



Monday 18 March 2024

Ruth Crowell
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London Bullion Market Association (LBMA)
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Royal Exchange
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Dear Ms Crowell,

Concerns that LBMA's Responsible Sourcing Programme still fails to prevent human rights abuse and the presence of illegal gold in the supply chain

A few days before the LBMA's Sustainability & Responsible Sourcing Summit takes place, and three years after our letter to the LBMA highlighting shortcomings in their Responsible Sourcing Programme¹, this second letter expresses our continuing concerns about the limitations of the LBMA standards. Numerous research reports from civil society organisations and the media have demonstrated that many refineries on the LBMA's Good Delivery List (GDL) are sourcing gold from questionable suppliers and mines and are not addressing the serious human rights violations and environmental degradation that continue to take place.

In recent years, many GDL refineries have failed to comply with the requirements of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance), demonstrating serious shortcomings in the exercise of their due diligence. They have sourced gold from suppliers that have been linked to money laundering, as well as from mines where numerous problems have been documented, such as land and water pollution, land expropriation, deaths of mine workers, security-related deaths and injuries, damage to the health of local populations and Indigenous peoples, and attacks and threats against journalists and human rights defenders. These cases relate to GDL refineries sourcing gold from suppliers in Azerbaijan², Brazil³, Burkina Faso⁴, Colombia⁵, Côte d'Ivoire⁶, the DRC⁷, Ethiopia⁸, Ghana⁹, Guinea¹⁰, Liberia¹¹, Mali¹², Peru¹³, Senegal¹⁴, South Africa¹⁵, Tanzania¹⁶, the United Arab Emirates¹⁷ and Zambia¹⁸.

Whilst the LBMA recognises in its latest Responsible Gold Guidance (RGG) that combatting human rights abuses and setting strong Environmental, Social and Governance (ESG) standards are vital to the Programme's credibility, alongside the longstanding purity and quality standards expected of LBMA members, at present these do not go far enough. There is therefore a risk that instead of reducing the risks for affected communities and Indigenous peoples, and providing access to remedy when problems are identified, the RGG and ensuing Responsible Gold Certificates could serve as a

form of “greenwashing”, rather than having a positive impact on the often very poor communities, workers and natural environments that have experienced significant harm as a result of mining operations.

We had hoped that the LBMA’s revisions to their Responsible Gold Guidance (RGG) in version 9¹⁹ would address the concerns we raised in 2021. Whilst we welcome some slight improvements, such as the increased due diligence requirements for sourcing from intermediate refiners or the inclusion of Environmental, Social and Governance (ESG) criteria, we remain concerned that the RGG is still not fully aligned with the requirements of the OECD Guidance²⁰. Furthermore, the LBMA’s implementation of the RGG is also flawed, as evidenced by the examples of problematic sourcing from GDL refineries detailed above.

The LBMA describes itself as “the Independent Precious Metals Authority” and as such, it has oversight over the Responsible Sourcing Programme. Therefore, the LBMA has a key role to play in setting standards for the industry and holding its members accountable. The LBMA has re-applied to have its assurance programme recognized by the EU Conflict Minerals Regulation after its first application was refused. In our view, it is clear that the LBMA’s RGG v9 should not be recognized under the EC Conflict Minerals Regulations until there are substantial improvements.

We have come together as a group of NGOs seeking to address human rights abuses within international supply chains, to prioritise advocacy work with recognised actors in the mining industry, the large transnational mining companies and refineries, and the banks and financial institutions that provide the capital needed to fund new mining developments. Each of us works with and/or is in contact with civil society organisations working directly with communities adversely affected by mining in the global South, including Indigenous peoples. Our key concerns that LBMA needs urgently to address are the following:

- 1. Due diligence and civil society engagement:** In the majority of cases, refiners do not make efforts to engage in good faith with workers and with communities affected by their suppliers, or with NGOs and trade unions supporting and representing them, despite the fact that this process is often the best way to alert them to human rights abuses and environmental harms. And even when refiners do agree to meet with affected communities, they usually rely on the contacts provided by the mines instead of reaching out to independent organisations representing the communities.

Recommendation(s): refiners should be required to engage with communities and workers (and the NGOs and trade unions supporting or representing them) for each of their on-site visits, not only in high-risks areas. The refiners’ Compliance Reports should routinely include a public update on this engagement, and auditors should seek to independently verify such reports and raise questions where this is not possible.

- 2. Lack of transparency:**

- a) The RGG 9 requires LBMA companies to disclose identified risks or risk mitigation strategies in general, but not to specify the particular mines to which these relate. Given that there are widespread problems at many of the mines from which they source their gold, this lack of transparency is particularly problematic and undermines the effectiveness of their due diligence. Indeed, the more transparently a refinery communicates the risks identified through its due diligence, and the mitigation measures taken in response, the less likely it is to be accused of breaches of due diligence and allegations of involvement in human rights and environmental abuses.

Recommendation(s): refiners should be required to disclose the identified risks and any mitigation for each mine from which they source their gold (for mined gold) and for each of their high-risk suppliers (for reprocessed gold).

- b) The LBMA's Disclosure Guidance states that "Refiners may choose to disclose Country of Origin data voluntarily in the annual reporting to provide transparency on worldwide gold supply chains and generate confidence amongst stakeholders" and that "Precious metals Refiners are encouraged to disclose on payments to governments if they directly buy mined gold from SOEs [state-owned enterprises] operating in EITI member countries". These voluntary disclosures need to become obligations so that all refineries disclose the same type of information. A significant number of mining companies already publish the names of their partner refineries and all World Gold Council's members have committed to publishing this information²¹. Therefore, the LBMA's continuing publication of aggregated information in order to "protect confidentiality" is not justified.

Recommendation(s): refiners should be required to disclose their Country of Origin Annex publicly and this should include the names of the mines they source from, as a minimum. In the Responsible sourcing reports, the LBMA should no longer aggregate the information about the origin of the gold and instead, this information should be published for each individual GDL refinery.

- c) Step 5 of the OECD Guidance mention that "the identity of the refiner and the local exporter located in red flag locations should always be disclosed," and the OECD has confirmed (in correspondence with SWISSAID) that this refers to public disclosure²². The LBMA's RGG mentions this OECD requirement but argues that the information related to this requirement does not have to be published by the refineries but simply transmitted to the LBMA, which is contrary to the OECD requirement. The LBMA acknowledged that its standard is not fully aligned with the OECD Guidance and expressly postponed such alignment²³, which is difficult to understand. Moreover, the LBMA also does not currently meet the OECD's definition of an "institutionalised mechanism" as per OECD Guidance, as it is not a multistakeholder association²⁴. Thus, disclosure to the LBMA (but not to the public) is not sufficient according to OECD Guidance.

Recommendation(s): in order to be fully aligned with the OECD Guidance, refiners should be required to disclose the name of their suppliers in red flag locations.

- 3. Origin of gold is not correctly reported.** The Country of origin Annex of GDL refiners has a major gap because it only refers to the last country from where the gold was imported. Thus for example, the 2023 LBMA Responsible sourcing report mentions the UAE as the country of origin of 149 tonnes of gold sold to LBMA GDL refineries in 2021²⁵. However, the origin of this gold is not the UAE, it was merely transited through this country. According to the OECD Guidance, in particular its annex II, when a refiner sources gold from an intermediary supplier (e.g. another refiner/smelter/aggregator/trading company) they are expected to know the precise origin of the gold, i.e. the mine of origin (for mined gold) or the point where the gold re-entered the market (for reprocessed gold). Therefore, if a refinery is expected to be aware of this information, they are also able to disclose it to the LBMA and to report it publicly.

Recommendation(s): Refiners should be required to disclose the precise origin (countries and suppliers) of the gold, i.e. the mine of origin (for mined gold) or the point where the gold re-enters the market (for reprocessed gold) when they source gold from an intermediary supplier.

- 4. Conflict of interest:** The LBMA Board is made up of senior executives of the leading refineries, alongside banks and financial institutions, and, currently, the director of a large mining company. A Board sub-committee takes final decisions in respect of the Incident Review Process and enforcement. It is not clear how the LBMA addresses any conflicts of interest arising as a result, given that, for example, a refiner which is under incident review may be

represented on the Board, or even those on the sub-committee dealing with such incidents may have vested interests. Moreover, banks represented on the Board may also be investors in, or purchasers of gold from, refiners or miners subject to a complaint.

Recommendation(s): Diversify the LBMA Board in order to reduce conflicts of interest and publish a clear conflicts of interest policy, that includes safeguards to ensure independence and transparency in respect of compliance issues.

- 5. Grievances and Incident Review:** although the RGG expects companies to establish a grievance mechanism, it is noticeable that very few of the Independent Assurance Reports on their website provide an overview of complaints received. Likewise, the LBMA's own Incident Review process²⁶ is carried out behind closed doors, there is little clarity regarding the criteria used for making decisions during the process, including whether a complaint is accepted, or any guarantee that the opening of an incident review or any outcome will be publicly disclosed, let alone the publication in full of any underlying investigations and/or enhanced due diligence reports.

Recommendation(s): Publish in full all Incident Review procedures, announce all Incident Reviews, publish details of complaints (with adequate safeguards to protect the security of complainants), the responses received, and all assessments and investigative reports in full, as well as provide reasoned conclusions. The LBMA should apply RGG provisions on the suspension of trade as a priority so that refiners cannot continue to trade with tainted suppliers, clarify its sanctioning regime, and move to enforcement when refiners fail to comply, including publicly reporting on applied sanctions.

- 6. Low quality of audits.** While the LBMA sets out guidance for refiners and auditors, and has recently introduced some trainings, implementation again needs to be much more rigorous. The LBMA auditors are still lacking technical competencies and knowledge of appropriate subject matter, giving rise to cases where, for example, in contrast to the auditors from the Swiss administration, the LBMA auditors were not able to discover the loopholes of the refiner's due diligence²⁷. As mentioned above, the OECD Guidance also requires auditors to consult civil society organisations if deemed relevant²⁸, a requirement which is absent from the RGG and the Third Party Assurance Guidance. Audits which only rely on information provided by the company are not credible.

Recommendation(s): Auditors should be required to consult civil society organisations and consider their inputs during the audits. More trainings should be put in place for auditors and existing trainings should be improved so that auditors better understand gold supply chains risks.

- 7. Lack of disclosure of audit findings.** Despite some small improvements mentioned in the Disclosure Guidance, GDL refiners still 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 name of suppliers where various risks have been identified and actions have been taken, 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. Moreover, the LBMA sometimes refuses to publish special audits.

Recommendation(s): The LBMA should disclose detailed audit findings allowing for external scrutiny. In particular, management reports, refiner's Country of origin Annex, corrective action plan and special audits should be made public.

- 8. Independence of auditors:** Auditors play a central role in guaranteeing compliance with the RGG, and as a result, it is important that they are demonstrably independent from the refineries. Auditors who are paid and selected by the refineries creates a risk of complacency and they can often overlook significant problems.

Recommendation: The LBMA should take steps to reduce these risks by reducing the number of years to four that the same auditor can assess a particular company (currently refiners must rotate Assurance Providers only every ten years) and by assigning the auditors (from the Approved Service Provider List) to the refineries.

- 9. Recycled gold:** currently the definition of “recycled gold” used by the LBMA is far too broad and opens the door to greenwashing. This could be addressed if the LBMA adopted the strict definition of recycled gold proposed by the Precious Metals Impact Forum (PMIF)²⁹. Moreover, due diligence requirements for sourcing so-called “recycled gold” are too weak. This creates a loophole through which much illegally mined gold may be laundered.

Recommendation(s): Adopt the PMIF definition of recycled gold and strengthen the due diligence requirements for reprocessed and recycled gold.

We would like to thank you for your invitation to the LBMA’s upcoming Sustainability & Responsible Sourcing Summit. We welcome this opportunity, and we hope that we will have the possibility to discuss these concerns with you and your team.

Yours sincerely,

Fastenaktion

Society for Threatened Peoples (STP)

Rights and Accountability in Development (RAID)

Amazon Watch

DKA Austria

Earthworks

Articulation of Indigenous Peoples of Brazil (APIB)

Swissaid

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

Bernd Lange, Chair, European Parliament International Trade Committee (INTA)

Allan Jorgensen, Head, OECD Centre for Responsible Business Conduct

Andrew Britton, Managing Director, KUMI Consulting

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