification of payment targets

Category [total no. persons paid, minimum estimate 143]*	Sub-category [no. persons paid, minimum estimate, 143]*	Definition (and sources used to categorise role)	Verification of and role of individuals named in documentation**
Politician [56]		An elected member of a government or law-making institution who is associated with a specific political party	
	National [53]	A politician elected and appointed at the national government level	1 not named. All 52 named individuals were verified - 48 via their parliamentary profile and four via media reports quoting their name & position.
	Local [3]	A politician elected and appointed at the local government level (i.e. district, county)	All three individuals verified via media reports quoting their name & position.
Civil servant [13]		Anyone employed by government or a government agency in a non-political capacityⁱⁱ ⁱⁱⁱ	
	FCTC focal point [3]	A civil servant officially appointed to oversee "the exchange of information with and through the Secretariat related to implementation of the WHO FCTC nationally and globally, including the Parties' regular implementation reports, technical questionnaires and all communication on technical matters in general" ^{iv}	All three individuals verified via FCTC Country reports.
	WTO delegate or Ministry of Trade Representative [3]	A civil servant (likely from the Ministry of Trade) acting in the capacity of an authorised government representative from his/her respective country at World Trade Organisation activities or formally working within the Ministry of Trade	Of three individuals, one verified via media reports quoting their name and position, one via an East Africa Community Secretariat report, and one not verified even though named.
	Kenya Revenue Authority representatives [1]	A civil servant working within the Kenya Revenue Authority acting as an informant (see definition below)	Not identified as <u>not named</u> in the documentation.
	Ministry of Labour and Human Resource Development representatives [2]	A civil servant working within the Ministry of Labour and Human Resource Development	Of two individuals, both verified via Kenya Court of Appeal documentation.

	Uganda National Bureau of Standards representatives [1]	A civil servant working within the Uganda National Bureau of Standards	Single individual verified via a LinkedIn profile.
	District Commissioner (Uganda) [2]	A civil servant appointed by the President to monitor and coordinate government services within a district ^v	Both individuals verified via media reports.
	Tobacco inspector [1]	A civil servant working within a government agency to monitor the cultivation and harvesting of tobacco crop (independent from tobacco companies) ^{vi}	The individual identified via a UN International Fund for Agricultural Development report.
Individual working with/supporting work of Parliamentary Committee [6]		An individual accompanying a parliamentary committee when that committee is acting in its official capacity (including committee secretary, economist, legal counsel, researcher, information officer, cameraperson etc.)	Not identified as <u>not named</u> in the documentation.
Competitor company staff [2]		An individual employed by a tobacco/tobacco leaf company seen as a BAT competitor	
	Mastermind Tobacco Kenya (MTK) [1]	An individual employed by Mastermind Tobacco Kenya	Not identified as <u>not named</u> in the documentation.
	Leaf Tobacco & Commodities Uganda [1]	An individual employed by Leaf Tobacco & Commodities Uganda	Single individual identified via a LinkedIn profile.
Journalist [35]		An individual employed by a media outlet (method of public communication), whether television, radio, newspaper, magazine, or online news sources	2 not named. Of 33 named individuals, 31 were verified via media outputs published in the individuals' name from the associated media house. 2 were not verified.
Farmers [22]		A tobacco farmer or an individual associated with or representing a tobacco growers organisation	Of 22 individuals, five not named, five verified via media reports quoting their name and position, and 12 named individuals could not be verified.
Armed forces and police [4]		An individual working within the navy, army, air force or police force	
	Armed Forces [2]	An individual working within the navy, army or air force	Of two individuals, one verified in media reports quoting their name and position, and one named individual could not be verified.
	Police [2]	An individual working within the police force	Not identified as <u>not named</u> in the documentation.

		Role not otherwise identified above	
Other [5]	Magistrate [1]	An individual working for the Magistrate Court of a Judiciary ^{vii}	Not identified as <u>not named</u> in the documentation.
	Other(s) involved with Operation Snake [1]	An individual or group of individuals involved in causing unrest in Mastermind Tobacco Kenya (Operation Snake)	Not identified as <u>not named</u> in the documentation.
	Staff of tobacco control NGO [1]	An individual working with a non-government organisation whose public remit involves activities around promoting tobacco control	Verification of the named individual not obtained.
	Farming family and medical staff [2]	An injured farming family and the medical staff treating them	Not identified as <u>not named</u> in the documentation.

* A large number of payments were made to KRA and MTK staff, but it is unclear whether just one or multiple individuals were targeted. Consequently, the number of individuals targeted in these two organisations, and the total, may be an underestimate.

**Among the 143, 121 were named and 22 were not. Of the 121 named, 104 were verified and 17 were not.

Appendix Table 3: Coding of staff involvement – awareness and role in payments

Coding	Definition
Awareness of payment(s) documented or highly likely	The data refer to payment(s) as well as the staff member’s awareness of the payment(s) and its purpose OR suggest that staff awareness is highly likely
1. Authorised payment \$	Authorised payment with apparent awareness of purpose (see above)
2. Requested payment	Requested payment with apparent awareness of purpose (see above)
3. Requested data to be acquired via payment	Requested competitor data and made reference to payment to source/inquired about costs to obtain it
4. Discussed implementing budget-lines for payments	Documented considering ways to allocate funds to payments within formal BAT system.
5. Interfered with attempts to audit payment practices	Made documented attempts to interfere with or hold information from external SOBC (Standards of Business Conduct) audits, ensuring that those orchestrating payments unavailable for interview
6. Openly discussed payments & no attempt to stop	Openly discussed or were directly informed about specific payments & their nature and did not admonish those involved or try to prevent activities.
7. Aware of payments & no attempt to stop	Sources suggest aware of and involved in decisions or activities surrounding payments with no documented attempt to admonish those involved or to prevent activities
8. Managed payments &/or sources being paid	Coordinated payment to service providers &/or sources.
9. Attended senior meeting where activities involving payments were tabled and appear to have been discussed	Person assumed to have attended specific East and Central Africa Leadership Team (ECALT) meeting if (a) that person was a member of ECALT for the relevant year AND (b) that person was listed as speaking at that meeting. Documentation relating to meeting, including draft meeting agenda, correspondence and PowerPoint slides indicate that verbal updates were given on operations which involved payments.
Awareness of payment(s) unclear ^	The data show close involvement with activities surrounding or awareness of outcomes directly related to payment(s), but no documented discussion of actual payment(s). [NB The information obtained via the payments – e.g. copy of legislation, detailed competitor data & outcomes of operations - should arguably have ensured staff understood what was happening].
10. Used or planned use of information acquired via payment (but may not have been aware of payment or purpose)	Actively shared or planned the use of information (such as draft tobacco control bills or competitor intelligence) acquired via the use of payments but no documented discussion of linked payment(s) [NB excludes those copied on emails where others were planning use – see 13]

11.Praised outcomes achieved via payments (but extent to which they had awareness of payment is unclear/unknown)	Documented approval of activities achieved through the use of payments, but no documented discussion of payment.
12.Requested competitor data (but no direct reference to payment) *	Documented request for intelligence/data, but no documented discussion of payment.
13.Included on emails where intel or outcomes obtained from payments are discussed (but payments not mentioned) **	Were sent or copied in on emails discussing intelligence gathered via payments or outcomes obtained from payments, but no documented discussion of payment.
<p>\$ Excludes nine staff whose only documented involvement was to sign off on payments via the internal payment approval system even where description of payment suggested unethical activities</p> <p>*NB Two staff included here were later cc'd on emails discussing costs for the data they had originally requested but no record of their response</p> <p>^ Only those included in codes 10-13 that were already included in codes 1-9 were included in Table 3 in the paper</p> <p>** Excludes two staff described as "crucial" in activities known to have involved payments but where documentation of involvement is unclear.</p>	

Appendix Table 4: Overview of number, target and size of BAT payments coded as “warrants further investigation under the UKBA”
(data based on our analysis)

		PH documents		SM documents		Combined document set			
Who was paid [total no. persons paid, minimum estimate]		Total value of payments (US\$)	No. individual payments*	Total value of payments (US\$)	No. individual payments*	Smallest-largest individual payments (US\$)**	Purpose of payment (CA = competitive advantage, PI = policy influence, HH = hiding harm, SM = stakeholder management)	Total value of payments (US\$)	Total no. individual payments*
Journalists [22]		4074	2	3252	28	26-2328	PI (likely), SM (recruiting), Unknown	7326	30
Tobacco farmers [22]				933	25	37-224	PI (likely), Unknown	933	25
Civil servants [3]	District commissioners [2]			218	2	99-119	SM (recruiting)	218	2
	Tobacco inspectors [1]			67	1	67	Unknown	67	1
	Sub-total [3]	0	0	285	3	67-119		285	3
Camera person working with/supporting Parliamentary Committee [1]				205	1	205	CA	205	1
Injured farming family and medical staff treating them [2]				652	2	652	HH	652	2
Other [5]	Police [2]			262	2	131	CA	262	2

	Armed forces [2]			218	2	79-139	SM (recruiting)	218	2
	Staff of tobacco control NGOs [1]			238	1	238	PI or SM (fragmentation)	238	1
	Sub-total [5]	0	0	718	5	79-130		718	5
All payments [55]	Total [55]	4,074	2	6045	64	26-2328	CA, HH, PI, SM	10,119	66

* These figures will likely underestimate the total number of payments as lump sum payments where individual disbursements were not detailed were counted as one payment.

** The range of payments includes lump sum payments where it is not known how many individuals were paid, and this may therefore inflate the upper range of individual payments within subsections.