



Tuesday 9 March 2021

Ruth Crowell  
Chief Executive Officer  
LBMA  
1-2 Royal Exchange Buildings  
Royal Exchange  
London EC3V 3LF

Dear Ms Crowell,

**Concerns that LBMA's Responsible Sourcing Programme fails to curtail human rights abuse and illicit gold in the supply-chain**

Over the past year, civil society organisations have repeatedly raised concerns with the London Bullion Market Association (LBMA) regarding weaknesses in the Responsible Sourcing Programme.

We had hoped that September's release of the LBMA's first annual [Responsible Sourcing Report 2020](#) would address these concerns. We welcome the report, which provides more detail than previous publications of the LBMA, for example on gold countries of origin, and therefore helps to enhance transparency. The report also contains objectives and actions in order to achieve more responsible sourcing, which are important. However, we are concerned that the report does not go far enough in providing information on where gold was actually mined, sheds little light on the incident review process and the cases of refiners considered during the reporting period, and advocates both the suspension of trade with problematic suppliers and the removal of non-compliant refiners only as "a last resort". Overall, we are very concerned that several of the most serious shortcomings have their origin in the formulation and implementation of the LBMA's [Responsible Gold Guidance](#) (RGG), which is itself not aligned with the [OECD Due Diligence Guidance for Responsible Supply Chains \(OECD Guidance\)](#).

The LBMA claims oversight in providing assurance to those downstream in the supply-chain that the gold it trades is responsibly sourced, conflict-free and untainted by human rights abuse. Consumer-facing brands such as Apple, Nokia, Tesla, Amazon and Disney, as well as investment funds backed by LBMA approved gold rely upon the LBMA's certification scheme. It therefore needs to be robust and prepared to expose and act upon non-compliance. Based on civil society's research, it is clear that there are serious weaknesses in the programme and that downstream customers cannot have confidence that the LBMA's Good Delivery gold is free of human rights abuses and not linked to conflict and illicit trade.

From January 2021, the [EU's Conflict Minerals Regulation](#) applies across its member states. Directed at the trade in tin, tantalum, tungsten and gold, it requires transparency on the supply practices of EU-based importers, smelters and refiners sourcing from conflict-affected and high-risk areas. Compliance can be facilitated through membership of industry due diligence schemes, provided these are [recognised](#)

under the regulation. The central requirement is that the scheme in question fully aligns, in respect of its standards and its implementation, with the foundational OECD Guidance. In our view, the LBMA's RGG falls short of the required standard and should not be recognised until there are substantial improvements.

Responding to your call for feedback on the Responsible Sourcing Report, this letter summarises the shortcomings and our key recommendations.

A key concern is the LBMA's apparent retreat from its position that refiners should suspend trade if there is a **possibility** that the gold sourced is illicit, to a new position that disengagement should only be considered as a "**last resort**". This suggests that the LBMA does not apply its own standard and instead dramatically lowers the bar. It creates confusion and risks signalling to refiners that rules can be bent. Moreover, it runs contrary to the letter and the spirit of the underlying OECD Guidance, according to which companies should disengage with suppliers which have not themselves stopped sourcing when there is a "reasonable risk" that these suppliers are linked to human rights abuses or armed groups.

Similarly, the report states that removal of a refinery from the LBMA Good Delivery List (GDL) will occur "if there have been failures that cannot be remediated or if attempts at remediation have been significantly poor". This vague standard has no basis in the RGG, which directs that all refiners must comply with all sections of the Guidance to remain on the GDL, though it does not explicitly set out the circumstances under which a refiner will be removed.

In recent months, three civil society organizations have independently raised specific cases detailing allegations that LBMA-approved refiners were associated with conflict gold or gold originating from a mine with a troubled human rights record. As set out here, each organisation has researched specific gold supply chains and is therefore, based on its analysis, solely responsible for the statements and comments that relate to the particular case in question.

Global Witness and SWISSAID published two separate reports in July 2020 – [Beneath the Shine](#)<sup>1</sup> and [Golden Detour](#)<sup>2</sup> respectively – based on parallel investigations into how Switzerland-based Valcambi, on the LBMA's GDL, sourced from UAE-based refiner and gold trader Kaloti, which was linked to Sudanese conflict gold.<sup>3</sup>

In the same month, RAID made public its [submission](#)<sup>4</sup> to the LBMA alleging whitewashing of serious human rights abuses at Barrick's North Mara Gold Mine in Tanzania and the failure of GDL refiner MMTC-PAMP to suspend trade or of the LBMA to publicly examine the refiner's own due diligence record.<sup>5</sup>

- Both cases are reported in the Responsible Sourcing Report, portrayed as positive examples of LBMA oversight. Yet neither case is counted as a "zero tolerance", high or even medium "non-conformance" and both LBMA refiners were found fully compliant with the RGG in their last

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<sup>1</sup> Global Witness (2020): Beneath the Shine. Available from [Beneath the Shine: A Tale of Two Gold Refiners | Global Witness](#)

<sup>2</sup> SWISSAID (2020): Golden Detour. Available from [SWISSAID-Goldstudie-EN\\_final-web.pdf \(kinsta.cloud\)](#)

<sup>3</sup> Kaloti and Valcambi's denials and detailed responses can be read in each report (see footnote 1 and 2).

<sup>4</sup> RAID (2020): Submission under the LBMA's Incident Review of PAMP/MMTC-PAMP. Available from [raid\\_analysis\\_of\\_synergy\\_assessment\\_north\\_mara\\_gold\\_mine\\_update.pdf \(raid-uk.org\)](#)

<sup>5</sup> A detailed response from Acacia (the former name for Barrick's Tanzanian subsidiary) on the allegation of human rights abuses can be found here: [Acacia's response - Business & Human Rights Resource Centre \(business-humanrights.org\)](#) and a response from Barrick on the human rights allegations can be found here: [Barrick's Bristow says Tanzanian human rights allegations must be heard in UK court - Miningmx](#); a detailed response from MMTC-PAMP on the human rights allegations can be found here: [press\\_release.pdf \(mmtcpamp.com\)](#) and here: [North Mara Gold Mine - Statement \(mmtcpamp.com\)](#). MMTC-PAMP did not respond to RAID's questions regarding the suspension of trade. RAID has asked the LBMA various times to respond to the above allegations, but the LBMA has not done so nor answered specific questions about its oversight role.

audits. The report does nothing to allay concerns about the application by the LBMA of its responsible sourcing standards. For example, Global Witness and SWISSAID extensively detailed concerns regarding Valcambi's sourcing from Kaloti in the UAE, which is linked to conflict gold.<sup>3</sup> In such a case the OECD Guidance calls for an immediate suspension of engagement. In an interview the head of the Swiss Precious Metal Association ASFCMP, in an unprecedented move, made statements which were understood to, publicly criticise Valcambi for sourcing gold from Kaloti, and other major Swiss refiners have requested Valcambi to declare publicly that it should stop working with Kaloti. Valcambi confirmed that it had a business relationship with Kaloti until November 2019 and that it has never sourced materials from Sudan.<sup>6</sup> Antoine de Montmollin, CEO of the Swiss refinery Metalor, clearly stated that in his opinion Kaloti is a red flag. Yet, with regard to this case, the LBMA report merely states that a Special Audit "did not detect any non-conformances", as Valcambi's Compliance Report "described fairly the activities undertaken during the year to demonstrate compliance".

- RAID informed the LBMA and the refiner about documented human rights abuses at the North Mara mine. Yet, RAID raised concerns that the independent assessor hired by the refiner and approved by the LBMA did not publicly examine this record, failed to meet victims, or undertake enhanced due diligence in accordance with the Guidance (for example, the assessment does not demonstrate use of the LBMA's Refiners Toolkit nor, in the alternative, justify why it was not used).<sup>7</sup> Nevertheless the LBMA reported that there were no "zero-tolerances" amongst its refiners for 2019 – that is, no refiners were "associated with serious human rights abuses". This appears at odds with the LBMA reporting that North Mara was "a high-risk mine and all parties involved were working toward improving the conditions", which seems a tacit admission that human rights concerns remain. Moreover, while the assessment made recommendations to the mine on improvements to risk management, it did not recommend what the refiner should do in response to these concerns in order to meet the requirements of Step 3 of the RGG.

Global Witness, SWISSAID and RAID all highlighted gaps in LBMA's RGG, problems with the opaque Incident Review Process, obvious inconsistencies or omissions in the due diligence record of refineries, and a lack of substance behind the LBMA's reported outcomes. We have identified eleven key issues that LBMA needs urgently to address:

- 1. Lack of transparency in annual reporting.** LBMA refiners' public annual reports often lack much of the information on identified risks and steps taken to address them as set out by the OECD Guidance. The OECD Guidance is also clear that companies should disclose suppliers in red-flagged locations and that this information cannot be subject to business confidentiality. Yet, refiners on the GDL do not always do so, indicating that implementation of the RGG is misaligned with the requirements of the OECD Guidance.

Public reporting is a core element of due diligence. Robust, detailed and transparent reporting generates public confidence in the due diligence measures companies are taking and is a crucial mechanism to ensure that all companies profiting from the minerals in question can be engaged in addressing the risks associated with their extraction and trade.

*Recommendation(s): The LBMA should close the significant gaps between the RGG and the OECD Guidance with regards to its reporting standards and ensure that its GDL refiners publish meaningful reports.*

- 2. Origin of refined gold is not correctly reported.** The Responsible Sourcing Report is providing an overview of the countries of origin of gold based on refiners' reporting to the LBMA. While this

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<sup>6</sup> Available from [Dubai, Switzerland, London: How the UAE became a smuggling hub for 'blood gold' \(www.middleeasteye.net\)](http://www.middleeasteye.net)

<sup>7</sup> Synergy's response can be found here: [Synergy Global Consulting response to allegations by RAID \(mmtcpamp.com\)](http://mmtcpamp.com).

is a useful step to increase transparency, it seems that often the countries of extraction of mined gold are not reported. For example, the report mentions the UAE as a gold country of origin of more than 200 tonnes of gold to LBMA GDL refineries in 2018. However, the origin of this gold is not the UAE, which is not a gold producer of significance.

*Recommendation(s): At a minimum, for “red flag” locations, Refiners’ Compliance Reports should include a list of source countries and disclose all suppliers and their counterparts down the chain. Refineries need to know from which mines their mined gold comes and report the country of extraction to the LBMA as otherwise the potentially problematic origin might be hidden. However, full transparency will only occur when refiners publicly list all their suppliers, counterparts and source countries.*

- 3. Weak guidance on suspending trade with problematic suppliers.** Global Witness and SWISSAID have pointed out that the RGG and the LBMA Audit Guidance only require the suspension of trade with suppliers if refiners risk sourcing conflict gold from them and not if those same suppliers are also dealing in conflict gold but sell this on to other companies. That means that refiners may cherry-pick supposedly unproblematic gold from the most tainted suppliers and by doing so are effectively propping these companies up. The LBMA’s stance contradicts a key point of the OECD Guidance, to which the RGG claims to be aligned, whereby refiners are directed to suspend trade with suppliers if there is a “reasonable risk” that the latter are sourcing conflict gold, or gold linked to serious abuses, even if this is beyond the refiner’s supply chain. Moreover, when it comes to the suspension of trade even within a refiner’s immediate upstream supply-chain, the RGG is not consistently implemented. The RGG specifies that a refiner should suspend trade if it is “possible [emphasis added] that there is money laundering, terrorist financing, serious human rights abuse, direct or indirect support to illegitimate non-state armed group, fraudulent misrepresentation of the origin of minerals”. In the case of MMTC-PAMP, the refiner failed to suspend trade with North Mara mine, even though the assessor found risk of serious abuses to be high and that many systems to manage these risks were “not yet fully implemented or effective”. By declaring in its Responsible Sourcing Report that disengagement should be considered as a “last resort” without mentioning the criteria for disengagement, the LBMA shows that it does not apply its standard and creates confusion.

*Recommendation(s): The LBMA should align its standards to the OECD Guidance to avoid the loophole allowing refiners to continue to trade with tainted suppliers and enforce RGG provision on the suspension of trade as a priority.*

- 4. Low quality of audits.** While the LBMA sets out guidance for refiners and auditors, implementation needs to be much more rigorous. SWISSAID highlighted the broad discretion given to auditors when it comes to deciding what information to gather as part of their assurance work. A recent judgment in the British High Court found against an auditor for covering up evidence of money laundering in the gold supply-chain.<sup>8</sup> The OECD Alignment Assessment criticised LBMA auditors for lacking technical competencies and knowledge of appropriate subject matter.

*Recommendation(s): Auditing guidance should be tightened to provide clarity on precise information to be gathered, including from third party and external sources. The LBMA’s development of an Auditor Competency Framework, which seeks to provide a better understanding of supply-chain risk, would benefit from wider consultations with civil society.*

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<sup>8</sup> RAID (2020): Landmark UK Judgment in Favour of a Whistleblower Exposes Auditing Firms. Available from [landmark-uk-judgment-favour-whistleblower-exposes-auditing-firms \(raid-uk.org\)](https://raid-uk.org/landmark-uk-judgment-favour-whistleblower-exposes-auditing-firms)

- 5. Lack of disclosure of audit findings.** Currently, LBMA-certified refiners only need to publish a compliance report and a summary assurance report by an auditor, which contains hardly any audit findings. Rather, the most important information from the audit – the various risks identified, any corrective action plan, and the main conclusions and recommendations – are included in a management report that remains confidential. In the case of non-compliances, these do not have to be disclosed if a refiner can resolve them through a corrective action plan and therefore the refiner has little incentive to ensure full compliance in the first place. This also means that the public is not informed about such non-compliances.

*Recommendation(s): Disclosure of detailed audit findings allowing for external scrutiny. Non-compliances and the need for corrective action plans should always be reported in audit summaries including details about the nature of the non-compliance and how it has been resolved.*

- 6. LBMA lacks access to crucial information.** The LBMA has failed to provide for disclosure of the information it requires from auditors about the audits undertaken in order to exercise effective oversight. For example, the LBMA is usually not informed about high-risk suppliers in the supply chains of its Good Delivery listed refiners. Such information is crucial to oversee its standards and ensure the quality of its audits. The Swiss Federal Audit Office indicated that “the absence of access to its members’ customer lists” is a major issue for the LBMA.

*Recommendation(s): The LBMA must ensure that it is informed about the identity of high-risk suppliers of its refineries at any time.*

- 7. Questionable independence of auditors.** Auditing companies undertake lucrative accounting and other work for the same clients, so it could be seen as not in their commercial interest to refuse to sign-off on responsible sourcing. SWISSAID has documented cases in which key staff from the auditing companies go through a “revolving door” and take-up positions with their former clients.

*Recommendation: Auditors should be automatically rotated to allow for renewed scrutiny. The LBMA should set up criteria concerning potential conflicts of interest and enforce those rules. Auditors with other significant business with a refiner should not be engaged. LBMA should choose the auditors for a refiner. As well as maintaining its approved list, when the LBMA removes an auditor, it should publicly report its reasons for doing so and provide information to the relevant professional body.*

- 8. Opaque review processes.** The LBMA is not at all clear on how it will handle any given incident. For example, the Valcambi case led to a “Special Audit”, but no Incident Review. An Incident Review of Perth Mint was announced and concluded within 8 weeks, without the release of any report. While a corrective action plan was put in place, what it involved was not disclosed. LBMA will not always confirm if an Incident Review has even started or finished. LBMA has not produced rules or procedures on how and under what conditions an Incident Review is conducted and refers to a Sanctions Policy which it has not published.

*Recommendation(s): Put in place policies and processes relating to how the LBMA handles complaints or reports of non-compliances, conducts investigations and decides upon sanctions, including the basis upon which refiners are suspended or removed from the GDL and make them public.*

- 9. Findings are withheld when incidents are investigated.** In the Valcambi case mentioned above, a two page summary of a Special Audit, contracted by the refiner, simply asserted compliance without providing any substantiating evidence. In the case of MMTC-PAMP, despite being subject to an Incident Review apparently prompted by [media reports](#) of human rights abuse, the

refiner and Barrick, the owner of the North Mara mine, with the LBMA, jointly agreed the terms of the “independent” assessment. The public summary made no reference to human rights violations at all and did not investigate how MMTC-PAMP sourced gold from the mine for seven years without publicly flagging any risks or suspending trade.

*Recommendation(s): The LBMA should announce all Incident Reviews, publish any complaints it receives (subject to consent), and release all Special Audits or other reports in full, as well as providing reasoned conclusions at the end of the review process.*

- 10. Lack of sanctions.** Despite requiring all refiners to comply with all sections of the Guidance to remain on the GDL, the RGG does not specify under what conditions a refiner will be removed from the GDL. The LBMA does not always report, or does not always do so in a timely manner, when refiners are removed from the GDL nor give reasons for delisting a refiner. Even though media and NGOs have reported apparent gross due diligence failures of GDL refiners, very few refiners have been delisted.

*Recommendation(s): The LBMA should publicly clarify which sanctions it applies under what conditions, enforce these rules and publicly report about applied sanctions. It might be useful to diversify its sanctions regime (including e.g. temporary suspensions).*

- 11. Lack of independence.** The LBMA is a trade body which, in effect, is self-policing. The Responsible Sourcing Report confirms that it is the LBMA’s Board of Directors that ultimately decides to remove a GDL refiner. Although the LBMA states that “[e]lected members of the Board are not involved in any decision involving refiners on the Good Delivery List” it is not clear how this is achieved in practice or how conflicts of interest are handled.

*Recommendation(s): The LBMA should publicly set out safeguards to ensure independence on matters of compliance, including detailing how procedures governing the Incident Review process address (potential) conflict of interest.*

We remain open to continue to engage with the LBMA and would welcome an opportunity to discuss these concerns with you and your team.

Yours sincerely,

- Global Witness
- Rights and Accountability in Development (RAID)
- SwissAid
- Fastenopfer
- Society for Threatened Peoples

Cc:

Valdis Dombrovskis, EU Trade Commission

Sabine Weyand, Director General of EU Directorate General for Trade

Chair, Member State Expert Group on Responsible Sourcing of Tin, Tantalum, Tungsten and Gold

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Andrew Britton, Managing Director, KUMI Consulting