



HUMAN RIGHTS IMPACT ASSESSMENT OF SQM AGAINST THE RIGHTS OF THE LICKANANTAY INDIGENOUS PEOPLE

José Aylwin
Marcel Didier
Oriana Mora



HUMAN RIGHTS IMPACT ASSESSMENT OF SQM AGAINST THE RIGHTS OF THE LICKANANTAY INDIGENOUS PEOPLE

EXECUTIVE SUMMARY

José Aylwin

Marcel Didier

Oriana Mora

December 2021

ENGLISH VERSION

© OBSERVATORIO CIUDADANO

December 2021

ISBN:

Human rights impact assessment of SQM against
the rights of the Lickanantay Indigenous People.

Authors:

José Aylwin, Marcel Didier and Oriana Mora

Cover photo:

Marcel Didier

Translated by:

Camila Ramírez and Mabel Cobos



INTRODUCTION

This executive summary comprises the main findings of the **Report on Human Rights Impact Assessment of SQM against the Rights of the Lickanantay Indigenous People**, whose goal was identifying and assessing the impacts of the SQM company has generated in the human rights of the Lickanantay or Atacameño people that inhabits the current Loa Province, in the Antofagasta Region, Chile. This, as a consequence of the lithium and derived products mining and processing that this company develops in the Atacama Salt Flat, territory owned and traditionally occupied and used by this indigenous people.

This document was prepared by the Globalization and Human Rights Program of the Observatorio Ciudadano, an NGO that has documented the human rights violations in the country and particularly indigenous peoples violations. Also, it had the support of the Consejo de Pueblos Atacameños - CPA (Council of Atacameño People), organization that gathers the Lickanantay communities from Atacama la Alta, where the Atacama Salt Flat is located, as well as the involvement of the Salt Flat communities, part of this people.

The community-based Human Rights Impact Assessment (HRIA) created by OXFAM and the International Federation for Human Rights (FIDH) was used as a methodological reference. Also, documentary and virtual references related to the Lickanantay people, the non-metallic mining projects of SQM in the Atacama Salt Flat, as well as those contained in the national and international legal framework applicable to companies and the rights of indigenous peoples, were reviewed. Moreover, diverse interviews to Lickanantay representatives and SQM and CORFO (The Chilean Economic Development Agency) executives were conducted.

This HRIA is based on the multiple complaints made by both CPA and the communities living in the Atacama Salt Flat basin with regard to SQM's serious violations of the rights that have been recognized for indigenous peoples under national and international law. Likewise, the serious questioning and irregularities in which the top managers of this company were involved and the growing global demand for lithium and its derived products which will certainly put great pressure on the Atacama Salt Flat where the production of this non-metallic mineral in Chile, were also key motivations for this research.

Finally, we hope this report provides information on the human rights impacts that the lithium projects here analyzed have had on the rights of the Lickanantay people. And we hope it contributes to amending its severe consequences and preventing them in the future. Moreover, we wish the Lickanantay people use this document as a tool for more recognition and protection for their rights and territory.

1. THE LICKANANTAY OR ATACAMEÑO PEOPLE

1.1 Background information on the Lickanantay people

The Lickanantay people that in its own language *ckunza* means “gente del pueblo o los habitantes del territorio (people’s folk or inhabitants of the territory)” (Shuller, 1907) is one of the ten indigenous peoples recognized by Law 19.253 (Indigenous Act). Various studies confirm that this indigenous people have inhabited the Atacama Salt Flat basin for at least 10,000 years. This has been proven through archeological finds and documentary records that reflect the antiquity of their settlement and its continuity with the processes of the Spanish conquest and colonization up to the present day.

Nowadays, the Lickanantay territory is divided in “Atacama La Alta” whose center is San Pedro de Atacama, and “Atacama La Baja” whose center is San Francisco de Chiu Chiu, both located in the San Pedro de Atacama commune. It also includes the city of Calama which acted as a supply center for the saltpeter mining throughout the Atacama desert. The communities that inhabit the Loa River basin are Conchi Viejo, Taira, Lasana, Chiu Chiu, Toconce, Caspana, Cupo, Ayquina. Whereas the communities in the Atacama Salt Flat basin include Río Grande, Machuca, Catarpe, Quitar, San Pedro de Atacama, Sequitor, Larache, Yaye, Solor, Coyo, Cucuter, Tulor, Toconao, Talabre, Camar, Socaire and Peine.

With regard to the organizational process of this people, and based on Act 19,253, in 1994 the CPA was registered with the CONADI (Corporación Nacional de Desarrollo Indígena, National Corporation for Indigenous Development) created by this body together with some Lickanantay communities. The CPA had been created in 1992 as a de facto organization with the aim of uniting the neighbourhood associations existing in the Atacama Salt Flat basin and in the Loa River basin, in the face of common demands, considering that the State did not recognize any other type of organization or groups of indigenous communities (Morales, 2014). Thus, the CPA began to gain relevance and was validated as a representative institution of the Lickanantay people before public and private institutions. It is also the current political reference of the communities of Atacama la Alta and a validated interlocutor to establish relations of all kinds with the different Atacameño communities that compose it. It is the main entity of cultural vindication and advocacy of the Lickanantay territory as well.

It is important to highlight that after functioning for more than 17 years as an organization that initially unified the Lickanantay people and that organized a strong defense of the territory against the threat of large extractive projects such as the Pampa Colorada mining project and the Tatio thermoelectric generation project, in mid-October 2009 the communities of Alto Loa decided to distance themselves from the CPA, leaving the organization as a representative body only for the communities of the Atacama Salt Flat basin, creating in parallel the Consejo de Pueblos del Alto Loa (Council of Peoples of Alto Loa).

1.2 Applicable regulatory framework

Like other indigenous peoples in the country, the Atacameño people, with a population of 30,369 people as of 2017 (INE, 2017) is not recognised in the Political Constitution of the Republic (PCR). Nonetheless, this people and their rights are partly recognized by the Act 19253 of 1993, on the Protection, Promotion and Development of Indigenous Peoples, in addition to the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169) ratified by the Chilean State in 2008 -which came into full force in September 2009- the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007, and the American Declaration on the Rights of Indigenous Peoples (ADRIP) of 2016, instruments to which Chile has adhered.

Unfortunately, since the ratification of the ILO Convention No. 169, governments across the political spectrum to date have not complied with their guidelines, restricting its application to domestic regulations. This is the case of the right to consultation to indigenous peoples. After an early and restrictive interpretation and a subsequent jurisprudence of the courts that accepted its specificity, differentiating it from other systems of citizen participation, it was regulated through Supreme Decree No. 40 of 2013, of the Ministry of Environment that approved the regulations of the Environmental Impact Assessment System (S.D. No. 40/2013) and the Supreme Decree No. 66 of 2014 of the Ministry of Social Development on the Indigenous Consultation (S.D. No. 66/2014).

The S.D. No. 40/2013 regulates the right of indigenous peoples to be consulted during the environmental assessment of the investment projects likely to affect them directly. In addition to not have been subject to a prior consultation process with indigenous peoples in accordance with the standard of the ILO Convention No. 169, its article 85 provides that the susceptibility to direct affectation occurs when the project generates any “significant impact” and, also, “directly affects one or more human groups belonging to indigenous peoples.” This regulation, together with establishing requirements not comprehended by the ILO Convention No. 169, determines that the vast majority of projects that enter the Servicio de Evaluación de Impacto Ambiental - SEIA (Environmental Impact Assessment Service) do not pass through an indigenous consultation process, being assessed through a Declaración de Impacto Ambiental - DIA (Environmental Impact Declaration)¹

1.3 Public Policy

1.3.1. Lands and Territory

After the approval of the Indigenous Act, the State promoted a process of identifying the lands that were demanded by the lickanantay with active involvement of the communities. In accordance with the report requested by CONADI, carried out between 1997 and 1998, taking into account the categories of lands included in the law, the territorial ownerships of each Atacameño community were

¹ Report on the projects submitted to the SEIA with the indigenous consultation process, available on the website of the Environmental Assessment Service: [www. https://www.sea.gob.cl/](https://www.sea.gob.cl/).

delimited, which resulted in an area of 2,342,442.9 hectares (Datura Consultant, 1998). This figure considered a total of 276 thousand hectares that, throughout the 20th century, and through different modalities, had already been recognized as property of Lickanantay families and communities.²

Since then, CONADI along with the Ministry of National Assets promoted a process of remediation of the Atacameño property established in the specific provisions of the Indigenous Act for Andean peoples. However, this was based on a total of 905,000 hectares that were in fact occupied by the 19 Atacameño communities in 1998. That year the lickanantay land registry was carried out (CONADI, 2020) without acknowledging the widest complaint of the Atacameño people for the recognition of their land of traditional occupation.

1.3.2. Water

As it was mentioned before, after the enforcement of law 19253 of 1993, the State started a process of regularization and remediation of lands and territories of ancestral use and occupation. This also included a special plan for water, in the previously highlighted regulations. Particularly the article/section 64 of the Indigenous Act and the transitory article/section 3 of the same legal body, specifically its section 2º, establish the joint work that CONADI and the Dirección General de Aguas - DGA (General Directorate of Water) must carry out by means of an agreement in order to protect, constitute and re-establish the water rights of ancestral property of Aymara and Atacameño communities.

It is relevant to highlight the importance this natural resource represents for the Lickanantay people, and in general for the northern indigenous peoples and communities located in desert and arid territories where its availability is very limited. CONADI (2008) has identified that these peoples have used water mainly in two different but complementary ways: irrigation and pastoralism, traditional costumes of the Lickanantay people.

1.3.3. Areas of Indigenous Development

Based on article 26 of Act No. 19,253, which provides that the State can declare Áreas de Desarrollo Indígena - ADI (Indigenous Development Areas) in ancestral indigenous territorial spaces, where there is a high density of indigenous population, ecological homogeneity and dependence on natural resources for their balance; and with the aim of focusing the State administration agencies on the benefit of the development of the indigenous peoples and their communities, the Ministry of Planning and Cooperation (as a result of a CONADI proposal) created in 1997 (Decree No. 70 of March 10, 1997) the ADI Atacama La Grande in the commune of San Pedro de Atacama, in El Loa Province, with an area of 2,369,800.35 hectares. Later, in 2003, the Ministry created the ADI Alto El Loa (Decree No. 189 of October 8, 2003) in the communes of Calama, San Pedro de Atacama and Ollagüe, in the same Province, with an area of 1,271,628, 09 hectares.

It is important to mention that there are conflicting views among the participating actors in the case of the ADI Atacama La Grande. While for state actors—such as regional mayors—this is a way to link the territory to regional development strategies, whose main hallmark is investment and mining development; for the Atacameño representatives, it was a way to not only address development problems but also their demands for territorial regularization and for the protection of water (Avendaño, 2009; Lemus, 2017). The absence of resolution of these demands, and the persistence of conflicts with the Lickanantay communities generated by the mining development strategies promoted to date by the State in the territory, show the limits of the ADI as a co-management space to address these conflicts and identify development or life strategies that are agreed upon between this people and the State.

2. THE DEVELOPMENT OF THE LITHIUM INDUSTRY IN CHILE

2.1 . General Background

The development of the lithium industry in Chile dates back to 1962, when the American company Anaconda, in charge of the exploitation of the Chuquicamata copper mine, discovered high concentrations of this non-metallic mineral in the brines of the Atacama Salt Flat. In 1969, the Instituto de Investigaciones Geológicas - IIG (Geological Research Institute) conducted a geological survey in the Atacama Salt Flat, revealing its economic potential given the presence of brines rich not only in lithium, but also in potassium, magnesium and boron.

The first stage of lithium development began in 1970, when CORFO, through INCONOR (Instituto CORFO del Norte, Northern CORFO Institute), launched a prospecting program to verify the economic potential of the existing brines through trial pits and deep drilling. Later in 1975, CORFO and Foote Mineral Company, one of the largest lithium producing companies in the United States, signed an agreement for the development of exploration studies in the Atacama Salt Flat. In accordance with the terms of the agreement, CORFO requested and obtained in 1977, 59,280 mineral rights in the Atacama Salt Flat, called OMA. Today, CORFO maintains 32,768 mining rights after renouncing a number of them.

A second stage in the development of lithium took place between 1987 and 1995, characterized by the withdrawal of the State from the partnership projects for the exploitation of lithium and the delegation of the responsibility for the exploration and exploitation investments to private companies. During this period, the State also steps out of the leading role it had in supervision and control until then.

In 1993, the Sociedad Minera y Química de Chile (SQM), a recently privatized Chilean company (whose origin will be discussed later in this HRIA), acquired 75% of the shares of Amax and Molymet in MINSAL. Therefore, it turned into a partner of CORFO, which held the remaining 25% of the stake of the project at that moment. The purchase established an increase in the term for exploitation operations until 2030. It also extended the mining rights leased by CORFO to 16,384. In turn, CORFO agreed not to exploit the 11,670 its remaining mineral rights in the Atacama Salt Flat (140,000 hectares) that it had left.

A new stage began in 2005, lithium production in the Atacama Salt Flat was strengthened and, at the same time, new business actors joined. That year SQM started the production of lithium hydroxide in the Del Carmen Salt Flat with a capacity of 6,000 tons per day. In 2008 it expanded its lithium carbonate plant from 30,000 to 48,000 tons per year; simultaneously, it requested the expansion of the Equivalent Metallic Lithium (LME) production quota from 180,001 to 1,000,000 tons per year before the Comisión Chilena de Energía Nuclear - CCHEN (Chilean Nuclear Energy Commission), a request that was rejected.

In 2009, the American company Rockwood (formerly Foote Mineral, today Albemarle)³, emerged as a major actor in the extraction and production of lithium salts, presenting an Environmental Impact Study (EIA, in Spanish) to obtain an Environmental Qualification Resolution (RCA, in Spanish) in order to carry out an alteration project on the evaporation systems of the ponds in the Atacama Salt Flat.

In 2012, the Ministry of Mining called for international tenders for the exploration, exploitation and benefit of Lithium Deposits (CEOL, in Spanish) of up to 100,000 tons of lithium for 20 years in any area of the national territory. The same year, this Ministry decided to declare the invalidity of the tender, since SQM had presented a superior offer to its contenders, such as Minera Li Energy, a member of Posco Consortium (Posco, Mitsui, Daewoo International Corporation and Minera Li Energy), which also was in litigation with the Treasury, a matter that the tender conditions did not allow.

Meanwhile, in 2014 the Bachelet administration created the Comisión Nacional del Litio, Comisión or CNL (National Lithium Commission), an entity made up of 18 experts from the public and private sectors and chaired by the Minister of Mining in charge of reviewing and proposing a national lithium policy. This Commission recommended reviewing the current contracts with SQM and Rockwood (Albemarle), not renewing them and giving a leading role to the State, including being a partner in current operations through their state-owned companies. Moreover, the Commission confirmed the fragility of the Salt Flats' ecosystems and recommended the creation of a special institutional framework for their governance, recognizing the right of the communities to receive benefits and to be adequately compensated for the externalities that the projects may generate.

2.2 Regulatory Framework for Lithium in Chile

Regarding the legal framework of lithium in Chile, the rules that will govern the exploration and exploitation of lithium in Chile depend on the date on which the mining rights were registered, before or after 1979, year in which this non-metallic mineral is declared as non-concessible, which means that it is not subject to a mining concession. Thus, the mineral rights registered before that year are subject to a concession and can be exploited either by public or private entities, which requires the CCHEN to authorize the concession and an extraction quota. Furthermore, if the project associated with exploring or extracting lithium started after 1997, an EIA approved by the SEA is required (OLCA, 2019)⁴.

On the other hand, lithium rights registered after 1979, are subject to different regulations since they are not subject to concession; thus, the right to exploit lithium can only be granted to state companies, by administrative concessions or by special contracts of operation, that in the case of lithium are called CEOL. Likewise, the authorization of the CCHEN and an approved EIA by the SEA are required, which would eventually also include a process of indigenous consultation.

³ Foote Mineral Company's operations in the development of lithium in Chile date back to 1981, when Corfo partnered with this company to form the Chilean Lithium Society (SCL) and promoted the technology for the production of lithium carbonate from brine in the Antofagasta Region (Atacama Salt Flat). In 2012, SCL, then 100% private, was renamed Rockwood Lithium, and was subsequently acquired in 2015 by Albemarle Corporation, currently present in the Salt Flat. See: <http://www.albemarlelitio.cl/news/los-pasos-de-albemarle-en-chile>

⁴ Among the lands subject to this system of mineral rights, prior to 1979, are those that belong to CORFO in the Atacama Salt Flat, currently exploited by SQM and Albemarle. On the other hand, CODELCO owns properties in the Maricunga and Pedernales Salt Flats, and ENAMI in the de Aguilar, Infieles and Cototos Salt Flats, all in the Antofagasta Region.

3. CURRENT CONTEXT OF SQM OPERATIONS

3.1 General Background

The SQM company has a precedent in the Sociedad Química y Minera de Chile - Soquimich (Chemical and Mining Society of Chile) created in 1968 as a mixed mining company between the private sector and the State of Chile (Compañía Salitrera Anglo-Lautaro 62.5% and CORFO 37.5%) with the interest of reorganizing the Chilean nitrate industry, raw material for the production of fertilizers, explosives and iodine. Then, this company held the deposits and assets of the Anglo-Lautaro Saltpeter Company and the Victoria Saltpeter Company of CORFO. Later, in 1971, this industry was nationalized and was left entirely in the hands of the State of Chile, which held the monopoly in the exploitation and commercialization of saltpeter.

In 1981, the Mining Code granted both CORFO and SQM six months of exclusivity to bring petitions for concessions to exploit the mineral. As a result, SQM concentrated more than 93 thousand hectares of land with the best iodine and saltpeter deposits, including the Pedro de Valdivia and María Elena deposits. Subsequently, through a process started in 1983 that culminated in 1987, during the military dictatorship, SQM was privatized (Poveda, 2020; Polanco, 2015).

It is worth highlighting the irregularities that characterized the process of privatization of public companies, such as SQM, which took place during the civic-military dictatorship of Augusto Pinochet. Indeed, according to the Commission of the Chamber of Deputies that investigated the privatizations that occurred during this period, the authorities back then were not accountable to the citizens for their actions, therefore, they did not leave clear records on the resources obtained through the privatizations. According to information provided by the Office of the Comptroller General of the Republic to said Commission, it is estimated that only for the sale of 30 companies transferred between 1978 and 1990 -which included SQM- the country lost US \$ 2,223,163,439, 98, which in 1990 was equivalent to 6.4% of the GDP (Chamber of Deputies, 2004).

The role of Julio Ponce Lerou, son-in-law of the then dictator Augusto Pinochet, according to all the evidence, was key in the privatization process of this company, which he later came to control. In his capacity as CORFO's director of companies, as well as SQM's Chairman of the Board, proposed in 1983 the sale of shares of this public company through the Stock Market, up to 30% of its capital. From then until the end of the privatization process of this company, when CORFO sold all of its shares to SQM, SQM was the center of a series of questionable financial operations, led by Ponce Lerou, his father, his brothers and his friends, first as government officials and later as individuals. With these operations, Ponce Lerou became, through the Pampa Group, the controller of SQM until 2018, when the new contract was signed between CORFO and SQM, which established his departure from the company's management (El Mostrador, 2012; Cofre, 2019).

The operations of SQM in the exploitation and processing of lithium in the Atacama Salt Flat until 2018 (the date of the new agreement signed with CORFO), were determined by the agreements signed by this

company with CORFO in 1993, later modified in 1995. According to the first agreement, CORFO leased 28,054 mining rights in the Atacama Salt Flat to SQM, including 16,384 hectares of exploitation and 11,670 hectares of protection. The same agreement allowed SQM to market potassium salts, boric acid, lithium products and any other substance that could be exploited in the Salt Flat until December 31, 2030.

Additionally, it established the production limit to 180,100 tons per year. Regarding the value of the lease, an annual fixed income of USD \$ 15,000 was established, together with a variable income consisting of sale percentages, including 5% of lithium sales (FAS in port) and 0.5% (FAS plant), expanded to 1.8% from the fifth year, of the sales of potassium salts, boric acid, potassium sulfate, sodium chloride, and sodium sulfate; and 5% of the sales of any other product. Responsibility for the payment of mining license fees and the care of the property is delegated to SQM.⁵

One of the most controversial issues with these agreements is the low amount of the annual income therein established that had to be paid by SQM to CORFO, bearing in mind the millionaire profits that the lithium operations generated to the company. Related to this, another issue was that the calculations of the amounts to be paid to CORFO were determined by the company, which initially did not seem to have been audited by the State (Arellano and Figueroa, 2015).⁶

3.2 Community Relations and with the Lickanantay People

SQM considers the inhabitants of the communities near the operations, including indigenous communities and community associations, as one of its stakeholders. As for its policies regarding them, it identifies the creation of direct and indirect employment, the social and economic development of the community, and care for the environment. Regarding communication, the company states it is fluid and pertinent.

In its 2019 sustainability report (SQMa, 2020), the company declares to support the communities in which it operates with a series of initiatives promoted in recent years, such as the Atacama Tierra Fértil Program, existing since 2008, promoting productive activities in various locations, including San Pedro de Atacama, Toconao, Talabre, Río Grande and Socaire. One of these programs supports 19 farmers in these communities to produce high altitude wine (Ayllu wine). It has also supported alfalfa crops in Talabre and garlic crops in Río Grande. Additionally, there are programs to support the access to education for members of neighboring communities, and to promote local art, culture and heritage and sports.

In relation to the community, the same report shows the existence of a labor inclusion program for women and people with disabilities, without referring to neighboring communities. However, SQM's Vice President of Environment, Community Relations and Technology, Alejandro Bucher, maintains that at the beginning of 2020

⁵ As noted, said agreement was modified in 1995, establishing details of the products allowed to be exploited; raising the pledge of shares, specifying the land that CORFO contributes to the company, establishing CORFO's power to request information on the payment of the profit in case it is insufficient, and considering CORFO's willingness to renew the contract after 2030 (CORFO, 2016).

⁶ According to Arellano and Figueroa (2015), the fixed amount of USD \$ 15 thousand, which in 2015 reached 9.5 million Chilean pesos, was derisory compared to the income of USD \$ 785 million (approximately \$ 493 billion Chilean pesos obtained at that moment by SQM for its lithium operations).

the company had a total of 240 workers from the community in the company out of a total of 1,300 workers employed in the Atacama Salt Flat.⁷

What stands out in most of its reports, is that SQM does not make a distinction between indigenous communities, in particular the Lickanantay of the Atacama Salt Flat, where its lithium operations are located, and those that are not. In this sense, it is relevant to mention its Human Rights Policy. Released only in 2020, in which the company adheres and expresses its commitment to the ILO Convention No. 169, the United Nations Guiding Principles on Business and Human Rights, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the United Nations International Covenant on Economic, Social and Cultural Rights.

In 2020, it also joined the Global Compact⁸, the United Nations initiative with more than 12 thousand affiliated entities encouraging the implementation of ten universally accepted principles to promote sustainable development in human rights and business, labor standards, environment and the fight against corruption in the activities and business strategy of companies.

On the other hand, and in relation to the communities, SQM (SQMc, 2020) drew up a Sustainability Plan in 2020, establishing for this purpose a series of goals and commitments, among them, one related to “Our Environment, Our Communities and Our contribution to sustainable industries.” In this Plan, it commits itself to the environment to “reduce brine extraction by 50% by the year 2030, which started with a reduction of 20% in November of this year; reduce continental water consumption by 65% by 2040, starting with 40% by 2030; and to be carbon neutral in all our products by 2040 and in the case of lithium, potassium chloride and iodine by 2030.” To this end, it began steps to join the Initiative for Responsible Mining Assurance (IRMA), an international certification of sustainable mining that measures practices in health and safety of workers, human rights, community participation, pollution control, rights of indigenous peoples, transparency in the payment of taxes to governments, among others.

Still, these are recent declarations and commitments, subsequent to the agreement with CORFO, which, as indicated, establishes requirements regarding relations and benefits for the Lickanantay people and the communities surrounding the Atacama Salt Flat. Indeed, together with the contributions committed to the Regional Government of Antofagasta and the municipalities in which it operates (including San Pedro de Atacama), for an amount equivalent to 1.7% per year of its sales until 2030, it made the commitment to make a contribution to the Atacameño communities of the Salt Flat (registered in CONADI); this contribution, according to the company, in 2019 amounted to USD \$ 14 million for development projects (SQMa, 2020).

As the Vice President of Environment, Community Relations and Technology of SQM, Alejandro Bucher, recognized in an interview in March 2019, the issue of human rights had not been addressed by the company until then, which only had a Corporate Social Responsibility approach. The same SQM manager acknowledges

7 Interview conducted by Amanda Romero and José Aylwin with SQM's Vice President of Environment, Community Relations and Technology, Alejandro Bucher, in Santiago, March 18, 2019.

8 For more information, see: <https://www.sqm.com/noticia/sqm-adhirio-como-miembro-de-pacto-global-de-naciones-unidas/>

that previously the company's relationship was with people rather than with the communities, and that this has changed in recent times, to recognize the authorities of each community, as well as the representative body of the Lickanantay, the Council of Atacameño Peoples.⁹

This contrasts sharply with the vision of the communities interviewed in this HRIA. The majority of its members consider SQM as a company distant from the communities, with which they have had significant conflicts derived from the violation of rights. The same interviewees report that the company's social responsibility policy has not benefited the communities and that indigenous workers have not been privileged either.

9 Interview conducted by Amanda Romero and José Aylwin with SQM's Vice President of Environment, Community Relations and Technology, Alejandro Bucher, in Santiago, March 18, 2019.

4. MAIN IMPACTS OF SQM ON THE RIGHTS OF THE LICKANANTAY PEOPLE

Regarding the regulatory framework applicable to indigenous peoples in Chile, the rights of the Lickanantay or Atacameño people are established in various acts and international instruments. Among the acts, the aforementioned Act No. 19,253 of 1993, stands out. It should be noted that this act in its article 1, together with recognizing the Atacameño communities as part of the “ethnic groups” of Chile, and the duty of the State to protect and promote their cultures and protect their lands, contains a set of specific regulations that establish specific obligations regarding the regularization and protection of their lands and waters of traditional occupation and use. And among the international instruments, the Convention No. 169 on Indigenous and Tribal Peoples of the International Labor Organization (ILO), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination -all instruments of the universal system for the protection of human rights- and the American Convention on Human Rights.

Despite the human rights commitments that have been formulated by SQM in its recent policy on the matter, which includes respect for the ILO Convention 169; in this HRIA we have been able to verify, both through documentary analysis and the interviews carried out during its development, in particular those carried out with members of the Lickanantay communities of the basin of the Atacama Salt Flat, that this company has severely harmed and violated the rights of these communities, through the various projects and activities of exploration and exploitation of lithium and derived products in the Atacama Salt Flat.

Although the indigenous rights affected by the company are diverse in nature, from the analysis carried out in this HRIA, we identified the most seriously affected such as: **the right to prior consultation and free, prior and informed consent; the right to self-determination and definition of development priorities; the right to benefit sharing and fair compensation for the harm caused; the right to land and territory; and water rights.**

In the following section, each of these rights held by the Lickanantay people is analyzed, as well as how these have been affected by the activities carried out by SQM in the Atacama Salt Flat related to exploration and exploitation of lithium and other products derived from its brines.

4.1 Right to Prior Consultation, and Free, Prior and Informed Consent

The Right to Prior Consultation, and to Free, Prior and Informed Consent is found in the ILO Convention No. 169 (article 6, 7 and 15), the UNDRIP (article 27) and the American Declaration on the Rights of Indigenous Peoples (2016), as well as in the American Convention on Human Rights (ACHR). It is important to highlight that both the IACHR and the I/A Court H.R. have made important contributions regarding prior consultation, both in

judgments in the litigious field as well as in their researches and periodic works on the matter.¹⁰ This has also been done within the United Nations System, in the ILO Tripartite Committee.¹¹

Since the ratification of the ILO Convention No. 169, there has been tension between the various indigenous peoples and communities and the organs of the State administration, as well as with the courts of justice, and also the Environmental Courts, for the application and implementation of the right to prior consultation. Even more so in relation to the recognition of the right to free, prior and informed consent. The debate in Chile, after ten years of enforcement of this international convention, has essentially been focused on the context of the Environmental Impact Assessment System (SEIA), regarding the pertinence of the special procedure when analyzing the “susceptibility of direct impact” to the indigenous peoples generated by the projects submitted for evaluation; referring to article 11 of the LBGMA (Ley sobre Bases Generales del Medio Ambiente, General Environmental Framework), where the assumptions of “significant impacts” are established. If verified, and in the context of an EIA assessment, a consultation process could be carried out; for this reason, any project entered via DIA is excluded from consultation, as has been the case in the vast majority of SQM’s environmental permissions.

In light of international law on the rights of indigenous peoples and the internal regulations, and particularly in the tasks and activities of SQM, the right to prior consultation and free, prior and informed consent, have been repeatedly violated by the State of Chile. It should be noted that prior consultation processes have not been considered, for example, in the contracts between CORFO and SQM in 2018, in the environmental sanctioning procedure against the company opened by the SMA (Superintendencia de Medio Ambiente, Superintendency of Environment) in 2016 and the subsequent review by the First Environmental Court, in addition to requests for its opening in environmental assessment procedures.

Finally, it is necessary to emphasize that indigenous consultation processes are not executed in the framework of the environmental assessments of the projects currently carried out by SQM. Additionally, the company denies other administrative procedures, such as the environmental sanction that considers measures enforced in indigenous territory and the verification of the violation of said right. Therefore, the indigenous communities of Atacama are prevented from exercising the right to self-determination and the right to decide their priorities in terms of development, matters included in the ILO Convention No. 169, and other international treaties, as will be reviewed below.

10 Among others, see: Inter-American Commission on Human Rights – IACHR. (2009). Rights of indigenous and tribal peoples over their ancestral lands and natural resources. Regulations and jurisprudence of the Inter-American System of Human Rights. Available at: <https://www.oas.org/es/cidh/indigenas/docs/pdf/Tierras-Ancestrales.ESP.pdf>; Comisión Interamericana de Derechos Humanos – CIDH. (2015). Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. OEA/ Ser.LV/II. Doc. 47/15. Available at: <http://www.oas.org/es/cidh/informes/pdfs/IndustriasExtractivas2016.pdf>.

11 In this regard, see International Labor Organization (2001).

4.2 Right to Free Determination and Definition of Development Priorities

As a result of the absence of consultation and free, prior and informed consent previously mentioned, both in the CORFO agreement with SQM, and in the exploration and exploitation projects of lithium and derived products carried out in the Atacama Salt Flat by this company, the right of indigenous peoples to self-determination, the right to autonomy and to define their development priorities, recognized in the aforementioned international law, have been violated.

As the former United Nations Rapporteur on the Rights of Indigenous Peoples, James Anaya, states, self-determination is fundamental in the context of investment projects that are located on indigenous lands and territories. The same Special Rapporteur confirms that in the business model currently dominant in the world, where a business enterprise with the help of the State controls the extraction operation, the right to free determination, as well as those over land and territory, are not respected. Thus, he states: "The business model still prevailing in most places of natural resources extraction located in indigenous territories is not totally conducive to the realization of the rights of indigenous peoples, particularly the right of self-determination" (Anaya, 2013, p. 4).

What the former Rapporteur Anaya stated fully applies to the exploitation operations of lithium and its derivatives that SQM carries out in the Atacama Salt Flat, which is protected by international law since it is indigenous territory.

Therefore, the right to self-determination, the right to autonomy and to define development priorities of the Atacameño people has been clearly violated by the State through the imposition of projects of extraction and processing of lithium and their derivatives by SQM in the Atacama Salt Flat. These projects, as has been previously noted, have not been consulted with the communities likely to be affected, and their consent has not been obtained. The development of lithium in the Salt Flat imposed by the State and the company, with all the impacts on the waters, environment and territorial rights of the Atacameño people, has prevented these people and their communities from defining their own future. It has seriously hindered the development of pastoral and agricultural activities typical of their culture and even the development of tourism activities, in which some communities have been involved in recent years.

4.3 Right to Benefit Sharing

The right of indigenous peoples to receive benefits is guaranteed in article 15.2 at the end of the ILO Convention No. 169, which establishes that "The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities." It is also recognized in direct relation to the right to consultation in article 32 of the UNDRIP, which in number 3 provides that "States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic,

social, cultural or spiritual impact.”

The standard that must be fulfilled in order for benefit sharing to be effective is provided by the former Special Rapporteur J. Anaya, who stated in this regard that participation “constitutes a guarantee against limitations or deprivation of the property rights of these peoples”, and that, therefore, “it should be understood as a way of fulfilling a right and not as a charitable concession seeking social support for the project or minimizing the conflicts” (Guerra and Aylwin, 2020: 45).

In the regional field of rights protection, the I/A Court H.R. has indicated that “the concept of benefit sharing, which can be found in various international instruments regarding the rights of indigenous and tribal peoples, is inherent to the right to compensation recognized in article 21.2 of the [American] Convention” (I/A Court H.R., 2007, para. 138).

As it has been reviewed throughout this HRIA, the agreements, conventions and contracts signed by SQM with state entities, particularly with CORFO, have not considered prior consultation, nor prior, free and informed consent from the Atacameño communities. Therefore, there is no direct and effective participation of the affected peoples in the measures that have been adopted only as a form of support and mere charity. Considering these facts, it can be argued from now on that the SQM company is far from complying with the international standards set forth, and that the State has not complied with its duty to protect said rights.

Although the company has signed a set of agreements including financial contributions to indigenous communities, there is no effective benefit sharing. First, because there is no relation between the incomes and profits obtained by the company, the damage done to the territory in which it operates, and the contributions that it reports to the governments and local communities, which SQM also intends to deliver to the communities that are part of the CPA. These contributions are closer to charity than to real financial contributions. Furthermore, the benefit is expressed in an agreement not previously consulted and with no granted consent. Thus, such agreements signed in 2018 do not comply in any way with what is established in the ILO Convention No. 169, and the standards set forth.

4.4 Right to Land and Territory

Both national and international law referring to indigenous peoples have recognized a set of rights over their lands and territories as natural resources of traditional occupation. Within the national law, Act 19,253 establishes the duty of the State to protect indigenous lands, their ecological balance and tend to their expansion (section 1, subsection 3). It also establishes the guidelines to be followed in the processes of regularization and acquisition of the domain for Andean communities over their ancestral lands, in order to safeguard them. The law recognizes different types of property over the lands of these peoples that must be safeguarded, including those of individual indigenous property and community property, which include pampas and slopes for rotational farming; and those constituting heritage owned by various indigenous

communities, such as grasslands, wetlands, hills, alluvial plains and others for the use of lamini cattle (section 63).

Regarding international law, various instruments, including the ILO Convention No. 169 ratified by Chile, have recognized these rights and established State obligations in this matter. The special relationship between indigenous peoples and their lands and territories is recognized by the ILO Convention No. 169, so much so that “governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship” (article 13). This relationship is reaffirmed by the UNDRIP when it states that “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard” (article 25).

This HRIA has confirmed that the State has not complied with national and international obligations in relation to the lands, territories and natural resources of the Lickanantay people. In fact, 27 years after the enactment of Act 19,253 and more than a decade after the ratification of the ILO Convention No. 169, the State has not concluded the land regularization process that began in the nineties. To this date, nearly 400 thousand hectares (394,797.79) have been regularized in different ownership types for indigenous communities and people of the Antofagasta Region, mostly Atacameño. This is less than half of the 905 thousand hectares that, according to the land registry commissioned by the State to the Consultant Datura (1998), were effectively occupied by 19 Atacameño communities (CONADI, 2020). Said regularization is even more deficient if we consider that the same registry, whose legal value (as also mentioned) has been recognized by the jurisprudence in cases of territorial vindications of Lickanantay communities, identified in 1998 at least 2.3 million hectares as lands of traditional Atacameño occupation.

The lack of state protection of these heritage lands of the Lickanantay people, and the authorization of extractive activities of lithium and its derivatives by SQM and other companies in the Salt Flat, has been decisive in the environmental deterioration, not only for the Salt Flat, but for the entirety of its basin. Indeed, as documented in this HRIA, the prolonged activity of these companies has caused serious harm not only to the waters of the Salt Flat, but also to the neighboring lands of the communities, recognized or not by the State as indigenous property. Consequently, these activities have seriously affected the alluvial plains and wetlands adjacent to the Salt Flat in which the communities carry out their pastoral activities (Babidge et al, 2019)¹². Moreover, their agricultural labor has been affected by the dust coming from the activities that SQM has in the Salt Flat (evaporation ponds). With the wind, the dust is transported to the neighboring communities and as a result their crops are damaged.¹³ All of this was verified in the development of this HRIA through interviews with representatives and members of the Atacameño-Lickanantay communities.

¹² Also mentioned in the case of Peine and surrounding communities by an Atacameño professional from the Community of Peine, in an interview conducted in Peine in November 2020.

¹³ Interview with an Atacameño professional from the Community of Peine, Peine, November 2020. It is also a matter that was verified by the authors of this HRIA on a January 2020 visit to the Peine community.

4.5 Water Rights

There is evidence that the exploration and exploitation activities of lithium and derived products carried out by SQM in the Atacama Salt Flat have had a strong impact on the existing water resources. It is important to remember that it is located in sensitive lacustrine systems, such as Soncor (Pular, Chaxa and Barros Negros Lagoons), and Aguas de Quelana and Peine (Salada, Saladita and Interna Lagoons), as well as in vegetation systems, such as the Tilopozo Alluvial Plain and the East Edge Vegetation. The activities of SQM are also carried out within the Los Flamencos National Reserve, despite the fact that it is under official protection, as it belongs to the Sistema Nacional de Áreas Silvestres Protegidas del Estado - SNASPE (National System of Protected Wild Areas of the State). The Soncor Lacustrine System is of particular importance; it has been declared as a RAMSAR site, in accordance with the Ramsar Convention on Wetlands of International Importance. Said instrument was signed and ratified by Chile in 1981, and despite this special declaration, this system has been affected by the activities of SQM.

For many Atacameño community members, the impacts on water resources are now visible to the naked eye. This has translated into them having to modify their ancient and traditional activities related to pastoralism and small farming. Some of them have described the impact on the life of local birds, such as flamingos changing nesting areas, which would be related to the work carried out by SQM. Likewise, some of the interviewees agree that part of the vegetation cover has desiccated, particularly in the “East Edge of the Atacama Salt Flat” area, and the alteration of some water bodies. Also, evident damage has been done to the Soncor area and carob trees near the wells of the Atacameño Community of Camar located east of the Salt Flat.

Although the resolution of the DGA and the courts of justice is valuable, in terms of guaranteeing the environmental protection of certain important sites—such as Los Flamencos National Reserve, located in Lickanantay territory—it is worrying that both SQM and other mining companies operating in the Antofagasta Region, and in the Atacama Salt Flat in particular, insist on their policy of exploiting fresh groundwater for their different processes when this resource is scarce and in such a fragile state. Even more so when this has been declared by various organs of the State, in addition to the number of rights (over) granted to the private sector in relation to those truly available. All of the above suggests that a moratorium on water in the Atacama Salt Flat basin is a sensible measure.

5. RESPONSIBILITIES

5.1 General Background

International human rights instruments establish that States have the obligation to respect and guarantee these rights, and to adopt measures to make them effective, as article 2 of the ICCPR, and articles 1.1 and 2 of the American Convention stipulate. This is also established in the provisions of the ILO Convention No. 169, as well as other international instruments declaring specific human rights for indigenous peoples. On the other hand, international law has established that, in certain circumstances, the State may have international liability for violations of human rights derived from acts committed by individuals or other non-state actors, including private companies. This has been stated by both the I/A Court H.R. and the IACHR when the law of the Inter-American Human Rights System has been applied to situations concerning the violation of human rights by third parties (IACHR, 2015).

5.2 Responsibility of the States

Bearing in mind the aforementioned international framework, in this HRIA we will first analyze the responsibility of the States in the violation of human rights of the Lickanantay or Atacameño people due to the operations of SQM in the Atacama Salt Flat. In doing so, we will be referring not only to the State of Chile, but also to the States where the companies that have invested in SQM are domiciled, since they have contributed to the development of the extractive and productive activities in the Salt Flat. These States are Canada and China.

5.2.1. Responsibility of the State of Chile

In accordance with the UN Guiding Principles (GPs) on Business and Human Rights, we corroborate that the State of Chile has a key responsibility in the violation of rights caused by the activity of extraction and processing of lithium and its derivatives done by SQM in the Atacama Salt Flat. Thus, the State of Chile has not complied with its obligation to protect third parties—in this case the Atacameño people and communities—against the abuse of human rights committed by third parties—in the case under analysis, by the SQM company. The State is responsible since it did not enforce domestic laws—such as Act No. 19,253 (Indigenous Act)—and international laws—such as the ILO Convention No. 169 ratified by Chile—in order to guarantee the respect for the rights of these peoples, their communities and members against the activities carried out by said company in their territory of traditional occupation. Regarding the Atacameño rights over their lands and territories, the Chilean State has not concluded the process of Atacameño land regularization it had pledged to do; even after almost three decades of Act No. 19,253 coming into force and a decade after ratifying the ILO Convention No. 169.

In environmental matters, the State has not safeguarded the ecological integrity of the Salt Flat. In relation to the environmental legislation and the Environmental Impact Assessment System regulation (Supreme Decree No. 40/2013), which establishes methods for citizen participation and indigenous peoples consultation about investment projects submitted to Environmental Impact Assessment, the State has systematically violated the rights of prior consultation, and prior, free and informed consent of the Atacameño communities in the case of SQM projects in the Salt Flat.

From the analysis carried out in this HRIA, it can be deduced that the Chilean State did not always ensure effective access to justice or administrative mechanisms of reparation for the human rights violations committed by these mining projects against these communities; nor did it facilitate access to non-State claim mechanisms. The clearest example is the rejection by the Supreme Court of the Civil Right Accion against the Government filed by the Council of Atacameño Peoples in 2018 for deprivation of the right to prior consultation of the Atacameño communities affected by the activity of SQM, when CORFO has already signed the Convention with this entity. Before this, the CPA decided to take their complaint of human rights violation to international bodies—the Inter-American Commission on Human Rights—since these rights are recognized in the American Convention on Human Rights. The complaint was presented in October 2019 and it has been assigned a case identification number, but the declaration of admissibility is pending.

The State of Chile has also facilitated the investments in SQM by business enterprises domiciled in Canada and China through the signing of bilateral trade agreements with both States. These agreements are not compliant with the United Nations Guiding Principles¹⁴.

Due to all the foregoing, the Chilean State has clearly failed to comply with its international human rights obligations in the case of SQM, with a special impact on the rights of the Lickanantay or Atacameño people.

5.2.2. Responsibility of the State of Canada

As referenced above, Nutrien Ltd., domiciled in Canada, initially through Potash Corp. of Saskatchewan Inc., and later merged with Agrium Inc. in 2018—both from the same country—had a significant shareholding in SQM for 15 years. In 2018, these companies sold said stake, then equivalent to approximately a quarter of the total shares, to Tianqi Lithium Corp. of China. Given the importance of their stake in the operations of SQM during said period, Nutrien and its predecessors could not have ignored—with minimum due diligence required by the United Nations Guiding Principles on the matter—the serious human rights violations caused by SQM, including those related to the rights of the Lickanantay people.¹⁵

5.2.3. Responsibility of the State of China

Likewise, Tianqi Lithium Corp. is domiciled in China, therefore, the responsibility of this State in the violation of the human rights of the Lickanantay people cannot be omitted from this HRIA. There are, in fact, numerous complaints against companies domiciled in said State operating outside its borders in different regions of the world (including

¹⁴ The trade agreement between the States of Chile and Canada was signed in 1996, and subsequently revised in 2017. The trade agreement signed with China dates from 2005 and 2007.

¹⁵ For more information on Nutrien, please see: <https://www.nutrien.com/sites/default/files/uploads/2018-03/Nutrien%20Fact%20Sheet.pdf>.

Asia, Africa and Latin America) for violation of human rights (The Mekong Legal Network-The International Service for Human Rights, 2017).

5.3 Responsibility of the Business Enterprises

As has been noted, according to the United Nations GPs on the matter, companies have an obligation to respect human rights (GPs Title 2). This implies the duty to avoid violating the rights of people, carrying out due diligence, and providing reparation for the negative consequences of their activities (GPs, Principles 11 to 24). Continuing within the GPs framework, we will analyze the responsibility of the businesses in the violation of human rights of the Lickanantay people by the operations of SQM. Furthermore, due to the importance of the stake in this company, we will also analyze the responsibility of Tianqi Lithium Corp.

5.3.1. Responsibility of SQM

The information collected within the framework of this HRIA allows us to verify that SQM, as a company, has had a long conflicting history with human rights, which unfortunately persists to this day. Together with the adverse consequences that the illegal practices of SQM have had on human rights in general, the company has negatively impacted the human rights of the Lickanantay people, in particular of the Atacama Salt Flat communities. Specifically, it has violated the rights to prior consultation and free, prior and informed consent; and as a consequence, their right to self-determination and to define development priorities. Likewise, it has seriously harmed the rights of the Lickanantay over their lands and territories, hindering the regularization of their traditional occupation spaces; including the Atacama Salt Flat, where the company carries out its activities.

Their operations have negatively affected the rights of the Lickanantay over their natural resources, particularly over water, which is extracted in large quantities from the Salt Flat.

5.3.2. Responsibility of Tianqi Lithium Corp.

As previously stated, the incorporation of the Chinese transnational Tianqi to SQM only took place in 2018 when it acquired the stake of a quarter of the shares of SQM from the Canadian Nutrien. For this reason, determining their responsibility in the harm caused to the human rights of the Lickanantay people in the Atacama Salt Flat is a complex matter.

It is obvious that Tianqi has no responsibility for the actions of SQM that harmed the human rights of these people and their communities prior to their participation in the company. Nevertheless, by acquiring such an important stake, Tianqi could not be ignorant of the human rights record of SQM, particularly regarding the rights of the Lickanantay communities in the Atacama Salt Flat basin.

6. RECOMMENDATIONS

6.1 For the State of Chile

- Guarantee the protection of the rights of the Lickanantay people to land, territory, and natural resources and assets of traditional use and occupation identified in the land registry commissioned by the State in the nineties, in compliance with Act No. 19,253. This should be done through regularization, titling and subsequent registration of the lands as property of the communities that are part of the Atacameño people. In compliance with the applicable national and international law, the State should include the territorial spaces of traditional occupation and use of the Lickanantay communities within the Atacama Salt Flat in the process of land regularization and titling. The waters of the Salt Flat and its tributaries should also be included, since a large part of this resource is granted to SQM and other mining companies that operate there, and this has caused the serious environmental impacts identified in this HRIA.
- Ensure the right to prior consultation of the Lickanantay people and the communities directly affected by the lithium extraction and processing operations of SQM and other brine derivatives in the Atacama Salt Flat in the aforementioned administrative measures that have authorized them, including also the contracts entered into by CORFO with SQM in 2018. Bearing in mind the large-scale operations of SQM in the Salt Flat and the magnitude of its impact on the Atacameño communities surrounding the Salt Flat, as well as the international law applicable in these cases, the State should consider and respect their right to grant or not their prior, free and informed consent regarding said measures.
- Guarantee the development of independent environmental impact assessments, with effective participation of indigenous communities likely to be affected, such as the communities of the Lickanantay people near the Atacama Salt Flat. This will provide adequate assessment of the social, spiritual, cultural and environmental impact of the projects, such as those developed by SQM in said territory, in compliance with applicable international law. Said assessments should respect the processes and times of the communities and consider the preservation and protection of the special relationship between indigenous communities and their territories, assets and natural resources, as their life systems and cultures depend on them. The State should adopt the necessary measures to ensure compliance with these special protection duties.
- Consider the synergic and cumulative impacts of all the current lithium extraction and processing operations active in the Atacama Salt Flat as part of the environmental impact assessments. Particularly in the case of the Salt Flat aquifers, since the operations of SQM and other companies demand the extraction of large quantities of fresh water and brine, which has caused serious impacts on this fragile ecosystem.

HUMAN RIGHTS IMPACT ASSESSMENT OF SQM AGAINST THE RIGHTS OF THE LICKANANTAY INDIGENOUS PEOPLE

- Consider the moratorium on lithium extraction and processing operations, or at least, moratorium on the extraction of Salt Flat water. This, because the synergic impacts of the operations of SQM and other mining companies on the aquifers and the environment of the Atacama Salt Flat have been verified by the representatives of the Lickanantay communities—interviewed in this HRIA—and by the environmental and judicial authority of the country. This moratorium should last until it is scientifically determined that said operations, in particular the extraction of water from the Salar and surrounding basins, can continue without collapsing the Atacama Salt Flat ecosystem.
- Ensure the exercise of the right of the Lickanantay people, and in particular of the communities of the Atacama Salt Flat, to maintain their traditional economy and their material and cultural ways of living according to their right to self-determination, autonomy and the right to define their own development priorities.
- Complying with the duty of the State to protect human rights against the activity of businesses, the State should, through its co-legislative bodies (executive, legislative and Constitutional Convention elected in 2021), adapt the current regulations to effectively guarantee the rights of indigenous peoples before investment projects, such as those promoted by the company SQM in the Atacama Salt Flat. This includes adapting the Political Constitution and the legislation and regulations; in particular, that referring to the rights over natural resources and assets such as water, subsoil resources found in the lands and territories of indigenous peoples and the aforementioned right to consultation and consent of indigenous peoples in administrative and legislative measures that may affect them directly. Adapting the environmental legislation should also be considered (Law No. 19,300 of 1994, modified by Law No. 20,417 of 2010), including Supreme Decree No. 40 of 2013, of the Ministry of the Environment, which regulates the System Environmental Impact Assessment.
- In addition, the modification of article 86 of the Supreme Decree No. 40/2013 becomes urgent in order to eliminate the assimilation between the terms “susceptibility to direct impact”—required by the ILO Convention No. 169 to enforce the obligation of prior consultation—and “significant impacts” of article 11 of the LGBMA. This seeks to put an end to the conditional effect that the magnitude of the susceptibility to direct impact has on the exercise of this right. Said condition is not required by the ILO Convention No. 169 and, as a result, this right is limited.
- Ensure that CORFO implements measures to prevent future violations of these rights, such as those affecting the Lickanantay people as a result of the operations of SQM. Since CORFO owns mining properties in the Atacama Salt Flat being leased to SQM, and because it is a public entity in charge of promoting production, CORFO has a special obligation to protect human rights and comply with the UN Guiding Principles on Business and Human Rights.
- Comply with the United Nations Convention Against Corruption, ratified by Chile, when entering into public contracts, such as the one signed by CORFO with SQM in 2018. Adopt the necessary measures to establish appropriate systems based on transparency, competence and objective decision-making criteria to effectively prevent corruption.

- Guarantee that international trade agreements, including the bilateral investment agreements signed by the State of Chile with Canada and with China, protect the human rights of indigenous peoples recognized by the national and international bodies of law.
- Establish human rights requirements for authorizations granted by the State to foreign investments related to investment projects in indigenous lands and territories; such as the authorization granted to Tianqi allowing its incorporation into SQM in lithium operations in the Atacama Salt Flat. Identify mechanisms of authorization with the participation of the affected communities in order to monitor compliance with the requirements established therein in this matter.
- Ensure the effective protection of the rights of indigenous peoples, including the Lickanantay people, in the Plan de Acción Nacional de Empresas y Derechos Humanos del Estado de Chile (National Action Plan for Business and Human Rights of the State of Chile) currently being prepared for the period 2021-2024. Said Plan should consider the aforementioned adjustments to the law required to guarantee the rights of these peoples in the face of large-scale investment projects in their lands and territories of traditional occupation. It should also safeguard human rights in contracts signed by public bodies. Likewise, the State should also consider adopting measures aiming to guarantee the compliance of businesses with their duty of respecting these rights through the adoption of legal or administrative reforms, enforcing their due diligence in human rights.
- Review and adapt the existing judicial and administrative mechanisms in order to ensure effective protection of the rights of indigenous peoples in the context of business enterprise activities, as well as reparation for the violations of these rights when they occur.

6.2 For the State of China, where Tianqi Lithium Corp. is domiciled

- Implement the recommendations made to—and accepted by—the State of China in 2018 within the Third Cycle of the Universal Periodic Review (UPR) of the United Nations Human Rights Council. This promotes the adoption of measures guaranteeing the compatibility of the development and infrastructure projects with human rights, the environment and the sustainability of natural resources within and outside their territory; in accordance with applicable national and international law and the commitment to the 2030 Agenda for Sustainable Development.
- Consider, in accordance with the same recommendations issued in the Third Cycle of the United Nations UPR, the possibility of establishing an internal legal framework guaranteeing that the activities carried out by the industries subject to its jurisdiction respect human rights abroad.
- Ensure that international trade agreements signed by the State contain clauses protecting human rights and guaranteeing that the investments of businesses domiciled in China operating abroad will not harm these rights.

6.3 For the State of Canada, where Nutrien is domiciled.¹⁶

- Effectively assume their extraterritorial obligations (ETOs) in matters of human rights. Ensure through the adoption of legislation and administrative measures, that companies domiciled in Canada operating abroad do not harm the human rights of communities affected by their investment projects, including the rights of indigenous peoples.
- Ensure that the Canadian Ombudsperson for Responsible Enterprise established by Canada, as well as the existing judicial mechanisms, hold companies domiciled in Canada violating human rights abroad effectively responsible when this occurs. This guarantees justice and reparation.
- Ensure that trade agreements, including free trade agreements and bilateral investment treaties signed by Canada with other States, do not contain provisions that may directly or indirectly restrict the human rights of indigenous peoples.
- Refrain from providing support through its Embassy in Chile, or other means, to companies domiciled in the country that harm the rights of indigenous peoples.

6.4 For SQM

- Refrain from harming, through operations of extraction and processing of lithium and derived products, the human rights of the Lickanantay people and the communities living in the Atacama Salt Flat, as the rights of indigenous peoples have been recognized in applicable national and international law.
- Respect the will of the Lickanantay people and the communities neighboring the operations in the Atacama Salt Flat regarding investment projects in their lands, territories and life plans. This will should be expressed previously in a free and informed manner.
- Repair by effective means the adverse social, cultural and environmental impacts that the operations in the Atacama Salt Flat have had on the rights of the Lickanantay communities. Especially the impacts on the waters of the Atacama Salt Flat and its aquifers as a result of the extraction of large amounts of this resource over time.
- In accordance with the duty of due diligence by business contained in the United Nations GPs, the company SQM should assess the actual and potential impact of its activities on human rights, particularly in the lands and waters of the Atacama Salt Flat and adopt measures to avoid said impact.

¹⁶ Although Nutrien has not participated in SQM since it sold its stake in the company to Tianqi in 2018, recommendations to the State of Canada are given here due to the importance of extractive companies operating in Chile domiciled in this State. Said businesses are harming the human rights of indigenous peoples in numerous cases (Observatorio Ciudadano, 2016; Guerra & Aylwin, 2020).

- For this purpose, SQM should promote a monitoring program on the impacts on the environment, water and livelihoods of indigenous peoples caused by their operations in the Atacama Salt Flat. Said program should include the participation of the Lickanantay communities of the Salt Flat, be transparent, and guarantee timely access to information by the general public and, especially, the communities.
- Establish mechanisms ensuring that communities granting their free, prior and informed consent to projects in the Atacama Salt Flat are able to share the benefits. Offering material support seeking to gain the approval of the communities should be avoided.
- Review and strengthen its internal claim mechanisms for human rights violations to make them more accessible to the Lickanantay people and communities affected by its operations. These mechanisms should provide effective reparation for harms caused by the company, either directly or indirectly through its contractors.
- Refrain from irregular practices such as corruption and bribery, violating stock market or limited company law, which, according to both national and foreign justice (USA), could be charged against the senior management of SQM. This would clearly betray the commitments made by the business when signing the Global Compact, whose members agree to “work against corruption in all its forms, including extortion and bribery” (Global Compact Principle 10).

6.5 For Tianqi

- Carry out due diligence in order to assess the actual and potential impact of the activities of SQM on the human rights of the Lickanantay people and the communities surrounding the Atacama Salt Flat; and prevent or mitigate the negative consequences that the activities may have on these rights.
- If said activities, such as those related to the water extraction from the Atacama Salt Flat and its aquifers and the adverse effects on the Lickanantay communities are not preventable or mitigable, Tianqi should consider ending its participation in SQM in the future.
- Issue an express declaration of commitment to human rights, in accordance with the United Nations GPs on the matter, beyond the ethical principles and corporate social responsibility that it has to date.
- Demand, as the majority shareholder in SQM, that their partners maintain a conduct consistent with human rights as established in the same United Nations GPs; particularly Sociedad de Inversiones Pampa Calichera S.A. (Grupo Pampa) controlled by Julio Ponce Lerou. Said demand should refrain from carrying out practices opposite to Tianqi’s anti-corruption and bribery policy.

6.6 For the States and business enterprises, especially the automotive industry, demanding lithium and derivatives produced by SQM in the Atacama Salt Flat, and for the entities financing the policies recognized as energy transition

- Observe the human rights of the indigenous peoples of the Atacama Salt Flat, demanding due diligence from SQM as a requirement for purchasing its production of lithium and derivatives.
- Ensure that the supply chain of lithium products manufactured by SQM respects human rights, especially the rights of access to water and to land/territory; which, according to national and international law, are held by indigenous peoples, in this case the lickanantay people.
- Protect and respect the representatives of the Lickanantay people and communities of Atacama Salt Flat, as well as the civil society organizations defending the human rights of this people against the activities of SQM and other businesses operating in their territory. Refrain from interfering or putting them at risk with their activity as human rights defenders.

REFERENCIAS BIBLIOGRÁFICAS¹⁷

- Anaya, J. (2013). Las industrias extractivas y los pueblos indígenas. Informe del Relator Especial sobre los derechos de los pueblos indígenas, James Anaya. Asamblea General de Naciones Unidas, A/HRC/24/41, 1 de julio de 2013.
- Arellano, A. y Figueroa, J. P. (2015): "El día en que el Estado le entregó el control del Salar de Atacama a Ponce Lerou". CIPER, 26 de junio. Disponible en: <https://www.ciperchile.cl/2015/06/26/el-dia-en-que-el-estado-le-entrego-el-control-del-salar-de-atacama-a-ponce-lerou/>
- Avendaño, S. (2009). Áreas de Desarrollo Indígena en el Norte de Chile. Negociaciones y disputas en torno a espacios territoriales. Tesis para optar al Grado de Magíster en Ciencias Sociales Mención Sociología de la Modernización (Facultad de Ciencias Sociales, Escuela de Postgrado). Disponible en: <http://repositorio.uchile.cl/handle/2250/105758>.
- Cámara de Diputados (2004). Informe Comisión de Privatizaciones Cámara de Diputados 2004). Disponible en: <https://www.carlosmontes.cl/senador/las-privatizaciones-informe-comision-investigadora-de-la-camara-de-diputados/>
- Castro Espíndola A., Cortes Araya M. y Amado Pool N. (2018) Guía de campo de vertebrados en la Reserva Nacional los Flamencos. Corporación Nacional Forestal.
- Cofré, V. (2019). Ponce Lerou. Pinochet - El Litio - Las Cascadas - Las Platas Públicas. Santiago, Catalonia.
- CONADI, Oficina de Asuntos Indígenas de San Pedro de Atacama (2020). Informe estado de tramitación de Tierras (Inédito, enviado el 1 de diciembre de 2020 por Liliana Cortez, encargada Oficina de Asuntos Indígenas de San Pedro de Atacama de CONADI).
- CONADI, Oficina de Asuntos Indígenas de San Pedro de Atacama (2008). Informe estado de tramitación de tierras y aguas indígenas Región de Antofagasta.
- Consejo de Derechos Humanos, Naciones Unidas. (2011). Principios Rectores sobre las Empresas y los Derechos Humanos. Puesta en práctica del marco de las Naciones Unidas para "proteger, respetar y remediar". Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos. Disponible en: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_sp.pdf.

17 The references listed here correspond to those mentioned in this executive summary. The complete list of references can be found in the document in extenso: <https://observatorio.cl/evaluacion-de-impacto-en-derechos-humanos-de-sqm-en-los-derechos-del-pueblo-indigena-lickanantay/>

HUMAN RIGHTS IMPACT ASSESSMENT OF SQM AGAINST THE RIGHTS OF THE LICKANANTAY INDIGENOUS PEOPLE

Consultora Datura (1998). Informe proyecto CONADI Oficina San Pedro “Delimitación de territorios comunitarios y patrimoniales indígenas de la Provincia del Loa y Patronos de Ocupación”, 1997-1998.

CORFO (2016). Presentación Comisión Investigadora Litio Cámara de Diputados Congreso de Chile. Disponible en: <https://www.camara.cl/verDoc.aspx?prmID=63026&prmTIPO=DOCUMENTOCOMISION>

Corte IDH. (2007). Caso Saramaka vs. Surinam. Sentencia de 28 de noviembre de 2007 (Excepciones Preliminares, Fondo, Reparaciones y Costas). Serie C Nº 172.

El Mostrador (2012): “Como Julio Ponce Lerou se quedó con Soquimich”, 26 de septiembre. Disponible en: <https://www.elmostrador.cl/noticias/pais/2012/09/26/como-julio-ponce-lerou-se-quedo-consoquimich/>.

Guerra, F. y J. Aylwin (2018). Derechos Humanos y pueblos indígenas. Marco jurídico, obligaciones estatales, implicancias para la actividad empresarial y acceso a la justicia. Disponible en: <https://observatorio.cl/derechos-humanos-y-pueblos-indigenas-marco-juridico-obligaciones-estatales-implicancias-para-la-actividad-empresarial-y-acceso-a-la-justicia/>

Instituto Nacional de Estadística (INE). Censo de población 2017. Disponible en: <http://www.censo2017.cl/>

Lemus, A. M. (2017). Demarcación Espacial, Imaginario Estatal. ADI Atacama la Grande. XVI Jornadas Interescuelas/Departamentos de Historia. Departamento de Historia. Facultad Humanidades. Universidad Nacional de Mar del Plata, Mar del Plata. Disponible en: <https://cdsa.academica.org/000-019/553.pdf>

Polanco, E. (2015). Historia de SOQUIMICH. Una revisión. Disponible en: https://www.researchgate.net/publication/282859509_Historia_de_SOQUIMICH_una_revision

Poveda Bonilla, R. (2020): “Estudio de caso sobre la gobernanza del litio en Chile”, serie Recursos Naturales y Desarrollo, Nº 195 (LC/TS.2020/40), Santiago, Comisión Económica para América Latina y el Caribe (CEPAL).

Schuller, Rodolfo R., (1873). Vocabularios y nuevos Materiales para el estudio de la lengua de los indios Lickanantai (atacameños) - Calchaqui. Biblioteca de Lingüística Americana (Zona Atacameña-Cunza- Calchaqui). Editor F. Becerra. Santiago.

SQMa (2020). Reporte de sustentabilidad. Disponible en: <https://www.sqm.com/wp-content/uploads/2020/07/Reporte-2019-SQM-ESP.pdf>

SQMc (2020): “SQM avanza en certificar sus compromisos de sustentabilidad”, 26 de noviembre. Disponible en: <https://www.sqm.com/noticia/sqm-avanza-en-certificar-sus-compromisos-de-sustentabilidad/>

Morales, H. (2014). Génesis, formación y desarrollo del movimiento atacameño (norte de Chile). Estudios Ataca-

meños, (49), 111-128. Disponible en: <http://www.jstor.org/stable/26395126>.

Mora Rodríguez, O. y Cayo Rivera, J. (2017). Una breve historia del agua, el bien natural de los lickanantay, defensa y amenazas en un contexto de administración-protección en el Salar de Atacama, en el norte de Chile. En Congreso El Extractivismo en América Latina: Dimensiones Económicas, Sociales, Políticas y Culturales (58-75), Sevilla: Universidad de Sevilla.

Observatorio Ciudadano (2016). Proyectos mineros canadienses en el territorio de la comunidad agrícola de los diaguitas huasco altinos en Chile. Evaluación de Impacto en Derechos Humanos. Temuco: Observatorio Ciudadano.

The Mekong Legal Network - The International Service for Human Rights (2017). The Human Right Impacts of Chinese Overseas Investments and Other Business Operations in Third Countries A Stakeholder Submission to the 3rd Universal Periodic Review of China.

Villagrán C. y Castro V. (2003). Ciencia Indígena de los Andes del norte de Chile. Editorial Universitaria, Santiago.

HUMAN RIGHTS IMPACT ASSESSMENT OF SQM AGAINST
THE RIGHTS OF THE LICKANANTAY INDIGENOUS PEOPLE

