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The Lithium Industry and its Human Rights Impacts: The Case of the Lickanantay People in Chile

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THE LITHIUM INDUSTRY AND ITS HUMAN RIGHTS IMPACTS: THE CASE OF THE LICKANANTAY PEOPLE IN CHILE

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I.	INTRODUCTION: LITHIUM PRODUCTION IN THE ATACAMA DESERT	107
II.	THE HUMAN RIGHTS IMPACTS OF LITHIUM PRODUCTION IN THE ATACAMA SALT FLAT	110
III.	ONGOING HARMS	113

I. INTRODUCTION: LITHIUM PRODUCTION IN THE ATACAMA DESERT

The production of lithium has boomed in recent years.¹ Lithium is considered an essential element of the so-called “energy transition” promoted by states and the corporate world in the context of the global climate crisis. Indeed, this non-metallic mineral is a central component of rechargeable batteries used for mobile phones and electric vehicles, and more generally, for energy storage in the renewable energy sector. Between 2008 and 2018, annual production in the major lithium-producing countries rose from 25,400 to 85,000 tons.² According to the International Energy Agency, demand for lithium is expected to increase

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¹ See INT’L ENERGY AGENCY, THE ROLE OF CRITICAL MINERALS IN CLEAN ENERGY TRANSITIONS: WORLD ENERGY OUTLOOK SPECIAL REPORT, EXECUTIVE SUMMARY 4 (2021, rev. 2022) [hereinafter IEA EXECUTIVE SUMMARY], <https://iea.blob.core.windows.net/assets/ffd2a83b-8c30-4e9d-980a-52b6d9a86fdc/TheRoleofCriticalMineralsinCleanEnergyTransitions.pdf> [https://perma.cc/CA42-WH4F].

² *Lithium Mining: Facts & Figures You Should Know*, VOLKSWAGEN GRP. ITALIA (Mar. 30, 2020), <https://modo.volkswagengroup.it/en/q-life/lithium-mining-facts-and-figures-you-should-know> [https://perma.cc/QP57-7XCG].

more than 40 times by 2040.³ Hence, why some analysts have defined lithium as a “white gold.”⁴

Australia is by far the largest lithium producer worldwide—producing 51,000 tons in 2019, compared to 16,000 tons produced by Chile, 8,000 tons produced by China, and 6,200 tons produced by Argentina.⁵ Argentina, Bolivia, and Chile however, located in the so-called lithium triangle, have the largest lithium reserves in the world.⁶

Unlike in Australia and other geographical contexts where lithium is obtained from ore mining, in these South American regions, it is extracted and processed from the brines that exist in the abundant salt flats of the Andean highlands.⁷ Lithium is processed by extracting the brines from the salt flats and bringing the brines to the surface where they are evaporated in large ponds. These salt flats are endorheic hydrographic basins located in one of the driest areas in the world—the Atacama Desert. Consequently, the intensive use of brines results in severe impacts on the fragile hydric ecosystems of which they are part. Additional freshwater necessary for lithium production is extracted from the scarce hydric sources existing in the area, contributing to water exhaustion and the environmental crisis of the salt flat ecosystem.

The salt flats from which lithium is extracted have been inhabited from time immemorial by different Indigenous peoples, including the Quechua, Aymara, Colla, and Atacameño or Lickanantay people.⁸ In the case of Chile, the Atacama Salt Flat, the main site of lithium exploitation in the area to date, is part of the traditional territory of the Lickanantay people. The Lickanantay has a population of over 30,000 and is one of ten distinct Indigenous peoples recognized as such

³ INT’L ENERGY AGENCY, THE ROLE OF CRITICAL MINERALS IN CLEAN ENERGY TRANSITIONS: WORLD ENERGY OUTLOOK SPECIAL REPORT 8 (2021, rev. 2022) [hereinafter IEA REPORT], <https://iea.blob.core.windows.net/assets/ffd2a83b-8c30-4e9d-980a-52b6d9a86fdc/TheRoleofCriticalMineralsinCleanEnergyTransitions.pdf> [https://perma.cc/CA42-WH4F].

⁴ See, e.g., Andrés Almeida & Joaquín Riffo, *Litio: lo que hay detrás de la prosperidad de SQM y los intentos por apuntalar a los privados en la industria*, INTERFERENCIA (Mar. 15, 2023), <https://interferencia.cl/articulos/litio-lo-que-hay-detras-de-la-prosperidad-de-sqm-y-los-intentos-por-apuntalar-los-privados> [https://perma.cc/79WM-YZFD]; Daniel Macmillen Voskoboynik & Diego Andreucci, *Greening Extractivism: Environmental Discourses and Resource Governance in the Lithium Triangle*, 5 NATURE & SPACE 787, 796 (2021); Danielo Soto Hernandez & Peter Newell, *Oro blanco: Assembling Extractivism in the Lithium Triangle*, 49 J. PEASANT STUD. 945, 946 (2022).

⁵ IEA EXECUTIVE SUMMARY, *supra* note 1; IEA REPORT, *supra* note 3, at 121.

⁶ Patricia I. Vásquez, *The Lithium Triangle: The Case for Post-Pandemic Optimism* 1 (Oct. 2020) (working paper), https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/LAP_201002_vasquez%20brief_update_v1b%5B1%5D.pdf [https://perma.cc/5L5F-94FC].

⁷ *Id.* at 7–8; Salley Babidge et al., *That’s the Problem with that Lake; it Changes Sides: Mapping Extraction and Ecological Exhaustion in the Atacama*, 26 J. POL. ECOLOGY 738, 745–47 (2019).

⁸ AMANDA ROMERO ET AL., GLOBALIZACIÓN DE LAS EMPRESAS DE ENERGÍA RENOVABLE: EXTRACCIÓN DE LITIO Y DERECHOS DE LOS PUEBLOS INDÍGENAS EN ARGENTINA, BOLIVIA Y CHILE (“TRIÁNGULO DEL LITIO”) 17–20 (Catalina Büchner ed. 2019), <https://observatorio.cl/wp-content/uploads/2020/01/informe-litio-para-imprensa-final.pdf> [https://perma.cc/5Z9P-WJBB]. “Lickanantay” is the contemporary iteration of the traditional name “lickan antay” or “lican antai.”

by Chilean legislation.⁹ Today, the Lickanantay inhabit the Loa Province in the Antofagasta Region of northern Chile. For centuries, their cultural and material subsistence has been based on agriculture—developed on irrigated terraces built by the Lickanantay—and on livestock breeding of primarily llamas and alpacas native to the Andean cordillera.¹⁰

Lithium has been processed in the Atacama Salt Flat since at least the 1980s.¹¹ Two companies currently extract and process lithium in that area: Sociedad Química y Minera (SQM) and Albemarle. SQM, formed initially as a state-owned company, was later privatized under the 1973–1990 military dictatorship of Augusto Pinochet. SQM is currently controlled by Pampa Group, a Chilean conglomerate,¹² and Tianqi Lithium, a Chinese company that acquired 24% of the company's shares in 2018.¹³ SQM was recently authorized by Corporación de Fomento de la Producción (CORFO), the state agency that regulates lithium, to continue its lithium operations in the Atacama Salt Flat until 2030. The second company, Albemarle, is a U.S.-based company that has been operating in the Atacama Salt Flat for 40 years, initially through Foote Mineral and later by Rockwood Lithium, both of them U.S.-based companies. Albemarle was authorized

⁹ INSTITUTO NACIONAL DE ESTADÍSTICAS, SÍNTESIS DE RESULTADOS: CENSO 2017, at 16 tbl. 3 (2018), <http://www.censo2017.cl/descargas/home/sintesis-de-resultados-censo2017.pdf> [<https://perma.cc/JRN9-MKB9>] (indicating a Lican Antai (Lickanantay) population of 30,369 in 2017); INT'L WORK GRP. FOR INDIGENOUS AFFS., THE INDIGENOUS WORLD 2023, at 324 (Dwayne Mamo ed., 37th ed. 2023) (explaining Chile's Indigenous populations have shown no major changes since the 2017 census); see also Law No. 19253, Establecen normas sobre protección, fomento y desarrollo de los indígenas y crea la Corporación Nacional de Desarrollo Indígena, tit. I, art. 1, septiembre 28, 1993, DIARIO OFICIAL [D.O.] (Chile) (acknowledging the Chilean State recognizes the Mapuche, Aymara, Rapanui, Quechua, Colla, Chango, Diaguita, Kawésqar, Yagán, and Atacameño or Lackanantay as the main Indigenous groups of Chile).

¹⁰ See JOSÉ AYLWIN ET AL., HUMAN RIGHTS IMPACT ASSESSMENT OF SQM AGAINST THE RIGHTS OF THE LICKANANTAY PEOPLE: EXECUTIVE SUMMARY 1.3.2 (2021), <https://observatorio.cl/wp-content/uploads/2022/05/eidh-sqm-english-version.pdf> [<https://perma.cc/4WNG-B6ZS>].

¹¹ *Id.* at 2.1, 3.1. It is relevant to mention that Corporación de Fomento de la Producción (CORFO) requested Foote Mineral, a U.S.-based company, to carry out a feasibility study of lithium exploitation in the Atacama Salt Flat in 1975. In 1980, both entities formed a joint venture to start producing lithium in the area. *Id.* at 2.1, 2.1 n.3.

¹² The Pampa Group is controlled by Julio Ponce Lerou, former son-in-law of General Augusto Pinochet. He was responsible for the privatization of SQM during that period, later becoming its largest shareholder. SQM has been involved in several illegal actions, including corruption, as a consequence of which Lerou was prohibited by CORFO to be part of the SQM board. *Id.* at 2.1 (citing *Cómo Julio Ponce Lerou se quedó con Soquimich*, EL MOSTRADOR (Sept. 26, 2012), <https://www.elmostrador.cl/noticias/pais/2012/09/26/como-julio-ponce-lerou-se-queda-con-soquimich/> [<https://perma.cc/776M-WT7N>]).

¹³ *Id.* at 5.2.2.

by CORFO to continue its operations extracting and processing lithium in the Atacama Salt Flat until 2040.¹⁴

II. THE HUMAN RIGHTS IMPACTS OF LITHIUM PRODUCTION IN THE ATACAMA SALT FLAT

Although lithium is generally portrayed as a “green” mineral, its extraction is known to generate adverse social and environmental impacts. A report written in 2019 after an observation mission undertaken by the Centro de Información sobre Empresas y Derechos Humanos (Business and Human Rights Resource Center) and the Observatorio Ciudadano (Citizens’ Rights Watch) in the salt flats of Argentina, Bolivia, and Chile, identified serious human rights harms generated by lithium activities on Indigenous peoples and their communities.¹⁵ Based on these findings, recommendations were made to both beneficiary and investor states, to lithium processing companies, and to end-users of lithium products, including the car industry, to ensure that their activities do not contribute to Indigenous peoples’ rights violations.¹⁶ A 2021 Human Rights Impact Assessment (HRIA) undertaken by the Observatorio Ciudadano, along with the Consejo de Pueblos Atacameños (Council of Atacameño Peoples), confirmed the 2019 findings and identified serious impacts to human rights, specifically with regard to the Lickanantay people and SQM’s prolonged operations in the Atacama Salt Flat.¹⁷ The threats to the Lickanantay’s rights identified by these reports, as well as the associated harms of lithium extraction on these communities, are discussed below. Such harms include, among others, impositions on traditional lands, loss of water sources (lagoons, rivers, and groundwater) for household use, loss of traditional breeding and farming activities, and a lack of appropriate remedies.

One of the impacts identified concerns the Lickanantay peoples’ right to consultation and right to free, prior, and informed consent regarding SQM initiatives in the area. These rights are recognized by Convention No. 169 of the International Labor Organization, ratified by Chile in 2008, as well as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), also endorsed by Chile.¹⁸ None of the SQM projects authorized by the Chilean State that affect Lickanantay traditional lands and territories involved consultation with the Lickanantay communities or organizations.¹⁹ Such is the case of the 2018 CORFO-SQM agreement authorizing SQM to continue operations in the Atacama Salt Flat until 2030: the State did not consult with the Lickanantay or their representatives

¹⁴ *Los Pasos de Albemarle en Chile*, ALBEMARLE (July 23, 2018), <https://www.albemarlelitio.cl/news/los-pasos-de-albemarle-en-chile> [<https://perma.cc/RC8K-693Z>].

¹⁵ See ROMERO ET AL., *supra* note 8.

¹⁶ *Id.* at 48–50.

¹⁷ See AYLWIN ET AL., *supra* note 10.

¹⁸ See International Labor Organization Convention Concerning Indigenous and Tribal Peoples in Independent Countries No. 169, arts. 6, 7, 15, *entered into force* Sept. 5, 1991, 28 ILM 1382 [hereinafter ILO Convention No. 169]; United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295 arts. 10, 11, 19, 28, 29 (Sept. 13, 2007) [hereinafter UNDRIP].

¹⁹ AYLWIN ET AL., *supra* note 10, at 4.1.

regarding the agreement. Consequently, the Consejo de Pueblo Atacameños sued CORFO on behalf of the Lickanantay communities.²⁰ The case was first brought to Chile's domestic courts, and later to the Inter-American Commission on Human Rights, where the case is currently being adjudicated. As a result of the imposition of SQM operations by the State without a consultation process, the 2021 HRIA affirms that the Lickanantay communities' right to self-determination, as recognized in UNDRIP, has also been violated.²¹

SQM's activities also seriously affect rights to lands and territories. Indeed, the Chilean State has recognized that the territory where SQM operations take place are part of the traditional territory of the Lickanantay people—including the salt flat itself and neighboring areas.²² Law No. 19,253 on Indigenous Development was enacted in 1993 and mandates the State to regularize the lands of Andean Indigenous peoples of northern Chile.²³ Thirty years after the enactment of Law No. 19,253, and more than a decade after the ratification of the ILO Convention No. 169, which reaffirms this State's obligation on this matter,²⁴ the Chilean authorities have not concluded the land regularization process. To date, only about 400,000 hectares have been regularized in different forms of ownership for Indigenous communities of the Antofagasta Region, most of which are Lickanantay lands.²⁵ This is less than half of the 900,000 hectares that, according to the State's 1998 land cadaster, were effectively occupied by 19 Lickanantay communities.²⁶ This regularization is even more deficient if we consider that the same land cadaster identified the existence of at least 2.3 million hectares as lands of Lickanantay traditional occupation. The failures of the Chilean State to fulfill its legal obligations have to this day facilitated SQM and Albemarle operations on lands historically belonging to and claimed by the Lickanantay.²⁷

SQM operations also have had severe impacts on waters traditionally used by the Lickanantay to support their livelihoods, mainly consisting of agricultural and livestock practices. This is a direct consequence of the intensive brine extraction process and intensive use of fresh water by SQM as well as other mining companies

²⁰ See *Chile: Consejo de pueblos de Atacama solicitó recurso de protección por ausencia de consulta en Proyecto de litio de Corfo y SQM*, BUS. & HUM. RTS. CTR. (June 7, 2018), <https://www.business-humanrights.org/en/latest-news/chile-consejo-de-pueblos-de-atacama-solicitó-recurso-de-protección-por-ausencia-de-consulta-en-proyecto-de-litio-de-corfo-y-sqm/> [<https://perma.cc/UM9G-FBYN>].

²¹ AYLWIN ET AL., *supra* note 10, at 4.2.

²² *Id.* at 1.3.1.

²³ Law No. 19253, tit. I, art. 1, tit. 2, art. 12, septiembre 28, 1993, DIARIO OFICIAL [D.O.] (Chile).

²⁴ ILO Convention No. 169, *supra* note 18, art. 13; see also UNDRIP, *supra* note 18, art. 26(3) (requiring that states give legal recognition and protection to the lands and territories traditionally owned by Indigenous peoples).

²⁵ AYLWIN ET AL., *supra* note 10, at 4.4.

²⁶ INFORME PROYECTO CONADI OFICINA SAN PEDRO DE ATACAMA: DELIMITACIÓN DE TERRITORIOS COMUNITARIOS Y PATRIMONIALES INDÍGENAS DE LA PROVINCIA DEL LOA Y PATRONES DE OCUPACIÓN, 1997–1998 (1998).

²⁷ AYLWIN ET AL., *supra* note 10, at 4.2.

operating in the area.²⁸ It should be mentioned that SQM extracts and processes lithium within Los Flamencos National Reserve, despite the fact that it is under official protection and is part of the National System of Protected Areas of the State.²⁹ Lithium extraction and processing are also carried out in the Soncor Lacustrine System, a hydric system of particular importance and a designated RAMSAR site afforded protections under the Ramsar Convention on Wetlands of International Importance, which was ratified by Chile in 1981.³⁰ The exhaustion of the hydric ecosystem of the Atacama Salt Flat as a consequence of prolonged use of the available waters for lithium extraction has been identified by scientific research, including the use of satellite mapping.³¹ In 2017, the First Environmental Tribunal of Antofagasta also recognized the fragility of the Atacama Salt Flat ecosystem and the lack of scientific data supporting the sustainability of SQM's current water uses.³² This recognition prompted the tribunal to order SQM to carry out an environmental impact assessment to ensure such uses comply with existing regulation and ensure the sustainability of the ecosystem.

These impacts on water resources have not only been identified by scientific studies and considered in judicial decisions; equally important is the knowledge and experience of the members of the Lickanantay communities. Community members were interviewed by the Observatorio Ciudadano and the Consejo de Pueblos Atacameños in the context of the 2021 HRIA.³³ According to their testimonies, the impacts on waters in recent years have forced community members to modify their traditional pastoralist and farming activities. Moreover, they describe the consequences of water exhaustion on birds, such as flamingos, as well as the negative impacts to their nesting areas which have diminished in recent years. Likewise, according to the same community testimonies, part of the vegetation cover along the edge of the Atacama Salt Flat has desiccated, particularly at the eastern edge. As a result of the intensive water use system by SQM, the Lickanantay's right to water and right to a safe environment recognized by Chile in domestic legislation and international treaties have been harmed.³⁴ Also highlighted by Lickanantay community members are threats to their cultural rights. This not only stems from the difficulties in maintaining their traditional economy, which is essential to their

²⁸ *Id.* at 4.5.

²⁹ See *Reserva Nacional Los Flamencos*, CONAF, <https://www.conaf.cl/parques/reserva-nacional-los-flamencos/> [<https://perma.cc/V99H-ZG8N>] (last visited June 14, 2023).

³⁰ See *Sistema Hidrológico de Soncor del Salar de Atacama*, RAMSAR: RAMSAR SITES INFO. SERV. (Jan. 1, 2010), <https://rsis.ramsar.org/rsis/876> [<https://perma.cc/PT3N-PX6A>]; Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Feb. 2, 1971, T.I.A.S. No. 1084.

³¹ See generally Babidge, *supra* note 7.

³² Primer Tribunal Ambiental [First Environmental Court], 26 diciembre 2019, "Comunidad Indígena Atacameña de Peine con Superintendencia del Medio Ambiente," Rol de la causa: R-17-2019, *reclamación*, No. 620 (Chile).

³³ See AYLWIN ET AL., *supra* note 10, at 4.5.

³⁴ International treaties include the United Nations Covenant on Economic, Social and Cultural Rights and the United Nations Biological Diversity Convention. See International Covenant on Economic, Social and Cultural Rights art 12, Dec. 16, 1966, 993 U.N.T.S. 3; Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79.

cultures, but also the damage to sacred sites due to water contamination and water exhaustion.³⁵

Finally, SQM violates the Lickanantay peoples' right to reap the benefits generated by SQM's activities on their traditional territory. Participating in the benefits of resource extraction, a right granted in ILO Convention No. 169,³⁶ has never been recognized as such by SQM.³⁷ Rather, the company has implemented a social responsibility program aimed at supporting those communities more closely connected to its operation sites, through initiatives generally related to farming or by supporting women's productive initiatives. Similar initiatives from other companies aim to compensate Indigenous peoples for the damages provoked by a company's operations. However, SQM's initiatives are far from complying with international standards on this matter, and are instead aimed at obtaining community support for their operations. In the context of the CORFO-SQM agreement of 2018, CORFO imposed revenue sharing with Lickanantay communities legally recognized by the Chilean State in accordance with Law No. 19,253. As previously mentioned, however, the State never consulted with the Lickanantay representative organizations regarding the agreement; consequently, the terms were not accepted.

III. ONGOING HARMS

Two years since the 2021 HRIA of SQM on the rights of the Lickanantay people was produced, and in the context of the increasing demand for lithium in global markets, SQM continues lithium production in the Atacama Salt Flat. The growing production revenues obtained by SQM during 2022 reached US\$3.096 billion, a 500% increase in revenues since 2021.³⁸

As a consequence of the agency of the Consejo de Pueblos Atacameños, and the visibility of the HRIA and media in general, SQM has adhered to United Nations Global Compact and developed a human rights policy, including the elaboration of a human rights due diligence plan for its operations in the Atacama Salt Flat.³⁹ The

³⁵ See AYLWIN ET AL., *supra* note 10, at 1.3.2, 4.5; ILO Convention No. 169, *supra* note 18, arts. 13, 25.

³⁶ ILO Convention No. 169, *supra* note 18, arts. 14, 15.2; *see also* UNDRIP, *supra* note 18, arts. 8, 28 (providing that states must ensure effective mechanisms for redress, including through compensation, for the occupation or use of Indigenous peoples' lands, territories, or resources without free, prior, and informed consent).

³⁷ AYLWIN ET AL., *supra* note 10, at 3.2, 4.3.

³⁸ Almeida & Riffo, *supra* note 4.

³⁹ AYLWIN ET AL., *supra* note 10, at 3.2. *See generally* SOL. FOR HUM. PROGRESS, POLÍTICA DE DERECHOS HUMANOS (2020), <https://www.sqmlithium.com/wp-content/uploads/2020/12/POLITICA-Derechos-Humanos.pdf> [<https://perma.cc/D72J-WKY8>]; SOL. FOR HUM. PROGRESS, SQM ESG SUPPORT DOCUMENT 2021: COMPLEMENTARY INFORMATION, at 3.3.2 (2021), <https://www.sqmsenlinea.com/uploads/documentations/86/original.pdf> [<https://perma.cc/G4QV-M36L>]; *see also* *The Ten Principles of the UN Global Compact*, U.N. GLOB. COMPACT, <https://unglobalcompact.org/what-is-gc/mission/principles> [<https://perma.cc/J7AX-UW9Z>] (last visited June 16, 2023) (explaining the U.N. Global Compact is a call to companies to align their strategies and operations with ten universal principles related to human rights, labor, environment, and anti-corruption).

implications that their plans might have on the rights of the Lickanantay people are still uncertain. It is also relevant that the current government of President Boric is engaged in the development of a National Lithium Policy, a policy that considers a much more active State role in lithium production in the Atacama Salt Flat, as well as in other areas such as the Maricunga Salt Flat, located on Colla territory, where the government has already approved lithium extraction projects.⁴⁰ The irony is that the Lickanantay and other Indigenous peoples affected by lithium exploitation have not been invited to participate in the elaboration of this “human rights” plan. The Consejo de Pueblos Atacameños continues to demand recognition of the right to be consulted on the contents of this National Lithium Policy, as required under ILO Convention No. 169.⁴¹

Unfortunately, this last episode demonstrates the continuation of a pattern of exclusion of Indigenous peoples from decisions that drastically affect their lives, in violation of their rights acknowledged by the Chilean State and the international community. If this pattern of exclusion continues, the sustainability of Lickanantay forms of lives and cultures, as well as of the ecosystem of the Atacama Salt Flat, will certainly be in danger.

⁴⁰ Maria del Mar Parra, *Pueblos atacameños piden ser consultados en debate sobre estrategia nacional del litio*, BIENES COMUNES (Mar. 30, 2023), <https://www.eldesconcierto.cl/bienes-comunes/2023/03/30/pueblos-atacamenos-piden-ser-consultados-en-debate-sobre-estrategia-nacional-del-litio.html> [https://perma.cc/Y4JT-CD68]; Nicole Greenfield, *Lithium Mining is Leaving Chile's Indigenous Communities High and Dry (Literally)*, NAT. RES. DEF. COUNCIL (Apr. 26, 2022), <https://www.nrdc.org/stories/lithium-mining-leaving-chiles-indigenous-communities-high-and-dry-literally> [https://perma.cc/P2KU-3X6F].

⁴¹ Mar Parra, *supra* note 40.