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Social licence and mining: A critical perspective

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A B S T R A C T

In 2002 the International Institute of Environment and Development published the landmark report Breaking New Ground: Mining, Minerals and Sustainable Development (MMSD). The report portrayed an industry distrusted by stakeholders and under threat from opposition groups. When read closely, the MMSD report reveals an inextricable link between industry's 'survival' instincts and the notion of a social licence. Within the context of a growing divergence around the expectations of minerals-led development, social licence has emerged as an industry response to opposition and a mechanism to ensure the viability of the sector. The objective of this article is to reinvigorate discussion and debate over how best to frame the industry's social and environmental obligations and how these obligations can be met by the sector. Where social licence has contributed to raising the profile of social issues within a predominantly industrial discourse, a primary failure is its inability to articulate a collaborative developmental agenda for the sector or a pathway forward in restoring the lost confidence of impacted communities, stakeholders, and pressure groups. We argue that a necessary first step in this process is for industry to reconcile its internal risk-orientation with external expectations which requires a less defensive and more constructive approach to stakeholder engagement and collaboration.

Introduction

In the industry study *Breaking New Ground*: *Mining, Minerals and Sustainable Development* (International Institute for Environment and Development, 2002), the authors outlined what we consider to be the fundamental driver behind the social licence to operate concept. Simply stated, that the industry "is currently distrusted by many of the people it deals with day to day". Without proffering a definition, the MMSD authors declared that industry players had "failed to convince some of its constituents and stakeholders that it has the 'social licence to operate' in many parts of the world" (International Institute for Environment and Development, 2002: xiv). As we understand it, the social licence concept as used in the MMSD report represented the sector's efforts at reaching out to stakeholders—global to local—and a broad attempt to articulate the many ways in which companies are responding to societal and community expectations.

It is important to note that these efforts took place against the backdrop of intense discussion about the industry's contribution to sustainable development and scrutinising debate about its corporate social responsibilities. A careful reading of the MMSD report reveals an inextricable link between industry's 'survival' instincts and the notion of a social licence. Using the MMSD report as a historical lens, this link can also be understood as an attempt by industry to reconcile the needs and expectations of stakeholders with its own business imperatives at a time when the sector was under collective threat from a range of external stakeholders for having failed to resolve this very problem.[2] Within the context of a growing divergence around the expectations of minerals-led development, social licence has emerged as an industry response to opposition and a mechanism to ensure the viability of the sector. As a cue for engaging in dialogue about the role of the minerals industry in sustainable development and poverty alleviation (Hilson and Murck, 2000), we argue that rather than open up critical enquiry 'social licence' serves to limit discussion and debate on these increasingly important topics.

The MMSD project was an independent two-year process of collaborative research and consultation that sought to explore and locate the industry's contribution towards sustainable development. The finalisation of the report in 2002 is widely regarded as a symbolic point in the history of the sector's engagement with broader debates about 'development'. Although it has been

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[2] In 2000, for example, The World Bank Group announced that it would conduct a comprehensive review of its activities in extractive industries in response to stakeholder concerns, primarily environmental and human rights organisations. The final report *Striking a Better Balance: The Extractive Industries Review* was released in 2004.

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subject to critique (*cf.* Corpuz and Kennedy, 2001), the MMSD process represented a collective 'opening up' of the industry to alternative thinking about mining and its contribution to development. The end result was a final report that sought to grapple with the industry's approach to 'impacts', rather than focusing only on a more traditional set of reputational 'issues'.

The recent commissioned series by the International Council on Mining and Metals (2012) on the industry's contribution to sustainable development highlights the significance of discourse and 'perspective' and their influence over corporate decision making. Putting social licence directly in the frame, the authors of the report argued that:

> "[…] the concept of a social licence to operate has been widely accepted by the industry as an essential attribute of success. It has prompted companies to look well beyond their self interest. However in practice, the social licence too, tends to be focused on more immediate decisions and actions. A contribution perspective would push the boundaries and open opportunities for greater stability over the longer term" (International Council on Mining and Metals, 2012: 5).

Given (i) the ongoing debate over the relative benefits and negative impacts of the sector and (ii) the corporate imperative to secure a 'social licence' in order to remain viable, a critical discussion about the function and value of 'social licence' is long overdue. With the exception of work that has sought to describe its 'character', 'components' and 'dimensions' (*cf.* Thomson and Boutilier, 2011), social licence as a concept has received scant attention in the scholarly literature (Corvellec, 2007). It is occasionally used by scholars as a frame to expose poor industry performance (*cf.* Browne et al., 2011) but in these instances the notion itself falls outside the scope of critique. The purpose of this article is therefore two-fold: firstly, it offers a critical examination of the term social licence and its usage by industry; and secondly it re-locates this critique in the context of wider debates about mining, sustainable development (SD) and corporate social responsibility (CSR). This second objective is addressed in the final section of the article, which calls for a more proactive industry stance towards these broader frameworks.

Industry usage and application

Over the past decade, the notion of 'social licence' has become embedded within core mining industry vernacular. It is invoked in CEOs speeches, to title sustainability reports and industry conferences on sustainable development, and has become deeply entrenched in corporate sustainability policies, standards and guidance notes, in addition to all manner of corporate literature.[3] While its use is widespread, the industry has approached the term uncritically in the sense that the utility of the concept remains essentially untested within the sector. Instead, the industry positions social licence as one of its greatest challenges. That mining companies make efforts to 'obtain', 'maintain', 'retain', 'renew' a social licence are all taken as given by the sector. Even in the face of doubt about the operational utility of the term on the ground, the industry continues to hold up the idea of a 'social licence' as a plausible and viable construct. Currently, there is an absence of alternative concepts, or an unwillingness to pursue alternatives that engage the tension between short-term profit maximisation and long term value for companies and local communities.
We argue that this proceeds from the industry's inherent (and limiting) risk orientation. Following Louche et al. (2010) in their edited volume *Innovative CSR*: *From Risk Management to Value Creation*, we assert that the mining industry's dominant risk management orientation limits its ability to formulate a collaborative long-term development agenda.

Notwithstanding extensive uptake by industry, not all companies use the term in the same way or give the term equivalent weight. For those tracking trends within the sector, a diversity of application and use is readily observable. On the one hand there are the 'true believers'—companies and industry actors that use the term to orientate thinking around stakeholder engagement, social investment and community development. Used in this manner, the term becomes an anchor point when trying to convince stakeholders that their expectations will be met. On the other hand, there are companies and industry organisations that appear to recognise limitations in the social licence construct, but continue to use it when referring to external expectations more generally. Some companies may be more restrained in their use of the term—perhaps reckoning with its limitations—but the point has not been reached where the industry at large readily acknowledges the concept's fundamental flaws. The intent of this paper is to make some of these flaws apparent to those within the industry that for various reasons, cannot, or at least has not yet, considered that such flaws might even exist.

Our principal objection to the term 'social licence' is its 'inflated' status and what its usage infers. Despite industry acknowledgement that a social licence is not materially available to companies in ways that are comparable to a regulatory licence for exploration or mining, industry usage rests on an assumption that a 'social licence' can indeed be granted by the communities or stakeholders their operations impact upon. In contrast, legally mandated instruments have specified conditions and obligations, which are monitored by a regulatory authority typically with power to revoke the licence should conditions not be met.[4] In the absence of any internally coherent definition of social licence by industry, what is consistent is the importance of gaining acceptance from stakeholders either in the form of explicit support or by way of lessening opposition. While we accept that the term aids in introducing industry professionals and decision-makers to the social dimensions of mining it can be argued that the because of the inherent complexities associated with the minerals sector, a far more nuanced approach is required beyond asserting that social dimensions are important.

In the absence of a meaningful industry definition, we seek to understand, more precisely, the relationship between social licence and what is inferred by companies when claiming one. On a close reading of this relationship a circular logic is made evident. This logic can be explained as consisting of the following four linked assumptions:

[3] A quick web-based search reveals that between 2007 and 2012, almost every corporate member of the International Council of Mining and Metals (ICMM), the Minerals Council of Australia (MCA), the Mining Association of Canada (MAC) and the Prospectors and Developers Association of Canada (PDAC) has used the term in one or more of these mediums. The International Standards Organisation (ISO) Guidance on Social Responsibility—ISO 26000—has been widely adopted by the mining industry. One of the key benefits of applying this standard is said to be an "enhanced reputation, greater public trust and a social licence to operate" (International Standards Organsiation, 2012). The term has also been used in publications produced by major 'think tanks' such as Business for Social Responsibility (BSR) (2003) and BSR with AccountAbility (2004), all of which the industry has used as key points of reference.

[4] The authors acknowledge that in many jurisdictions, authorities do not display the requisite capacity, skills, knowledge, resources or will to monitor permitting conditions. We also acknowledge that in some jurisdictions, even though authorities have the power to revoke legal licences, this rarely occurs. Notwithstanding the challenges of implementation, our point is that regulatory permits and legal licences are institutionalised instruments with a structural and procedural form.

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(i) use of the concept is itself an indication of the effort made by companies to either meet stakeholder expectations or to claim that they have adequately done so,
(ii) whether or not companies actually respond to stakeholder expectations in the manner most preferred by those stakeholders, companies continue to assert that their social licence is in place—marking either the effort itself or the result of that effort,
(iii) mining companies and their various stakeholders invariably have different expectations about what is necessary or desirable in terms of 'development',
(iv) the gap between what companies presume to hold by way of approval and what stakeholders increasingly require (or desire) of the sector serves to exacerbate the 'expectations gap'.

These assumptions reveal more than just a circular logic. What is evident is how social licence can be used to mask the gap between company and stakeholder expectations and, therefore, the ability of the sector to respond. While there is scope to suggest that social licence reflects an openness on the part of industry to identify this problem, the stronger and more pressing argument here is that social licence has been adopted by industry as the 'solution' to the expectation gap. Rather than concede the significance of this gap, companies have instead used the label 'social licence' to claim the reputational credits associated with being 'on top of it'. Read through the lens of a sector under continued 'threat' from external stakeholders, the industry's use of the term is interpreted here as an effort to disguise or silence opposition—an aim that is not aligned with the overarching principles of sustainable development.

The basic premise of 'social licence' in mining

Social licence is premised on the idea of informal or 'tacit' licensing that signals the presence or absence of a critical mass of public consent, which may range from reluctant acceptance to a relationship based on high levels of trust (Thomson and Boutilier, 2011; Boutilier, 2007; Joyce and Thomson, 2000). By definition, this licence is considered to be fundamentally intangible and informal, unless effort is made to measure, analyse or quantify its character (Thomson and Boutilier, 2011, Nelsen and Scoble, 2006; Nelsen, 2006). In a mining context, it has been suggested that social licence performance criteria might range, for example, from consumer boycotts through to an absence of project delays (Ali and O'Faircheallaigh, 2007). These potential measures suggest that a social licence is applicable at a range of societal levels—from the macro to the local. Contemporary use in mining links social licence to perceptions that locally-impacted communities hold about a company's activities and the impact those activities have on local culture, environment, economy and livelihoods. Applied in this way, social licence is underpinned by an understanding that local perceptions or responses can determine a company's ability to access land, water and other financial and human resources for the purposes of mineral exploration, extraction and processing and transfer to markets. In other words, the industry is responding to a direct causal relationship between stakeholder perceptions of the company and the perceived level of 'threat' posed by a host community.

Social licence and the social pillar

An appreciative read of 'social licence' is possible when it is understood as a tool and a rhetorical lever for situations that require a 'calling of attention' to social and community dimensions of mining, particularly where these aspects have been ignored or overlooked in the past. When confronted with a potential threat—or risk—to operations, the business case for engaging stakeholder expectation is easier to assert. Levered by establishing a direct connection to business risk, the concept serves to force social issues onto the industry agenda. Through this simple transactional proposition where the industry reaps a direct business benefit for prioritising social issues, the emphasis appears to swing from 'business as usual' to 'responsibility to community'. In reality this simply reflects the circular logic of the social licence construct, which starts and then ends with the business case.

Within this context, it is therefore important to consider the utility of social licence from a sustainable development perspective. Conceptually and linguistically, social licence engages with the 'social', emphasising a field of enquiry in which human relationships and development aspirations are of interest. Indeed, the concept itself appears to indicate that social dimensions are the ultimate priority. This is important given the historical weakness of sustainable development's social pillar and ongoing calls for improved industry performance in line with this agenda. Notably though, invoking the word 'social' does not result in a clearer basis for community engagement. It does not articulate, for example, a local-level focus despite the fact that mining companies and operations associate social licence—first and foremost—with local community perceptions.

The extent to which social licence reflects a bias towards aggregate or local social issues has yet to be established. A more 'localised' interpretation of social licence by industry would appear to engage the subsidiarity principle, which lies at the heart of sustainable development (Brundtland, 1987). This principle requires that decisions about development be made as close to those affected as possible. As such, it is not considered 'responsible' for mineral developers to exclude local communities, allowing 'society at large' or the State to control development decisions without considering those who live locally, or who experience the greatest impact. Social licence does not resolve this issue—in fact it leaves open the possibility that 'society at large' can grant the licence, at the expense of local perspectives. For those within industry who may not be attuned to the nuances of the social domain, retaining this 'option' holds practical appeal.

What can also look appealing is that social licence symbolises an adherence to an 'unspoken' contract, which is at once consistent with both legal and extra-legal requirements. As an 'optional' construct that appears to mimic other legal instruments, social licence becomes useful for extending the mining industry's focus from the technical, production and financial imperatives of mining to also include social and community considerations—particularly the concept of 'risk' (Joyce and Thomson, 2000). 'Social risk', which relates to the risk that specific operations pose to local communities (Kemp, 2010), may be encompassed within social licence, but typically only where those risks have a 're-bound' effect on the business, such as through social outrage and consequential reputational or financial damage (Gunningham et al., 2004). Even through an appreciative read, social licence remains a pragmatic calculation of what is required to minimise business risk and win the degree of community support required to avoid delay or disruption to company operations (Humphreys, 2000; Hamann, 2007; Ali and O'Faircheallaigh, 2007).

Social licence, governance and community consent

In the context of industry pragmatism, this section presents a critique by arguing that social licence itself is not only unworkable, but its usage by industry can result in perverse development outcomes. To begin with, the value of social licence to the broader

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sustainable development agenda is limited because of the industry's deep attachment to business risk. When social licence is viewed as a framework premised on business 'risk', 'returns' and 'reputation', sustainable development can fade into the background. As a concept, it signifies what the industry needs in order to pursue its agenda of land access for resource extraction. At best it provides a partial basis for integrating, explicating and challenging the core assumptions of a company-centric approach to development as it does not shift the paradigm to one of understanding the 'other'; instead, it rests squarely within the paradigm of the corporate 'self'. This approach weakens the ability of companies to engage with external concerns, despite the concept being originally devised to minimise impending external threats to the sector.

When communities voice or act out resistance to projects, those concerns are taken as indicators that a social licence is under threat of breach or withdrawal. Many non-government organisations (NGOs) strategically invoke the term this way when highlighting lack of community support (*cf.* Earthworks, and America Oxfam, 2010). Even when used by NGOs as a call to public attention about poor industry practice, all that social licence offers is a crude form of 'negative governance'. That is, it is easier to point to an absence of particular factors that could be considered necessary for a social licence rather than to know when all relevant factors are actively in place.[5] By contrast, the absence of explicit forms of contestation can be interpreted as latent support insofar as communities have not offered any explicit point of objection that challenges the legitimacy of the so called 'social licence'. We refer to this indicator as 'minimal community resistance'. This is at odds with research in the social sciences highlighting the importance of understanding 'what sits beneath the surface' (Owen, 2006). In some instances, a lack of overt conflict may be the result of community actors disengaging from the project. Alternatively, the absence of conflict may be the feature of a hiatus period in which communities essentially 're-group' until a more opportune moment to voice opposition arises. Resistance may be even less clear where forms of opposition are less tangible or familiar to foreign mining personnel, who may not be *au fait* with the nuances of a specific cultural or political context, such as when resistance is manifest through a politics of withdrawal or silence.

Negative governance can often fail to account for the nuances of oppositional thinking and practice in cross-cultural settings. These factors are fundamental to the idea of protest being one of the most powerful levers that communities can invoke to hold companies accountable for their 'social licence'. Cultural approaches to expressing disagreement or disapproval are as vast as the contexts in which mining companies operate. Scott's (1985) *Weapons of the Weak* on everyday resistance indicates that community-level objections can often take subtle forms which may be unrecognisable to outsiders. Not all cultural contexts support the overt expression of disagreement and dissent, and indeed, in some political contexts, the State explicitly prohibits it. In contexts such as these, overt expression of opposition could place 'opposers' and their families at great risk. There is the risk of backlash from pro-development actors, often including the State and its security force, or groups within communities who may exercise power to silence unpopular points of view. In this context, the idea that community support can be gauged by an absence of objection fails to reckon with the complexity associated with identifying a reliable account of a community's "internal threshold" (Rule, 1988: 240). Minimal community resistance is a poor positive measure of social licence because it conflates 'available' evidence about support with 'actual' levels of support. Such an understanding can only be generated through deep knowledge about local culture, contexts, power dynamics and a sophisticated approach to engaging the diversity that exists within communities (Agrawal and Gibson, 1999), not an aggregate perspective on 'the social' and a single licence to operate.[6]

Minimal community resistance is distinct from what Levi (1997: 8) calls "contingent consent", which suggests that communities may be willing to accept negative social impacts on the basis that these are outweighed by positive consequences. This argument is quite possibly the most widely implied by industry and users of the social licence to operate concept—namely that the net social benefits outweigh the harms, and for as long as the balance is such, society at large will support the project. United Nations (UN) (2011) endorsed Guiding Principles on Business and Human Rights recognise that the impacts of industrial development are usually distributed unevenly and that attempts to 'balance out' benefits and harms is unacceptable. The UN Special Representative on this topic states that "companies cannot compensate for human rights harm by doing good deeds elsewhere" (Ruggie, 2008: 17). On the issue of human rights, it is now broadly accepted that corporate philanthropy does not relieve a company of its human rights responsibilities. Putting aside technicalities embedded within global norms, a social licence under Levi's construct would remain contingent on agreed and understood benefits being readily available and obvious to society more generally. Underneath any surface-level consensus implied through social licence sits a broad-based prospectus for disapproval and disagreement. Interpreting tacit consensus as 'social licence' can inadvertently lead companies to miscalculate the contingencies upon which points of agreement are made and underestimate their overall or relative importance to particular groups.

It is possible for local communities to question the existence of a social licence by expressing dissatisfaction through 'negative governance'. However, it is not always possible to refuse or revoke a social licence in practice, even when it has been called into doubt, such as when community grievances become systemic and reveal a deep sense of dissatisfaction. While there are examples of projects that 'fail to launch' or are delayed due to strong community opposition, once a project is underway, it is often harder to shut it down (Bastida, et al., 2005; Hintjens, 2000; Slack, 2009). Companies can and do operate even when their social licence has been called into question on a global scale; including in situations of complicity in egregious human rights abuses.[7] Even where a social licence is 'contingent', its implicit nature often prohibits 'social regulators' from identifying exact points of strain in the licence conditions. Without explicitly agreed parameters qualifying who is party to upholding the licence and what the conditions are, it is impossible to determine when companies have or have not satisfied the requirements of the so called 'social licence'. Those who protest can even be accused of campaigning on matters that fall outside the parameters of the licence, either by the pro-development majority, supportive regulators, or other stakeholders whose interests are

[5] We recognise that Thompson and Boutilier (2011) have attempted to address this point in their own framework. However, their work takes as its point of departure the role of social license in the permitting process, rather than the utility of the term against a broader development agenda.

[6] Companies routinely establish a deep understanding of local ecologies in order to 'measure their environmental impacts', but many see investment in a deep understanding of the local culture as both costly and optional. This behaviour is largely a result of regulatory imperatives. While there are moves towards regulating social aspects of mining, requirements for integrating social knowledge lags behind other discipline areas.

[7] For examples of cases highlighting the ongoing contestation over mining and human rights see the numerous mining-related case studies featured on the Business and Human Rights Resource Centre at ⟨www.business-humanrights.org/⟩.

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inextricably linked to mining. This raises the perpetually difficult question of how and where the boundaries of CSR obligations are to be established (Banks, 2006; Rajak, 2010).

Given its practical appeal as an inclusive construct that encourages broad-based community support, it is clear that the idea of the social licence is designed to privilege the 'majority' perspective. However, a key problem is that diverse stakeholder groups are easily homogenised under the rubric of 'social' or the concept of 'community' (Agrawal and Gibson, 1999). Ensuring that alternative and marginalised voices have an opportunity to meaningfully participate in development decisions speaks to the principle of inclusion, which is essential to any sustainable development and poverty alleviation agenda (Blair, 2000; Craig and Porter, 2006; Grindle, 2004). There are examples where marginalised, disempowered and otherwise excluded groups have ground mining activities to a halt through opposition to the inequities of mining. This has occurred in situations where a 'broad social consensus' was otherwise thought to have been secured. While the term 'social' appears to be inclusive, often times it inadvertently occludes a focus on diversity and difference of opinion, experience and impact, simply by aggregating diverse voices into the one combined permitting instrument.

Social licence implies a reliance on mainstream CSR principles, including the concept of 'accountability'; a process whereby companies 'account' to stakeholders for their performance across a range of sustainability dimensions (Global Reporting Initiative, 2006). Equal access to reliable information is a key enabling factor for the establishment of a robust accountability framework (Kemp et al., 2010). Access is conditional on both availability of information and capacity of recipients to identify substantive content and understand its implications. Without the requisite knowledge, skills and resources, poorer and marginalised groups can be excluded from meaningful participation in development decisions (Newell, 2005). Without a focus on equal access to information, social licencing can overlook established patterns of exclusion and even serve to reinforce them. These challenges are exacerbated in different mining contexts, but few more so than in contexts of conflict, corruption, poverty and cumulative impacts, the latter of which reflects the compounding spatial and temporal effects of industrial activity (Franks et al., 2012). Social licence tends not to engage the complexities of context, effectively leaving key development dilemmas unaccounted for.

Finally, responsible mining requires that a balance be struck between the rights of corporate entities and the human rights of individuals and groups affected by mining activities (*cf*. Macintyre, 2007). From a procedural perspective, companies can invoke their right to obtain a licence simply by stating a desire for one. In fact the rhetoric is often grounded in a language of 'strengthening' and 'maintaining' a social licence, which rests on the assumption that a social licence—even a tenuous one—has been established. There is no civil society equivalent. Communities can insist on a right to free prior and informed consent (FPIC), but this concept tends to be associated with a one-time decision prior to development (Thomson and Boutilier, 2011). Other than when it is legally mandated the industry has resisted FPIC on principle, citing methodological challenges of representation and governance (International Council on Mining and Metals, 2010). Ironically it is those very same challenges that exist under a social licence. Outside of defined legal obligations, when communities claim FPIC as condition for a social licence, it is not always agreed to by companies. This pattern supports claims that corporate willingness to share power and enable community participation in development decisions remains "in short supply" (Hamann, 2007: 26).

It has been acknowledged in the sections above that 'social licence' has some benefits in giving profile to the 'social' dimensions of mining practice. This is significant in a sector whereby such dimensions are difficult to interpret or justifiably prioritise in a business case environment. The term can also be taken as drawing attention to the importance of 'relationships' outside of 'permitting', namely that companies need to recognise and engage with expectations held by a broader suite of stakeholders. Despite these important base-level benefits, we have argued that social licence is, on balance, counter-productive to the sustainable development agenda. The arguments against the social licence can be summarised as follows. While social licence draws attention to the human domain, in practice it devalues these relational responsibilities. Perceptions are positioned as primary and actual development contributions or outcomes secondary. As an aggregate concept founded on the notion of 'broad consensus', the frame of social licence does not seek to balance dominant and dissenting voices, other than where marginal stakeholders employ powerful resistance strategies. What is contained within the social licence is poorly defined by industry. The parameters, substance and governance aspects of the terms are rarely, if ever, elaborated by proponents. Additionally, the underlying assumptions or philosophic orientation have not, and most likely cannot, be established. On this basis, without explicit conditions, recognition of reciprocal rights or a clear requirement for a comprehensive evidence base that engages with the many development dilemmas that the industry currently faces, it is argued the social licence construct runs counter to a sustainable development agenda.

Community agreements and tacit social acceptance

From a governance perspective, the tacit and amorphous nature of a social licence is a key constraint. The pressure to define conditions and contingencies for consent is reflected in moves towards agreement-making in mining. There is now a significant literature emerging on this topic (*cf*. Nish and Bice, 2012; Crooke et al., 2006; Altman and Martin, 2009; O'Faircheallaigh, 2003, 2004, 2008; Fidler and Hitch, 2007; Harvey and Nish, 2005; Langton and Palmer, 2003). Agreements have the potential to address concerns relating to recognition of rights and the distribution of development outcomes, through compensation arrangements and efforts to localise economic benefits. There is an increasing trend towards community development agreements (CDAs) or Indigenous land use agreements (ILUAS) in mining as a formal and often legally sanctioned means for registering and securing stakeholder support for particular projects. While agreements provide a tangible basis for community engagement and benefit sharing with local communities, fulfilment of agreement conditions does not always guarantee what the industry regards as a 'social licence'. Issues may arise, for example, that fall outside an agreement that cause angst, anger and concern to parties to the agreement. It is the organisation's response to these additional issues that also determine whether or not their apparent 'social licence' is maintained. Conversely, breaches of agreement conditions may not necessarily diminish the so-called 'social licence' if a company responds appropriately. For instance, if a company inadvertently damages cultural heritage but responds by way of immediate and respectful notification to elders, accepts fault and provides an apology, compensation or other acceptable measures in alignment with the terms codified in the agreement.

While agreements are imperfect devices for ensuring compliance on agreed courses of action, they nonetheless do articulate a set of expectations held by stakeholders. An obvious challenge in this respect is the extent to which participating stakeholders can be understood as being 'representative' of the larger social unit. The issue of social inclusion sits at the forefront of criticism over agreement-making, with each agreement requiring proponents to identify and enter into dialogue with 'qualified communities' (O'Faircheallaigh, 2007; Smith and Finlayson, 1997). Though it is not accepted or explicit practice, the process of identification also categorises communities as 'unqualified' by virtue of their exclusion. As a limitation, however, it does not undermine the fact that parties have arrived, albeit through less than ideal process, at a mutually negotiated document explicating obligations and commitments. Increasingly agreements include terms of reference which specify how the parties will engage with one another over the life of the agreement. Nevertheless, there are few guarantees that process principles are applied in practice as agreements rarely address structural and other power imbalances that exist between parties (Altman and Martin, 2009; Langton, 2006; O'Faircheallaigh, 2010).

The nature of agreements also tends to 'compartmentalise' through the demarcation of boundaries between peoples, localities and regions. For land-connected peoples, these boundaries are significant from identity, livelihood and cultural perspectives. They are also unavoidable in the context of securing land access for the purpose of mining. However, the implications for benefit sharing and 'development' are broader than parcels of land and particular groups. The compartmentalisation that occurs through agreements can reduce incentives for establishing linkages between parties to the agreement and other development actors, in turn inhibiting an integrated and holistic approach to development. One fundamental challenge for researchers, policy makers and practitioners in understanding the effect of compartmentalisation on development outcomes is the paucity of data that relates to mining-led development and poverty alleviation (*cf.* Langton and Mazel, 2008). The absence of development-related performance data runs much deeper than agreement making; it reflects a systemic lack of knowledge about the industry's local and regional development impact. This knowledge gap is not addressed by applying the social licence construct where the primary focus is 'perceptions' about the operation, rather than actual development contribution and outcomes for local and regional development.

Conclusion—beyond risk and return

Sitting at the heart of the MMSD report's usage of social licence is a recognition of the inherent value and risks associated with stakeholder expectations. In this landmark report, the failure to adequately reckon with societal expectations is presented as a fundamental and formidable threat to the continued viability of the mining industry. The potential for this to derail a powerful and profitable industry remains a constant, albeit latent, fear in the collective corporate psyche. Throughout this article we have argued that social licence has not progressed the sector's thinking in relation to expectations for development. If companies were successfully responding to the aspirations and concerns of stakeholders in the manner implied by the social licence, one might conclude that the industry's fears over expectations were unwarranted and or misplaced. However, as our analysis has revealed, the contemporary application of social licence is more about reducing overt opposition to industry than it is about engagement for long-term development.

Engaging expectations holds significance beyond addressing corporate fear or minimising threats of opposition. The point of significance resides in understanding where company motives differ from communities' and why the barriers associated with reconciling this difference remain firmly in place. Mining company decision-making is motivated by profit maximisation and control of risk. The sheer dominance of the risk paradigm exacerbates fears that engaging expectations only increases them, which in turn increases the risk of exceeding what is reasonable or indeed possible for a mining company to 'manage'. This drives what can only be considered to be corporate 'avoidance behaviour', where comprehensive and sustained dialogue about community expectations is avoided in order to minimise the risk of expectation spiralling out of control. Another barrier to engagement relates to disruption of the status quo, whereby companies hold the greater share of power over resource development decisions. The status quo sees business case arguments drive the development agenda. If a company cannot be convinced of the business case, it is unlikely to invest the time and resources required to engage community expectations effectively. Business case arguments in mining are notoriously short term and production orientated. The business case for project start-up for example, rarely accounts for a company's 'development legacy' at closure (*cf.* Gerritsen and Macintyre, 1991).

Nothing short of a move away from social licence at the project level is required to pave the way for a more proactive stance towards sustainable development. Such a move would require companies to listen and respond to what a community 'expects', including the poorest and most marginalised. A community-orientated, context-sensitive stance prompts broad-based collaborative dialogue about local and regional priorities in a way that does not take the politics of permitting as its starting point. There will naturally be those who remain in complete opposition to mining, but it is worth noting that the industry is experiencing higher levels of engagement with non-industry actors than ever before, at least at the global level. It is important that inclusive dialogue is generated at the project level to ensure that transactional social licencing is transformed and transcended.

While we have provided a strong case against the industry's usage of 'social licence' as a response to its relational and developmental challenges, the intention behind this critique is to reinvigorate discussion and debate over how best to frame the industry's development obligations and how these obligations can be met by the sector. Where social licence has contributed to raising the profile of social issues within a predominantly industrial discourse, a primary failure is its inability to articulate a collaborative developmental agenda for the sector. A necessary step in this process is for industry to reconcile its internal risk-orientation with external expectations and this requires a less defensive and more constructive approach to engagement and collaboration.

What is clear is that social licence has not forged a clear path forward in defining or progressing a clear development agenda. Our critique applies to both the social licence discourse—and its lack of engagement with this issue—and the industry's use and application of social licence in framing its response to its sustainable development and CSR obligations. Whether readers interpret this critique as calling for a new social terminology for the minerals sector or as highlighting the disconnect between current thinking and stakeholder expectations, a proactive and critical re-thinking of 'social licence' is overdue. Read from either perspective, industry continues to operate without a genuinely collaborative and long-term development agenda to orientate its practice. The forward challenge for the industry is to articulate an agenda which balances its own commercial needs with broader expectations about contribution to development. This involves looking beyond the business case as the only legitimate basis for decision making. It is only then that the challenges so clearly outlined in the MMSD can be progressed by the sector at large.

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