

**Mr Matthew Chamberlain**  
**Chief Executive**  
**LME**  
**10 Finsbury Square**  
**London**  
**EC2A 1AJ**

Dear Matthew Chamberlain,

The Metals and minerals traded on the LME are at the heart of the world's economy, central to industrial production and construction. They underpin the products and services we rely on in our daily lives. The OECD predicts that without significant policy change, world consumption of raw materials including metals will [at least double by 2060](#)<sup>1</sup>. Meanwhile the IPCC 2018 report is clear that raw material trade and consumption patterns must change if we are to adapt to and mitigate catastrophic climate change, and limit global warming to 1.5C above pre-industrial levels.<sup>2</sup>

The LME's global reach – trading metals from over 60 countries across its 98-strong membership – brings an opportunity for the Exchange to ensure that a significant proportion of the world's metals are sourced and traded responsibly in line with international standards. This is particularly critical in metal markets such as copper and zinc, where responsible sourcing practices in line with the OECD, EITI, and UN Guiding Principles on Business and Human Rights (UNGPs) standards are not yet well established or implemented. By aligning the LME position with the OECD, the Exchange will ensure that its members are required to operate to the same responsible sourcing and trading standards and on a level playing field with requirements for miners, downstream manufacturers, traders and all companies complying with EU, US and other OECD-based domestic supply chain due diligence laws in operation.

We welcome the responsible sourcing rules for LME brands, particularly requirements for brands to publicly report on all environmental, social and governance (ESG) and human rights risks and financial crime and corruption risks in line with EITI and OECD standards<sup>3</sup>, and to name individuals directly responsible for supply chain due diligence within their supplier networks. However, we have identified critical weaknesses with the LME's proposals and write to highlight those here. It is paramount that the LME addresses these weaknesses, in order for the proposals to retain credibility and, most importantly, be effective.

In particular, we highlight the LME's failure to oblige members to disclose environmental risk – including damage to biodiversity and water, climate risk and CO2 emissions<sup>4</sup>; the continued delegation of crucial due diligence responsibilities to industry schemes, despite insufficient proof of their robust implementation – and the implication of this for secondary sourcing and ineffective corruption risk reporting. All of these points must be addressed.

### **Reporting on climate and environmental risk**

The LME must take a progressive stance on both the long-term negative externalities caused by the mining industry on the climate, as well as the immediate potential damage caused by mining to the environment, and oblige its members to report on risk and harm. While the LME suggests a lack of

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<sup>1</sup> [https://read.oecd-ilibrary.org/environment/global-material-resources-outlook-to-2060\\_9789264307452-en#page5](https://read.oecd-ilibrary.org/environment/global-material-resources-outlook-to-2060_9789264307452-en#page5)

<sup>2</sup> [https://report.ipcc.ch/sr15/pdf/sr15\\_spm\\_final.pdf](https://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf)

<sup>3</sup> <https://eiti.org/GN29>

<sup>4</sup> [https://www.ipbes.net/system/tdf/spm\\_global\\_unedited\\_advance.pdf?file=1&type=node&id=35245](https://www.ipbes.net/system/tdf/spm_global_unedited_advance.pdf?file=1&type=node&id=35245)

‘market demand’ from brands, it is clear that market demand exists from end consumers and investors, as well as the EU and other regulators.

The EU has recently agreed on new rules for investors to do due diligence on ESG risks and impacts<sup>5</sup>, while the Climate Financial Risk Forum made clear in March that climate change and society’s response to it represents a financial risk to companies<sup>6</sup>. International studies suggest, in fact, that companies with strong ESG policies outperform those who do not take these risks into account.<sup>7</sup>

The LME must use the central role of the Exchange to mitigate, and where possible reverse, the damage caused by the metals and minerals industry it facilitates, and ensure the industry does not fall behind in its commitments to the Paris agreements. The LME must take these steps, before institutional investors are legally obligated to divest from equity and debt within the mining industry, because of the negligence of some mineral production and trading companies.

Consumer demand for products with low carbon emissions, such as electric vehicles, demonstrates the will of the consumers to reduce their carbon footprint. As countries shift towards zero carbon economies, including commitments to [electric vehicle fleets](#) that rely heavily on base and battery metals like copper, cobalt, nickel and lithium, demand for environmental, climate and human rights supply chain due diligence reporting of mining is only going to increase.<sup>8</sup> A report by the World Bank found that global demand for “strategic minerals” such as lithium, graphite and nickel will skyrocket by 965%, 383% and 108% respectively by 2050,<sup>9</sup> while other reports found that the future electric vehicle market could create a huge increase in demand for copper and cobalt.<sup>10</sup> Other recent studies on Nickel found that “40% of global nickel reserves are in locations with high biodiversity and protected areas, and 35% in areas with high water stress”, in addition to highlighting the significant implications for reputational damage, if automobile and battery manufacturers fail to properly address environment risks.<sup>11</sup> We cannot allow the path to a zero carbon economy to come at the cost of lives in producing and manufacturing countries.

In addition to the long-term impact on the climate, the mining industry has caused serious environmental damage time and again, often because of unmitigated supply chain risks. Cases of environmental damage often have serious human rights impacts for local communities, as the collective research of our organisations show (see Annex) and inadequate environmental assessments can leave local communities at great risk.

### **Over reliance on industry schemes**

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<sup>5</sup> <https://www.globalwitness.org/en/press-releases/global-witness-celebrates-significant-agreement-and-shift-mind-set-eu-investor-due-diligence/>

<sup>6</sup> <https://www.fca.org.uk/news/press-releases/first-meeting-pra-and-fcas-joint-climate-financial-risk-forum>

<sup>7</sup> Clark, G.L., Feiner, A. & Viehs, M., ‘From the Stockholder to the Stakeholder: How Sustainability Can Drive Financial Outperformance’, 5 March 2015. Available at SSRN <https://ssrn.com/abstract=2508281>

<sup>8</sup> [In March 2019, Amnesty International publicly called on leaders within the electric vehicle industry to make the world’s first completely ethical battery within five years, see https://www.amnesty.org/en/latest/news/2019/03/amnesty-challenges-industry-leaders-to-clean-up-their-batteries/](https://www.amnesty.org/en/latest/news/2019/03/amnesty-challenges-industry-leaders-to-clean-up-their-batteries/)

<sup>9</sup> <https://www.worldbank.org/en/news/press-release/2019/05/01/new-world-bank-fund-to-support-climate-smart-mining-for-energy-transition>

<sup>10</sup> <https://www.economist.com/business/2017/03/11/mining-companies-have-dug-themselves-out-of-a-hole>

<sup>11</sup> <https://www.maplecroft.com/insights/analysis/nickel-a-green-energy-necessity-with-grave-environmental-risks/>

Last year Global Witness contributed to the development of the OECD pilot Alignment Assessment of Industry schemes with the OECD Minerals Guidance.<sup>12</sup> The assessment is clear, that companies must avoid the use of industry schemes as tools to enable a short cut to compliance and that they retain individual responsibility for their due diligence.<sup>13</sup>

Global Witness recently commissioned a review of January 2015 - November 2018 due diligence reporting by 3TG smelters and refiners operating in Chinese territory who are participating in industry-led responsible sourcing programmes, which totalled over 70 entities. The review focused on international expectations of due diligence reporting as set out in the OECD Guidance (i.e. a policy, an audit summary and a report on due diligence practices and results). Preliminary findings - prior to receipt of responses to allegations from the companies and industry schemes reviewed - are that nearly 1 in 5 companies didn't publish any due diligence information (sometimes due to links or websites not working), 1 in 4 companies didn't publish a due diligence policy and 3 in 4 didn't publish a due diligence report. The results are disappointing given that smelters and refiners are critical choke points in supply chains and that the companies being scrutinised should be the most active and engaged, given their participation in industry schemes.

In order for the LME to effectively maintain its role as the leading metals exchange, it is imperative that the LME oblige its members to make public an OECD-standard responsible sourcing policy. Companies must also be required to demonstrate through individual public reporting their individual efforts to implement this policy, including evidence of risk identification, mitigation and remediation, and on an annual basis. The LME must ensure it has processes in place such that where brands fail to undertake supply chain checks or respond to risks in line with international standards, they are penalised. Mechanisms for enforcement and corporate liability are historically flawed in this area, and we welcome the LME's proposition to take robust action and delist brands.

If the market wants rid of 'standard saturation', then it must clearly demonstrate that industry standards are dispensable, and make routine and regular full disclosure of all corruption, environmental, and human rights risks and abuses. We reiterate, industry schemes are tools for companies to better understand their supply chains and identify possible risks of contributing to harms, as well as concrete instances of abuses where they happen, but membership of a scheme cannot replace a company's own individual responsibilities.

Industry schemes should provide clearer guidance to participating companies on requirements in line with the OECD-standard, including the need for application of due diligence to the whole supply chain, not just to tier 1 (direct) suppliers. Similarly, across many programmes implementing Step 4 audits of smelters and refiners there is a lack of effective on the ground due diligence by participating companies on their higher risk supply chains, as well as insufficient focus by these programmes on the importance of companies undertaking on the ground due diligence assessments, where necessary.

Furthermore, the LME's proposal to equate the standard of different industry schemes, or adhere to various industry schemes is problematic. The LME refers to the "Work of the Aluminium Stewardship Initiative (ASI) and LBMA" as "examples of how requirements to ensure the responsible sourcing of secondary or scrap material can be incorporated within a responsible sourcing scheme or

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<sup>12</sup> <https://mneguidelines.oecd.org/Alignment-assessment-of-industry-programmes-with-the-OECD-minerals-guidance.pdf>

<sup>13</sup> <https://www.globalwitness.org/en-gb/press-releases/global-witness-statement-oecd-alignment-assessment-industry-programmes-oecd-minerals-guidance/>

standard”<sup>14</sup> — but a number of previous cases evidence the shortcomings of industry schemes to properly address corruption risks.

In 2016, the Global Initiative against Transnational Organized Crime reported that the judicial authorities of Peru had accused six international gold refiners, of which four were accredited by the London Bullion Market Association (LBMA), of criminal acts arising from the “seizure of gold” in Peru between 2013 and 2014 and of the money laundering of the proceeds of illegal mining. Miami-based NTR Metals, a major U.S. refiner and a subsidiary of Elemetal LLC (‘Elemetal’), was one of the companies named in the report. Elemetal later pleaded guilty and agreed a large fine with the US Department of Justice<sup>15</sup>. It was not until a year later, in March 2017, when Bloomberg published investigators’ findings that the LBMA and CFSI delisted Elemetal Refining LLC. It is unclear what the industry schemes were doing in the interim to assess and manage the risks associated with the allegations linked to NTR Metal.<sup>16</sup>

### **Corruption risk**

We welcome the LME’s proposal for listed brands to conduct step five reporting and the publication of the basis of their assessments, as well as full disclosure to support this assessment. However, LME-listed brands must avoid publishing aggregated data, and ensure all reporting has the granularity the EITI now requires.<sup>17</sup> This includes beneficial ownership, publishing contracts, and reporting at project-level in the countries they operate in, to offer meaningful transparency.

EITI requirements now demand project level reporting<sup>18</sup>, in addition to countrywide reporting. The inclusion of all payments made to governments, in accordance with item A.1.1 of Step 5 reporting, is instrumental in rooting out and addressing the inherent corruption risks in mineral supply chains. As LME-listed brands source from a number of countries that are not EITI members, it is imperative that the listed brands and the producers, suppliers and/or other upstream companies take robust steps to provide transparency on payments in line with the EITI principles and Standard. For those listed brands and producers not within jurisdictions that require mandatory project-level reporting in line with the EITI, their full disclosure is essential.

Corporations often seem to fail to understand that corruption entails systemic human rights abuses that permeate supply and value chains. The LME cannot propose a system of full disclosure, and at the same time exempt the publication of ‘commercially sensitive’ or confidential data, if it concerns human rights. Price forecasting and price-specific contractual information is proprietary, human rights are not.

Publishing data on an aggregated statistics and individual anonymised basis is a weak approach to transparency. It is a perversion and ailment of the current physical commodities trading system that opacity is rewarded, and transparency is not.

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<sup>14</sup> <https://www.lme.com/News/Press-room/Press-releases/Press-releases/2018/10/LME-proposes-requirements-for-the-responsible-sourcing-of-metal-in-listed-brands>

<sup>15</sup> <https://www.justice.gov/usao-sdfl/pr/us-gold-refinery-pleads-guilty-charge-failure-maintain-adequate-anti-money-laundering>

<sup>16</sup> [https://www.globalwitness.org/documents/19349/Civil\\_society\\_note\\_on\\_implementation\\_of\\_EU\\_responsible\\_mineral\\_sourcing\\_regulation\\_ENG.pdf](https://www.globalwitness.org/documents/19349/Civil_society_note_on_implementation_of_EU_responsible_mineral_sourcing_regulation_ENG.pdf)

<sup>17</sup> <https://eiti.org/GN29>

<sup>18</sup> EITI (2018). “Project-level reporting in the extractive industries” [https://eiti.org/sites/default/files/documents/eiti\\_factsheet\\_project\\_level\\_reporting\\_en\\_web.pdf](https://eiti.org/sites/default/files/documents/eiti_factsheet_project_level_reporting_en_web.pdf)

The same principle applies to disclosure on parent-subsidary responsibility. A Recent Supreme Court judgement on parent-subsidary responsibility and supply chain transparency, found that disclosure is key to proving the level of responsibility the parent company has taken on, and that this will in practice be key to the mitigation of environmental risk.<sup>19</sup> Companies would be wise to clearly demonstrate the steps taken to address environmental and corruption risks, including information that may be considered ‘commercially sensitive.’

### **Locations of mineral origin and transit**

The LME’s policy for brands to disclose countries of transit is particularly important to maintain the provenance of supply chains, this must include free ports or free trade zones. In order to do this effectively, information on suppliers (direct or indirect) must be disaggregated. Companies must publish in full their list of suppliers, their suppliers’ shareholders, their suppliers’ beneficial owners, and a list of countries in which their suppliers operate. In order to combat smuggling, company assessments must flag incidents where available minerals from a given area, exceed known mineral resources, expected reserves, or production levels.

As the LME recognises, Conflict-Affected and High-Risk Areas (“CAHRAs”) increasingly do not pertain to one national geography and are not confined to state borders, nor are criminal networks that survive through illicit financial flows and smuggling commodities for private gain. Mineral supply chains have transnational boundaries that are fluid in the risks they present to suppliers. Due diligence should not be confined to CAHRAs but rather should be a process applicable to all supply chains, that can be dialled up or down as risk, or potential risk, is detected.

### **ANNEX of Case Studies**

In cases such as El Cerrejón, Latin America’s largest open-pit mine, partly owned by LME-listed brands; Glencore, BHP Billiton and Anglo-American, the mine was blamed for water shortages and mass displacement,<sup>20</sup> in addition to the death of cattle and livestock from drought, and intimidation directed toward community leaders and human rights defenders.<sup>21</sup> The local operating company responded at the time, condemning the threats and denying that the mine had caused water shortages.

Other egregious incidents in the mining industry, such as that of the Vale dam, in which a huge tailings dam broke, and killed 300 people in the village of Brumadinho, Brazil, evidence the perils of treatment and storage of waste materials. Following the disaster, Brazilian regulators ordered the mining company Vale, who operated the dam, to suspend activity in this and two more of its mines.<sup>22</sup> Vale’s CEO also resigned.

Mining corporations are not only responsible for disclosing environmental harm, but also for the threat to land and environmental defenders, and must engage with indigenous communities in accordance with the principles of Free Prior and Informed Consent (FPIC) of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>23</sup>

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<sup>19</sup> <https://www.supremecourt.uk/cases/docs/uksc-2017-0185-judgment.pdf> p.18

<sup>20</sup> <https://www.cetim.ch/human-rights-violations-committed-by-transnational-corporations-in-colombia/>;  
<https://www.elheraldo.co/la-guajira/indigenas-denuncian-que-hay-18200-afectados-por-sequia-en-la-guajira-160446>

<sup>21</sup> <https://www.globalwitness.org/ru/press-releases/worst-year-ever-environmental-and-land-rights-activists-least-200-killed-2016-crisis-spreads-across-globe/>

<sup>22</sup> <https://www.globalwitness.org/en/press-releases/global-witness-celebrates-significant-agreement-and-shift-mind-set-eu-investor-due-diligence/>

<sup>23</sup> <http://www.fao.org/indigenous-peoples/our-pillars/fpic/en/>

The British-owned Vedanta Sterlite mine in the state of Tamil Nadu in India was blamed for toxic pollution, and unnaturally high cancer rates in surrounding villages.<sup>24</sup> When protests erupted over plans for Sterlite Copper to double the size of the plant to 800,000 tonnes per year, police opened fire on the protesters, killing 14 people.<sup>25</sup> The plant was shut down in 2018,<sup>26</sup> but the Indian Supreme Court has since ordered its reopening.<sup>27</sup>

India: In May 2018, at least 11 protesters were killed and dozens more injured by Indian police when they opened fire on protesters in the southern state of Tamil Nadu. Residents had been protesting against a copper smelting plant owned by the Sterlite Copper subsidiary of Vedanta Resources, which they said was polluting the air and threatening the local fishing industry.<sup>[i]</sup>

In 2015, Amnesty International published *Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine*<sup>28</sup>. Amnesty's investigation focused on the Monywa copper mine project in central Myanmar, which includes the Sabetaung and Kyisintaung (S&K) and the Letpadaung copper mines. Since its inception the Monywa project has been built on a foundation of forced evictions, environmental pollution and a lack of transparency. Thousands of people have been driven from their homes without adequate compensation or relocation. Hazardous waste discharged from the mines has exposed communities to serious health risks. Thousands more people have faced the threat of losing their homes and livelihoods in ways that violate international human rights law.

Communities protesting the forced evictions and loss of livelihoods caused by the Letpadaung Mine have been met with excessive use of force by the police. In 2012, police used white phosphorus, a highly toxic and explosive substance, against peaceful protesters, an act amounting to torture, which is a crime under international law. In 2014, one woman died and several other people were injured when police opened fire on protesters. The report also raised serious questions about opaque corporate dealings and possible infringements of economic sanctions on Myanmar.

Since 2010/11 the Monywa project has been operated by Wanbao Mining Ltd. (Wanbao Mining), a wholly owned subsidiary of NORINCO. Myanmar Yang Tse Copper Limited (Myanmar Yang Tse), a wholly owned subsidiary of Wanbao Mining operates the S&K mine, Myanmar Wanbao Mining Copper Limited (Myanmar Wanbao), another subsidiary, operates Letpadaung in partnership with the military-owned conglomerate, Union of Myanmar Economic Holdings Limited (UMEHL). In 2013 the Government of Myanmar gained a stake in Letpadaung via ME1, which now receives 51% of the profits of the mine.<sup>29</sup>

In 2017, Amnesty published a follow-up report, *Mountain of Trouble: Human Rights Abuses Continue at Myanmar's Letpadaung Mine*,<sup>30</sup> which revealed how thousands of families living near the Letpadaung mine continue to be at risk of losing their homes or farmland as the operations expand. The threat of environmental disaster looms over the area, which is prone to earthquakes and floods. Should either strike, contaminated waste could be unleashed into the local community. Amnesty's

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<sup>24</sup> <https://www.theguardian.com/world/2018/may/28/india-copper-plant-sterlite-vedanta-shut-down-deadly-protests>

<sup>25</sup> <https://www.bbc.co.uk/news/business-44256552>

<sup>26</sup> <https://www.theguardian.com/world/2018/may/28/india-copper-plant-sterlite-vedanta-shut-down-deadly-protests>

<sup>27</sup> <https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/vedanta-to-approach-tamil-nadu-government-to-restart-tuticorin-plant/articleshow/67440109.cms?from=mdr>

<sup>28</sup> *Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine (Open for Business?)*, 2015, ASA16/0003/2015, <https://www.amnesty.org/en/documents/ASA16/0003/2015/en/>

<sup>29</sup> *Open for Business?*, p. 5

<sup>30</sup> *Mountain of Trouble: Human Rights Abuses Continue at Myanmar's Letpadaung Mine*, ASA 16/5564/2017, <https://www.amnesty.org/en/documents/asa16/5564/2017/en/>

most recent investigation also revealed how the authorities continue to use repressive laws to harass activists and villagers opposed to the mine.

Yours sincerely,

ASSODIP

Amnesty International

BIRUDO

CooperAcción

FOCO/INDAPE

Global Witness

German Watch

OECD Watch

London Mining Network

Max impact

Mining Watch Canada

Powershift

RAID

SOMO

Society of Threatened Peoples

Sherpa

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<sup>[i]</sup> <https://www.aljazeera.com/news/2018/05/indian-police-accused-killing-11-protesters-180523134721427.html>  
<https://www.theguardian.com/world/2018/may/23/police-in-south-india-accused-of-mass-after-shooting-dead-protesters>  
<https://www.reuters.com/article/us-vedanta-smelter-violence/at-least-nine-dead-after-police-fire-on-protesters-at-indian-copper-smelter-idUSKCN1IN11X>