



Diagnostic Report on Corruption in the Chilean Lithium Industry

Authors

Telye Yurisch Toledo
Gary González Robles
Engel Ramírez Venegas

April 2024

Diagnostic Report on Corruption in the Chilean Lithium Industry

Authors: Telye Yurisch Toledo, Gary González Robles, Engel Ramírez Venegas

Content editing: Flavia Liberona Céspedes, Equipo NRGi

Copy editing: Cristóbal Moreno Silva

Cover design and layout: Iunta

Free distribution: This work is licensed under CC BY-NC-SA 4.0
This license requires that reusers give credit to the creator. It allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, for noncommercial purposes only. If others modify or adapt the material, they must license the modified material under identical terms.

More information at: <http://creativecommons.org>



Disclaimer


Natural Resource Governance Institute (NRGI), supported by a grant from the Open Society Foundations (OSF). The opinions and views expressed in this publication do not purport to reflect those of NRGI or OSF.

ISBN

978-956-6379-01-0, Santiago, Chile.

Terram Foundation

General Bustamante 24, 5th floor, office i. Providencia, Santiago, Chile.

 Telephone: +56 2 22694499

 e-mail: contacto@terram.cl

 Facebook Terram Foundation: [Fundación Terram](#)

 X Terram Foundation: [@TerramChile](#)

 Instagram Terram Foundation: [@fundacion_terram](#)

 LinkedIn: [Fundación Terram](#)



Table of Contents

Acronyms and abbreviations	4	4.2 Revenue collection	40
Introduction	5	4.2.1 Area background	40
1. Methodology	6	4.2.2 State capture	42
1.1 Key concepts	8	4.2.3 Companies manipulate the factors that determine their revenue obligations	46
1.2 Methodological adaptation	9	5. Prioritization and action plan	49
2. Context	12	6. References	52
2.1 General background	12	Cited Legislation	55
2.2 National legal framework	14	Bill of Law	57
3. General assessment of corruption in the Chilean lithium industry	18	7. Annexes	58
3.1 Areas of focus	18	7.1 Annex 1: Summary repor	58
3.1.1 Decision to extract, license, and contract	18	7.2 Annex 2: Diagnosing corruption (Step 4) and Prioritizing for action (Step 5)	61
3.1.2 Operations	20	7.3 Annex 3: Action plan for prioritized forms of corruptions (Step 6)	66
3.1.3 Revenue collection	23		
3.1.4 Revenue management	25		
3.1.5 State-owned enterprises	26		
3.2 Selection of areas of focus	28		
4. Diagnose corruption	30		
4.1 Decision to extract; licensing and contracting	30		
4.1.1 Area background	30		
4.1.2 State capture	32		
4.1.3 Policy capture	35		
4.1.4 Manipulation of community consultations	38		

Acronyms and abbreviations

ASOGEOMIN	: Chilean Mining Industry Association	FOB	: Free on Board
BCCH	: Central Bank of Chile	GORE	: Regional Government
CCHEN	: Chilean Nuclear Energy Commission	ICC	: International Chamber of Commerce
CDE	: State Defense Council	IEAM	: Specific Mining Tax
CEOL	: Special Lithium Operation Contracts	ILO	: International Labor Organization
CFA	: Autonomous Fiscal Council	LCE	: Lithium Carbonate Equivalent
CGR	: Comptroller General of the Republic of Chile	LME	: Lithium Metal Equivalent
CIPER	: Center for Investigative Reporting	MINSAL	: Sociedad Minera Salar de Atacama S.A.
CMF	: Financial Market Commission	MMA	: Ministry of the Environment
COCHILCO	: Chilean Copper Commission	OECD	: Organization for Economic Cooperation and Development
CODELCO	: National Copper Corporation	OMA	: CORFO mining properties in Salar de Atacama
CONADI	: National Corporation for Indigenous Development	RCA	: Environmental Qualification Resolution
CONAMA	: National Commission for the Environment	SEA	: Environmental Assessment Service
CORFO	: Production Development Corporation	SERNAGEOMIN	: National Geology and Mining Service
CPA	: Council of Atacameño Peoples	SII	: Chilean Internal Revenue Service
CPR	: Political Constitution of the Republic of Chile	SMA	: Superintendency of the Environment
DGA	: General Water Directorate	SQM	: Sociedad Química y Minera de Chile S.A.
EITI	: Extractive Industries Transparency Initiative	TGR	: General Treasury of the Republic
ENAMI	: National Mining Company		
FNE	: National Economic Prosecutor's Office		

Introduction

This report presents the findings of Terram Foundation's diagnosis of corruption in the non-metallic lithium mining industry in Chile. The methodology is adapted from a tool developed by the Natural Resource Governance Institute (NRGI) called "*Diagnosing Corruption in the Extractive Sector: a Tool for Research and Action*", which helps identify and understand major corruption issues in a given extractive industry, making it possible to develop an action plan to prevent such practices going forward.

This research is innovative with respect to previous applications of the tool in Latin America, as it focuses on a mineral that is considered strategic for the energy transition. As a key resource for the development of renewable energies and electromobility, lithium's global boom has overshadowed and ignored the many problems that its extraction causes in local communities and ecosystems.

This report is structured in five chapters according to our adaptation and execution of the steps set forth in the NRGI tool. The first chapter

describes the methodological tool that was used and how it was adapted, defining key concepts and the scope of the research. The second chapter addresses the international context and the importance of lithium, as well as characterizes the Chilean domestic market, the legal framework for extraction, and the various attempts of previous administrations in the last decade to establish a policy governing lithium deposits. The third chapter describes and applies Steps 2 and 3 of the methodology proposed by NRGI, making a preliminary analysis of the data available for each stage of the industry's value chain and identifying areas of focus (see Annex 1). The fourth chapter diagnoses corruption in the areas of focus, identifying the form of corruption suggested by the tool for each area (see Annex N° 2). Finally, the fifth chapter prioritizes the areas of focus according to the scoring criteria indicated in the methodology and outlines the proposed action plan to address the prioritized forms of corruption (see Annex N° 3 for details), along with some closing reflections about the research.

1. Methodology

This research was conducted using the tool “*Diagnosing Corruption in the Extractive Sector: a Tool for Research and Action*”¹ developed by the **Natural Resource Governance Institute (NRGI)** in late 2021. Our goal is to develop an action plan with effective anti-corruption measures to identify and assess the main corruption risks in the Chilean lithium industry.

This tool is based on interaction and multi-stakeholder feedback from three key actors: an organization requesting the assessment (user), an organization leading the research (independent expert), and a wider set of stakeholders including policymakers, civil society, industry, and more.

The methodology is a **six-step process** that defines both implementation timeframes and interaction between actors, which can be summarized as follows:

a) Step 1: Choose sector and set goals.

In this first step, the user selects a specific sector or commodity and appoints an independent expert to conduct the corruption diagnostic.

b) Step 2: Review existing data.

The independent expert compiles existing data for each area of focus, which are the following:

Table 1: Areas of focus by topic.

	Area of focus
Value Chain	Decision to extract; licensing and contracting
	Operations
	Revenue collection
	Revenue management
General topics	State-owned enterprises
	Energy transition

c) Step 3: Select areas of focus.

Based on the research carried out in Step 2, the independent expert, in communication with the other stakeholders, selects the areas of focus that will be further explored during the remainder of the study.

¹ For more information about the tool, see: <https://resourcegovernance.org/es/publications/diagnostico-de-la-corrupcion-en-el-sector-extractivo-una-herramienta-para-la>

d) Step 4: Diagnose corruption.

The independent expert conducts a detailed investigation of the area or areas of focus selected in Step 3 to identify their potential corruption risks.

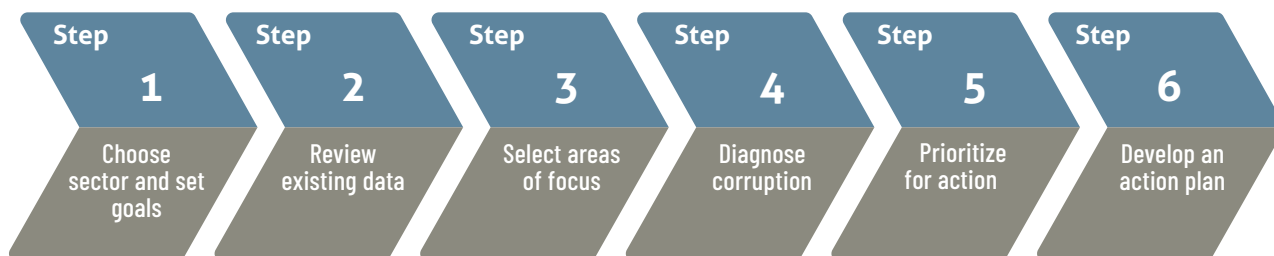
f) Step 6: Develop an action plan.

In this step, the objectives, strategies and measures to combat the corruption risks detected in the previous step are defined.

e) Step 5: Prioritize for action.

The independent expert, in communication with the other stakeholders, prioritizes the forms of corruption detected for each area of focus, according to the criteria of: likelihood, negative impact, and feasibility of positive change.

Figure 1: Synthesized outline of the steps of the NRGi tool.



1.1 Key concepts

In addition to adapting the NRG tool, this research required agreement on and definition of the main terms and concepts to be used in diagnosing the forms of corruption examined in each area of focus. To do so, we first made an overview of the terms described in the tool and, secondly, we asked the user to specify any new concepts that arose during the study.

- **Corruption:** is understood as “*the abuse of entrusted power for private gain*”, as defined by Transparency International. Corruption is therefore a broad concept that can involve a series of improper actions, either through action or inaction (Gillies et al., 2021).
- **Forms of corruption:** are the different ways in which corruption can manifest itself, encompassing both legal and illegal actions, in which entrusted power is abused (Gillies et al., 2021).
- **Risk factors:** are circumstances that contribute to increase the likelihood of corruption occurring (Gillies et al., 2021).
- **Underlying causes:** are the more systemic and structural factors that explain the corruption, such as the prevailing political context (Gillies et al., 2021).
- **Policy capture:** is the process by which public policy decisions or the content or application of regulations are consistently or repeatedly directed away from the public interest and towards those of a specific industry, group or person (OECD, 2017).
- **State capture:** describes “the efforts of individuals or firms to shape the formation of laws, policies and regulations of the state to their own advantage by providing illicit private gains to public officials” (Hellman & Kaufmann, 2001; Hellman & Kaufmann, 2018).

1.2 Methodological adaptation

Step 1: Choose sector and set goals.

As previously mentioned, the purpose of this research was to diagnose corruption risks in the non-metallic lithium mining industry. To this end, two trips were made during April 2023: one to the Salar de Atacama, in the Antofagasta Region, and the other to the Salar de Maricunga, in the Atacama Region, since these are two of the largest salt flats with the highest known concentrations of lithium found in Chile to date.

These trips, which were not required by the tool, were planned in order to learn and observe first-hand the implications, interactions, and perceptions of indigenous communities, academics, social organizations, government authorities, and lithium companies in the area. Our preliminary mapping of relevant stakeholders and the ensuing interviews did not follow a predefined pattern, and therefore it was not possible to systematize them. However, as a result of these trips, a set of qualitative background information was collected that allowed us to broaden our perspective and focus our research objectives.

Step 2: Review existing data.

Once the main research areas were identified and established, a literature review was carried out for each of the first five areas of focus, excluding Energy Transition. This second adjustment to the tool is justified by the framework in which the project is developed, since lithium is understood as a resource that supports the transition to cleaner energy and not as an obstacle to this objective, which is how the tool approaches this area of focus.

On the other hand, the review of existing data was based on the sources suggested by the tool, such as:

- **Existing knowledge of the sector**, based both on the work done by Terram Foundation on mining issues over the years, as well as on the experience gathered from the stakeholders interviewed during the trips;
- **Sector data**, collected from the reports of different national organizations and institutions, such as: the Chilean Copper Commission (COCHILCO), the Financial Market Commission (CMF), the National Economic Prosecutor's Office (FNE), the National Geology and Mining Service (SERNAGEOMIN), and others;

- **Information on past corruption cases**, widely documented by Chilean media such as the Center for Investigative Reporting (CIPER) and other reports and news articles, and finally;
- **Reports on corruption and governance in Chile**, carried out by other organizations with similar tools.

Step 3: Select area of focus.

In this step, a qualitative assessment of the different areas mentioned above was made based on the previously collected information, evaluating each area in terms of:

- The significance of the area of focus with respect to potential corruption risks and the availability of information;
- The seriousness or harm generated by corruption in this area; and
- Opportunities for action and positive change.

Each of the above items was given a score: “yes”, “no”, or “somewhat”, according to the research team’s subjective evaluation in discussion with the user.

Step 4: Diagnose corruption.

Once the areas of focus were selected, the identified corruption risks were further analyzed and classified according to the different forms of corruption described in the tool. Our comprehensive investigation was focused on identifying and assessing the most significant forms of corruption in each of the areas of focus and determining the risk factors and underlying causes linked to each one. This guided our preliminary search for potential solutions that could address the main corruption risks.

Step 5: Prioritize for action.

We first prioritized the forms of corruption in each area of focus, completing the template included in the tool’s guide. This exercise involved giving each form of corruption a numerical score between 1 (low) and 5 (high), for each of the three factors evaluated: i) likelihood, ii) impact (multiplied by 2) and iii) feasibility. The maximum possible score was 20 and the minimum score was 4 (see Annex 2). This evaluation provided a ranking of the different forms of corruption identified, allowing us to focus our efforts on the corruption risks with the highest scores and/or the most important ones.

Additionally, as part of the **“International Seminar: Strengthening Transparency and Accountability in Chile’s Lithium Industry”²**, organized by NRGi, Terram Foundation, Chile Transparente, and GIZ on October 17 and 18, 2023 in Santiago, Chile, a closed workshop called **“Diagnostic Report on Corruption in Chile’s Lithium Industry and Spaces for Action”** brought together different Chilean and international organizations, experts, authorities, and academics. At the workshop, the research group (independent expert in terms of the NRGi tool) spoke on the forms of corruption found for the areas of focus, which were compared and contrasted with comparative experiences from other countries, and discussed possible measures to tackle the identified issues and provide input for the development of an action plan.

Step 6: Develop an action plan.

In this step, the information gathered in the aforementioned workshop was first systematized and comments and observations were then anonymously sorted by each area of focus. This allowed us to create a framework of common understanding that laid the groundwork for the measures proposed later in the plan. These measures are aimed at strengthening the governance of the lithium industry in Chile and reducing the identified corruption risks.

² For more information, see the event press release, “El futuro de la industria del litio en Chile”, (The future of the Chilean lithium industry) published by MINSUS on October 18, 2023. Available at: <https://minsus.net/el-futuro-de-la-industria-del-litio-en-chile/>

2. Context

2.1 General background

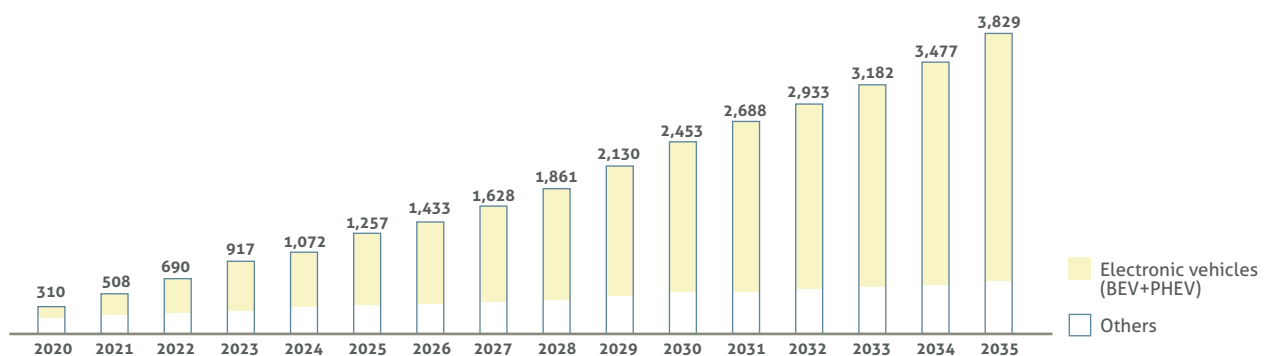
The global climate crisis resulting from the high emissions of greenhouse gases (GHG) into the atmosphere, mainly due to the burning of fossil fuels such as oil, coal, or gas for use in the energy sector and in land, air, and maritime transportation, has spurred the search for new technologies to optimize energy production, distribution, and storage as part of a new “green” energy paradigm meant to counteract global warming (Hernández, 2020).

The energy transition, which hopes to reduce GHG emissions through the use of novel raw materials, has positioned lithium as a strategic mineral in battery manufacturing, primarily to power the rise of electric vehicles, and in the storage of

energy from renewable sources (solar, wind, and others) (Gundermann & Göbel, 2018; Cabello, 2022).

Thus, according to the Chilean Copper Commission’s latest report on the “Lithium Market” (COCHILCO, 2023), it is projected that total demand will reach 3,828 kt of lithium carbonate equivalent (LCE) by 2035 (Figure 1), due to the increased global demand for lithium-ion batteries. In addition, the report highlights the rise in prices of different lithium compounds, such as carbonates and hydroxides, which in 2022 resulted in an 8-fold increase in the value of exports (\$8.14 billion USD) compared to the previous year.

Figure 2: Projection of aggregate lithium demand (LCE kt) through 2035.



Source: Terram, based on data from COCHILCO, 2023.

Moreover, according to the latest information from the National Geology and Mining Service (SERNAGEOMIN) in its 2022 Annual Report, Chile remains the second largest lithium producer in the world, responsible for 29.6% of all production, equivalent to 303,241 tons of lithium in different compounds (carbonates, sulfates, and hydroxides). This silvery-white metal was the resource with the highest growth between 2021 and 2022, increasing production by 86.6% (SERNAGEOMIN, 2023). This is especially relevant when production is broken down by territorial unit because, according to SERNAGEOMIN, all of the lithium produced in Chile comes from the Antofagasta Region, specifically from the Salar de Atacama.

This salt flat, located in the Andes Mountains at 2,300 m.a.s.l., is the largest salt deposit in the country with an area of 3,000 Km², an average rainfall of around 10 mm/year, and a potential

evaporation of 2,000 mm/year (Alonso & Risacher, 1996). It is located within the so-called “Lithium Triangle” formed by northwestern Argentina, southwestern Bolivia, and northeastern Chile, which holds more than 70% of the world’s lithium reserves in its brine and whose climate makes it the most economically advantageous site for mining (Gundermann & Göbel, 2018). Moreover, this wetland is of enormous sociocultural importance for the pre-Hispanic communities that have practiced their economic and traditional activities in the surrounding area for centuries, including the Lickanantay or Atacameño peoples (Lorca, Olivera, & Garcés, 2023). In ecological terms, the Salar is a high value ecosystem due to the complex hydrological network it forms part of and the broad biodiversity it supports³. However, to date, only a small part of this salt flat is legally protected as part of **Los Flamencos National Reserve**, managed by the National Forest Corporation (CONAF)⁴.

³ For more information, see the article “Salares y litio en ecosistemas frágiles”, (Salt flats and lithium in fragile ecosystems) published by CIPER on July 10, 2023. Available at: <https://www.ciperchile.cl/2023/07/10/salares-y-litio-en-ecosistemas-fragiles/>

⁴ For more information, please visit: <https://www.conaf.cl/parques/reserva-nacional-los-flamencos/>

2.2 National legal framework

Since 1979, lithium has been declared a non-leasable mineral that is considered strategic and is “reserved” for the Chilean government, therefore lithium deposits can only be explored or extracted directly by the state or its companies. Some mining concessions, also known as holdings, were awarded previously when lithium was still leasable⁵ and are held primarily by three public entities: the Production Development Corporation (CORFO) managed the holdings located in the Salar de Atacama (55% of the surface of the Salar), the National Mining Company (ENAMI) controls 4% of the surface of the Salar de Aguilera, and CODELCO manages 100% of the Salar de Pedernales and 18% of the surface of the Salar de Maricunga. Additionally, there are three private groups that hold 25% of the surface of the Salar de Maricunga. These titleholders have the exclusive right to extract the lithium themselves or to enter into

partnerships with private parties to do so, while complying with the respective environmental and sectoral regulations. However, to date, only CORFO has entered into direct extraction agreements with private companies under a “contractual model”, meaning that has project contracts and administrative leases to extract certain quantities and/or quotas of lithium within established periods of time (CORFO, 2016; Poveda, 2020).

The two private companies that extract lithium in Chile (jointly with potassium salts) are Sociedad Química y Minera de Chile (SQM), owned by Chilean and Chinese capitals, which operates in the eastern part of the Salar de Atacama, and the U.S. mining company Albemarle, which operates in the southeastern part of the same. Both companies have undergone a number of changes over the years, the main milestones of which are shown in Table 2.

⁵ Chapter 4 of this report, “Diagnosing corruption”, presents a detailed analysis of the legal framework for the exploration and extraction of lithium in Chile.

Table 2: Corporate changes at SQM and Albemarle between 1968 and 2023.

SQM S.A.	Year	ALBEMARLE CORPORATION
Foundation of SQM as a joint venture between the Chilean government and Compañía Salitrera Anglo Lautaro S.A.	1968	
Nationalization of SQM	1971	
	1975	Basic Agreement between CORFO and Foote Minerals Company to carry out studies in the Salar de Atacama.
	1980	Incorporation of Sociedad Chilena del Litio (SCL) as a joint venture between CORFO (45%) and Foote Minerals Company (55%).
Privatization of SQM	1983	
Incorporation of Sociedad Minera Salar de Atacama (MINSAL) as a joint venture between Amax Inc. (63.75%), CORFO (25%) and Molymet (11.25%).	1986	
	1989	CORFO sells its stake in the company to Foote Minerals Company.
SQM buys Amax Inc. and Molymet's stake in MINSAL.	1993	
CORFO sells its stake in MINSAL on the stock market, which is bought by SQM.	1995	
	1998	Chemetall joins the Foote Minerals Company.
	2004	Rockwood Holding Inc. buys Chemetall's stake.
	2015	Albemarle Corporation buys out the entire company.
Through a transaction on the Santiago Stock Exchange, the Chinese company Tianqi acquires a 24% stake in SQM ⁶ .	2018	

Source: Terram, based on information from Azócar, 2022, and Poveda, 2020.

⁶ For more information, see the article "Julio Ponce has new partner: Tianqi finally buys 24% of SQM and seals Nutrien's exit", published by Diario Financiero on December 03, 2018. Available at: <https://www.df.cl/empresas/mineria/julio-ponce-tiene-nuevo-socio-finalmente-tianqi-compra-el-24-de-sqm-y>

The events mentioned in the table above can be connected to the four periods of lithium governance in Chile proposed by Poveda (2020), in which he identifies: a first stage between 1970 and 1983, characterized by laying the foundations of the current legal framework that regulates the lithium industry, establishing this mineral as strategic, non-leasable and reserved for the Chilean government; a second stage, between 1984 and 2004, marked by the gradual privatization of the lithium companies (MINSAL and SCL) that transforms the paradigm of a “strategic mineral” controlled by the state into a mineral extracted by private companies, a process that is undoubtedly in line with the subsidiary political and economic model established in the 1980s and reinforced by the subsequent administrations of the *Concertación* coalition; a third stage, from 2005 to 2013, linked to rising market prices; and finally, a fourth stage, between 2014 and 2019, associated with the lithium “boom” and some significant institutional changes.

During this last period (2014-2019), substantive modifications were made to CORFO’s project and lease contracts with Albemarle (2016) and SQM (2018) after the agency filed two lawsuits against the latter company for failure to pay in full the rents agreed upon between 2009 and 2014 (CORFO, 2016). After a long arbitration process in

the Santiago Chamber of Commerce, this resulted in a settlement that set out new requirements for the renegotiation of the CORFO - SQM Contract, such as changes to SQM’s corporate governance, including the departure of Julio Ponce Lerou (who at the time was Augusto Pinochet’s son-in-law⁷); a \$17.5 billion USD conflict termination payment; changes to extraction quotas; funds for research and development (R&D), Indigenous Communities communities and regional development; and other stipulations (CORFO, 2018).

On the other hand, it should be noted that since 2014, a number of initiatives and proposals have been presented and formulated to address the industry’s governance issues, including the creation, at the beginning of the presidency of Michelle Bachelet, of the **National Lithium Commission**, whose objective was to propose a national policy for this mineral. This was finally released in 2016 as the **Salt Flat Governance and Lithium Policy** and highlighted the importance of sustainable salt flat governance, which until then was not the focus of the discussion. It should be noted that one of the suggestions made by the Commission in its final report⁸ was to update CORFO’s current contracts with SQM and Albemarle in order to improve the government’s participation in lithium mining, which was lost during the privatization stage.

⁷ It should be noted that SQM was created in 1968 with the objective of restructuring the Chilean saltpeter industry. Its initial corporate structure was a joint venture between the Chilean government and Compañía Salitrera Anglo Lautaro S.A. In 1971, during the administration of the Popular Unity coalition, the industry was nationalized and placed entirely in the hands of CORFO. However, the privatization began of SQM in 1983 during the civil-military dictatorship (1973-1990), transferring ownership to Julio Ponce Lerou who, at the time, was the son-in-law of dictator Augusto Pinochet Ugarte and director of CORFO (Polanco, 2015).

⁸ For more information, see: https://ciperchile.cl/pdfs/2015/06/sqm/INFORME_COMISION_LITIO_FINAL.pdf

Finally, and in line with the aforementioned policies, in 2023 the administration of President Gabriel Boric introduced the **National Lithium Strategy** (Ministry of Mining, 2023), whose main provisions include the creation of a **National Lithium Company** that restores public participation in the industry; the creation of a **Public Lithium and Salt**

Flat Technological and Research Institute focused on building capacities and technical knowledge that are currently lacking regarding salt flats; the creation of a **Protected Salt Flats Network**; and the creation of a **Strategic Committee on Lithium and Salt Flats** in charge of implementing the strategy.

Salar de Maricunga, National Park Nevado Tres Cruces, Atacama Region.

Photo: Fundación Terram | Cristóbal Moreno.



3. General assessment of corruption in the Chilean lithium industry

3.1 Areas of focus

3.1.1 Decision to extract, license, and contract

As mentioned above, lithium has been a non-leasable mineral substance considered strategic and “reserved” for the Chilean government since 1979, which is enshrined in subsequent mining legislation (Political Constitution of 1980, the Organic Act on Mining Concessions of 1982 [No. 18,097], and the Mining Code of 1983 [No. 18,249]), thus establishing that the exploration and mining of lithium deposits can only be carried out directly by the state, its enterprises, or through “Special Lithium Operation Contracts” (CEOL). As a result of the mining contracts signed by CORFO with private companies, only two companies currently mine the silvery-white metal (jointly with potassium salts) in Chile: Sociedad Química y Minera de Chile (SQM), controlled by Chilean and Chinese capital, which mines in the eastern part of Salar de Atacama, and the U.S. mining company Albemarle, which mines in the southeastern part of the same salt flat. Likewise, in 2012, 2018, and 2021 the Ministry of Mining created CEOLs with several public and private actors. These led to numerous legal controversies

both in the design of the award criteria and the selection of the companies, causing two of the three processes to be annulled.

Thanks to this legal framework, SQM has become an important but controversial player in the mining sector as well as the public sphere, as it has been involved in a number of corrupt practices and the political capture of the state, which has allowed it to hold a preferential position in the production of lithium in Chile, despite the fact that it is still facing lawsuits for bribery and sanctions for environmental and contractual non-compliance.

This area of focus is therefore one of the most relevant in terms of corruption risks and opportunities for state capture. SQM engaged in capture tactics by exercising **undue influence over the drafting and/or reform of laws and regulations** through irregular and sustained political financing that allowed it to incorporate tailor-made clauses into the discussion of Act N° 20,469 (2010) that “Introduces modifications to the taxation of mining activity”, which will be reviewed in detail in the “Revenue collection” section, as well as influencing

the 2008-2010 reform of Act N° 19,300 on General Bases of the Environment (LBGMA), known as the Environmental Act, where it used its political connections to lobby to “soften” the provisions of the Act⁹.

In addition to the above, SQM took other reprehensible actions that constitute policy capture, which is the main risk for this area. One of these actions was to **obstruct third-party participation in future contracts and licenses**¹⁰ to operate in the Salar de Atacama. . This action led CORFO to file for arbitration in 2016, accusing the company of having registered water rights in its name for more than 300 L/s on lands surrounding the holdings it was temporarily leased as part of its mining concession in the Salar and of having taken possession of several mining easements that overlapped its holdings, registering some of them up to the year 2059 and others up to 2057, in clear violation of the contract ending in 2030. By registering water rights, easements, and concessions required for lithium mining in its name, SQM built a safeguard for its business that might be able to block CORFO from licensing mining rights to a different company at the end of the contract.^{11, 12} This is very worrying and is it is not only a strategy of SQM in the Salar de Atacama.

As of 2022, SQM had an area of 2,687,630 hectares of mining concessions, 16.2% of the total national surface, making it the company with the largest surface area of concessions in Chile, regardless of the primary mineral being extracted. This surpasses the Escondida mining company and even the state-owned CODELCO, the largest producers of copper in Chile and the world (SERNAGEOMIN, 2023), which shows the company’s control over mining holdings and therefore its capacity to influence public policy.

Another action by the company that constitutes policy capture has to do with opportunities for **favoritism in the awarding of contracts and licenses** for lithium extraction. Despite irregular political financing and the arbitrations filed by CORFO against SQM for breach of contract and violation of the government’s rights between 2013 and 2018, which will be reviewed in detail below, CORFO renegotiated and modified its leases and project contracts with SQM in 2018, establishing an additional extraction quota of approximately 350,000 tons of lithium metal equivalent (LME) until 2030 in exchange for new lease rents and value-added incentives, among other elements (CORFO, 2018).¹³ Furthermore, the first public CEOL tendered by the Ministry of Mining in 2012 was awarded to

⁹ For more information, see the article “La intervención de SQM que cambió la Ley de Medioambiente”, (The SQM intervention that changed the Environmental Act) published by CIPER on May 24, 2018. Available at: <https://www.ciperchile.cl/2018/05/24/la-intervencion-de-sqm-que-cambio-la-ley-de-medioambiente/>

¹⁰ Although the NRG tool does not recognize these practices as a form of corruption, the authors propose considering it as one given its implications for the area under study.

¹¹ For more information, see the article “El día en el que el Estado le entregó el control del Salar de Atacama a Ponce Lerou”, (The day the State handed over control of the Salar de Atacama to Ponce Lerou) published by CIPER on June 26, 2015. Available at: <https://www.ciperchile.cl/2015/06/26/el-dia-en-que-el-estado-le-entrego-el-control-del-salar-de-atacama-a-ponce-lerou/>

¹² For more information, see the article “SQM-CORFO: las jugadas maestras que consolidaron el poder de Ponce Lerou”, (SQM-CORFO: the moves that consolidated Ponce Lerou’s power) published by CIPER on June 13, 2018. Available at: <https://www.ciperchile.cl/2018/06/13/sqm-corfo-las-jugadas-maestras-que-consolidaron-el-poder-de-ponce-lerou/>

¹³ For more information on the terms of the agreement, see the CORFO-SQM settlement briefing entitled *Modificación de contratos del Estado de Chile con Albemarle y SQM* (Modification of contracts signed by the State of Chile with Albemarle and SQM), (pp. 6-12).

SQM, but the contract was later annulled because the company had pending litigation with the government, therefore violating the conditions of the tender, in addition to making unlawful payments to the then Undersecretary of Mining, Pablo Wagner, who intervened in favor of SQM during the awarding process¹⁴. Despite all of this, in December 2023, **CODELCO, by order of the President, established a Memorandum of Understanding with SQM to jointly mine the Salar de Atacama until 2060** (CODELCO, 2023).

Finally, this area also showed corruption vulnerabilities related to the absence of an effective indigenous consultation process, both in the CEOL tender and in the establishment of mechanisms to distribute economic benefits in Atacameño/Lickanantay communities, which is referred to as **manipulation of community consultations** in the NRGJ tool.

Potential actions: in general terms, there are two lines of action and/or opportunities for positive change in relation to the identified practices of policy capture and state capture, which have a high risk of progressing to a more systematic phenomenon. The first is **increasing the participation of the state and/or third parties in lithium extraction**. This can include improving assessment and partner selection for CEOLs, among

other actions. The second is the promotion of **anti-corruption practices** that will ensure greater integrity in decision-making processes and the implementation of deeper transparency in the process of tendering and awarding contracts.

3.1.2 Operations

The Salar de Atacama is currently the only deposit in Chile where lithium is extracted. It is a high Andean wetland located in the driest desert on the planet, from which it gets its name, with a fragile, highly diverse ecosystem home to different endemic species that depends on its complex hydrological network¹⁵. Its watershed is also inhabited by different indigenous communities that have practiced their traditional and economic activities here for hundreds of years, such as the Aymara, Colla, and Lickanantay communities, among others (Gundermann & Göbel, 2018). The Atacameño people, also known as Lickanantay, are partially organized as the Council of Atacameño Peoples (CPA)¹⁶, an organization that brings together 18 indigenous communities to preserve and promote their culture and values, which has made them key stakeholders in resisting and raising awareness about the local impacts of the lithium industry.

¹⁴ For more information, see the article: "CDE pide al Fiscal Nacional que dirija la investigación contra Wagner por fallida licitación del litio", (CDE asks the National Prosecutor to lead the investigation against Wagner for failed lithium tender) published by CIPER on May 26, 2015. Available at: <https://www.ciperchile.cl/2015/05/26/cde-pide-al-fiscal-nacional-que-dirija-la-investigacion-contra-wagner-por-fallida-licitacion-del-litio/>

¹⁵ For more information, see the article "Salares y litio en ecosistemas frágiles", published by CIPER on July 10, 2023. Available at: <https://www.ciperchile.cl/2023/07/10/salares-y-litio-en-ecosistemas-fragiles/>

¹⁶ For more information on the Council of Atacameño Peoples, visit their website at: <http://www.lickanantay.com/#!/-nuestra-organizacion/>

For this area of focus, three main findings were identified that pose or have posed potential corruption risks. The first concerns the “profit-sharing agreements”¹⁷ that have been established between lithium companies and indigenous communities, which are referred to as **misuse of community development and/or social investment programs** in the NRG tool. Rockwood (now Albemarle) first implemented unusual “shared value” practices in 2012, which were then replicated in CORFO’s renewed contracts with Albemarle (2016) and SQM (2018), and were used as a reference to establish terms of engagement with Colla indigenous communities for the various projects seeking to operate in the Salar de Maricunga¹⁸.

Another finding concerns **corruption in the awarding of contracts**, as exemplified by the case of Laurence Golborne, former President Sebastián Piñera’s dual minister of Mining and Energy (2010–2011). While negotiating the bill that would reform mining taxation (No. 20,469, mentioned above), Golborne, together with Pablo Longueira (then Senator and later Minister of Economy), incorporated the recommendations proposed by Patricio Contesse, former CEO of SQM, into the bill in their entirety.¹⁹ This meant a tax benefit for the

company thanks to the tax invariability that was being discussed at the time. Years later in 2018, Golborne would be appointed to the board of SQM, a position he held until 2022, a clear example of the revolving door between the public and private sectors.

Finally, the third finding is companies’ **recurrent deviation from their environmental obligations**. Both SQM and Albemarle have been sanctioned by the competent authorities (Superintendency of the Environment and the General Water Directorate) due to different instances of non-compliance with their Environmental Qualification Resolutions (RCA) and/or Early Warning Plans (PAT),²⁰ such the extraction of water in excess of the levels established in their environmental permits and impacts on local biodiversity, among other factors.

Based on the facts presented above, **direct contributions to local communities** represent the main corruption risk for this area of focus. When the first agreement was signed between Albemarle (then Rockwood) and the community of Peine in 2012, in which the company committed to make an annual contribution of 3.5% of its sales (Lorca, Olivera, & Garcés, 2023), the foundations were laid for a new

¹⁷ For more information, see the website of Albemarle Chile. Available at: <https://www.albemarlelitio.cl/Sostenibilidad/social/comunidades>

¹⁸ For more information, see the article “CORFO debe cumplir con el Convenio 169 de la OIT en lo referido al proceso de consulta para asignar los recursos destinados por SQM al desarrollo de comunidades indígenas ubicadas en el Salar de Atacama, resuelve la Corte Suprema”, (Supreme Court rules that CORFO must comply with ILO Convention 169 regarding consultation processes in order to allocate SQM funds to the development of indigenous communities in the Salar de Atacama) published by Diario Constitucional on August 31, 2022. Available at: <https://www.diarioconstitucional.cl/2022/08/31/CORFO-debe-cumplir-con-el-convenio-169-de-la-oit-en-lo-referido-al-proceso-de-consulta-para-asignar-los-recursos-destinados-por-sqm-al-desarrollo-de-comunidades-indigenas-ubicadas-en-el-salar-de-ataca/>

¹⁹ For more information, see the article “Cambio clave de la Ley de Royalty que benefició a SQM salió del computador de Contesse”, (Key change in the Royalty Act that benefited SQM came from Contesse’s computer) published by CIPER on March 7, 2016. Available at: <https://www.ciperchile.cl/2016/03/07/cambio-clave-de-la-ley-de-royalty-que-beneficio-a-sqm-salio-del-computador-de-contesse/>

²⁰ For more information, see the website of the Superintendency of the Environment. Available at: <https://portal.sma.gob.cl/index.php/2019/01/07/sma-aprueba-programa-de-cumplimiento-que-impone-exigencias-a-sqm-salar-s-a-avaluadas-en-usd-25-millones/>

transactional relationship between companies and communities that was outside of public regulation. Later on in 2016, when its contract with CORFO was being renewed, the company extended these contributions to the 18 Atacameño communities belonging to the CPA.

This undoubtedly set a precedent for lithium companies, and CORFO would institutionalize this relationship strategy in a specific clause in its modified lease agreement with Albemarle. This was repeated on two subsequent occasions: when modifying their contract in 2018, CORFO and SQM set a minimum (\$10 million USD) and a maximum amount (\$15 million dollars) to be distributed to Atacameño communities each year (CORFO, 2018). Likewise, in 2022 the Blanco Project of Minera Salar Blanco S.A., located in the Salar de Maricunga, committed to “share” 0.3% of the sales from its commercial operations with three Colla communities in Diego de Almagro, in the Atacama Region, setting a minimum of \$300,000 USD per year in its environmental permit (RCA), which was approved by Exempt Resolution No. 0094 (SEA, 2020).

Potential actions: Two lines of action and/or opportunities for positive change are identified in order to regulate and improve the transparency of the contributions made by companies to local communities. The first is to ensure **increased government regulation and continuous monitoring**

of the “collaboration agreements” and “direct contributions” signed by the lithium companies with the indigenous communities surrounding their operations, in order to prevent opportunities to co-opt or demobilize social opposition to the sector’s environmental impacts. Secondly, it is important to establish **transparency clauses in these “agreements”** that periodically report cash or in-kind contributions, identify the final recipients, and establish accountability process for beneficiaries.

3.1.3 Revenue collection

The fiscal framework of the Chilean lithium industry includes taxes such as the Income Tax and the Specific Mining Tax (IEAM) as well as the payment of mineral patents, royalties, and direct subnational contributions established in the contracts between CORFO and the two lithium companies (SQM and Albemarle) operating in the Salar de Atacama (Jorrat, 2022). The industry and its regulatory institutions do not present official figures on taxation in the sector, mainly because they are subject to tax “secrecy”, which means that there are large reporting and fiscal transparency gaps (Jorrat, 2022; Yurisch & Martínez, 2022). This regulatory situation becomes even more complex when considering that the mineral is not traded on the stock exchange, so its price is the outcome of negotiations between producers and consumers, which has led to differences between the market prices of lithium carbonate and the prices implicit in the FOB value of exports, which



Pool of brine containing lithium carbonate in Albemarle operations, Salar de Atacama, Atacama Region.

Photo: Terram Foundation | Cristóbal Moreno

averaged 58% in Argentina and 21% in Chile in the period from 2010 to 2020 (Jorrat, 2022). Undoubtedly, this complex and opaque tax situation constitutes one of the industry's main public issues. In two formal instances, CORFO has pointed out the use of transfer pricing by SQM (CORFO, 2016) and Albemarle (2021)²¹, stating that both companies have employed "mechanisms" to reduce the payment of their tax obligations.

In this context, we identified two fiscal practices in this area of focus that reflect practices of **state capture** and a potential **vulnerability to corruption**. As mentioned above, a clear example of capture has been the **undue influence** exercised by Patricio Contesse, the former CEO of SQM, over Pablo Longueira, then Senator (2010) and later Minister of Economy (2011), during the reform of the IEAM tax under Act N° 20,469 of 2010 (mentioned above). Specifically, in 2010, Longueira received emails from Contesse in which he proposed to insert an article that would give SQM access to tax benefits, language that was adopted with almost the same wording in the new law. In addition, illegal payments made by the company to Longueira and his associates are still being investigated, which led the Public Prosecutor's Office in 2016 to indict Contesse for bribery and Longueira for taking bribes²², a case that has been pending for seven years and has not yet been settled²³.

²¹ For more information see the article "CORFO inicia arbitraje contra Albemarle por incumplir contrato de litio con el Estado de Chile", (CORFO files for arbitration against Albemarle for breach of lithium contract with the State of Chile) published by CORFO on February 22, 2021. Available at: https://www.CORFO.cl/sites/Satellite?c=C_NoticiaNacional&cid=1476728125492&d=Touch&pagename=CORFOPortalPublico%2FC_NoticiaNacional%2FCORFODetalleNoticiaNacionalWeb#:~:text=CORFO%20present%C3%B3%20el%20viernes%20pasado,con%20el%20Estado%20de%20Chile.

²² For more information, see the article "El entierro del caso SQM IV: la formalización de Longueira, el 'perdonazo' del SII y la renuncia de los fiscales", (The cover-up of the SQM IV affair: the indictment of Longueira, the upholding of the SII's appeal, and the resignation of the prosecutors) published by CIPER on May 4, 2018. Available at: <https://www.ciperchile.cl/2018/05/04/el-entierro-del-caso-sqm-iv-la-formalizacion-de-longueira-el-perdonazo-del-sii-y-la-renuncia-de-los-fiscales/>

²³ For more information, see the article "Después ocho años, este lunes inició el juicio oral contra Longueira y ME-O por el caso SQM", (After eight years, the oral proceedings against Longueira and ME-O for the SQM affair began this Monday) published by Cooperativa on February 13, 2023. Available at: <https://cooperativa.cl/noticias/pais/politica/caso-sqm/tras-ochos-anos-este-lunes-inicio-el-juicio-oral-contra-longueira-y-me-o/2023-02-13/093640.html>

On the other hand, some of the area's **most serious corruption risks** include the actions taken by mining companies to **reduce the payment of and/or exempt themselves from tax obligations**. Regarding this, the Special Investigation Commission on Lithium²⁴, created by the Chamber of Deputies in 2016, instructed the Internal Revenue Service (SII) to modify its criteria for applying the IEAM and, starting that year, to declare lithium mining in the Salar de Atacama as subject to the tax, considering that these holdings were awarded prior to the 1979 declaration of non-leasability²⁵. To date, Albemarle has complied with this new tax obligation; however, the SII and SQM are involved in a legal dispute on the matter in which the latter claims that its operations are not subject to the tax since lithium is a non-leasable mineral²⁶.

On the subject of **tax noncompliance**, CORFO has reported gaps in the calculation of the tax obligations of both companies and has filed arbitration proceedings before chambers of commerce. CORFO first filed arbitration with SQM, claiming that the company did not pay the full amount of its lease rents between 2009 and 2013, a tax gap estimated to be at least \$8.9 billion USD

(CORFO, 2016). In 2021, CORFO filed arbitration once again, this time with Albemarle, claiming that the company had altered the calculation mechanism of the royalty established in the contract, resulting in estimated tax losses of \$15 billion USD²⁷, suggesting that transfer pricing had been used in both cases.

Potential actions for the situations described above: a high potential for positive change is identified and three clear lines of action are proposed. The first has to do with the lack of price transparency in the lithium market, where **intergovernmental cooperation (across the lithium triangle) to establish a reference price** for the industry would contribute to solving the problem. In conjunction, **strengthening the government agencies responsible for controlling and inspecting mineral products on the market** would make it possible to reduce the use of "transfer pricing". And finally, **implementing a comprehensive transparency agenda** would make it possible to improve both public and private fiscal accountability.

²⁴ For more information, please visit the website of the "Comisión Especial Investigadora de la participación de organismos públicos en la exploración, procesamiento, explotación, exportación y transporte de litio, así como de las características del contrato suscrito entre CORFO y SQM", (Special Investigation Commission on the participation of public entities in the exploration, processing, mining, export and transport of lithium, as well as the characteristics of the contract signed between CORFO and SQM). Available at: <https://www.camara.cl/legislacion/comisiones/sesiones.aspx?prmlD=1181&prmlDtipo=2103>

²⁵ For further information, see the article "SQM vs. SII: la disputa por el pago del impuesto específico al litio", (SQM vs. SII: the dispute over the lithium specific tax) published by La Tercera on March 29, 2022. Available at: <https://www.latercera.com/pulso-pm/noticia/sqm-vs-sii-la-disputa-por-el-pago-del-impuesto-especifico-al-litio/ZIMDB7MXUVCUZNT5SLATAJIN7M/>

²⁶ For further information, see the article "SII vs. SQM: autoridad exige a minera pagar royalty de años tributarios 2020, 2021 y 2022", (SII vs. SQM: authority requires mining company to pay royalty for tax years 2020, 2021, and 2022) published by La Tercera on May 3, 2023. Available at: <https://www.latercera.com/pulso/noticia/sii-vs-sqm-autoridad-exige-a-minera-pagar-royalty-de-anos-tributarios-2020-2021-y-2022/3ICWSJGJRVCS5N445J2ZD6E4MI/>

²⁷ For more information see the article "CORFO inicia arbitraje contra Albemarle por incumplir contrato de litio con el Estado de Chile", published by CORFO on February 22, 2021. Available at: https://www.CORFO.cl/sites/Satellite?c=C_NoticiaNacional&cid=1476728125492&d=Touch&pagename=CORFOPortalPublico%2FC_NoticiaNacional%2FCORFODetalleNoticiaNacionalWeb#:~:text=CORFO%20present%C3%B3%20el%20viernes%20pasado,con%20el%20Estado%20de%20Chile.

3.1.4 Revenue management

The lithium industry's current fiscal framework consists of tax and non-tax instruments as well as other types of contributions specified in the lease and project contracts between CORFO and the companies in the sector. As mentioned in the previous section, the industry is subject to income tax, IEAM, and other general taxes. Regarding non-tax and other contributions, in the modified contracts negotiated by CORFO with Albemarle (2016, then known as Rockwood) and SQM (2018), royalties were established in the form of a tiered, progressive, and marginal commission rate for different lithium compounds, from 6.8% to 40%. The contracts also established direct contributions to regional governments, municipalities, and local communities, and others for research and development (R&D), among other non-tax provisions (SII, 2018; Poveda, 2020). In particular, the direct fiscal contributions have been the subject of public scrutiny that has called into question their applicability, distribution criteria, transparency, and accountability.

This background allowed us to identify corruption vulnerabilities for this area of focus related to **subnational allocations to regional and local governments and to communities**. As mentioned above, the modifications to existing contracts between CORFO and mining companies pose several fiscal challenges: with these new clauses, the Antofagasta Region and Atacameño

communities are projected to receive subnational contributions of approximately \$980 billion USD between 2018 and 2030 (Poveda, 2020). This could be even higher with the rise in prices during 2022, when lithium carbonate traded at a record price of \$80 million USD per metric ton²⁸.

In particular, the modification of the contract with Albemarle establishes that it must make direct contributions amounting to 3.5% of its revenue from lithium sales through an agreement between the company and the Council of Atacameño Peoples (CPA). In addition, SQM established an annual contribution of \$10 to \$15 million USD to investment and development projects that promote the sustainable development of 21 indigenous communities currently registered with the National Corporation for Indigenous Development (CONADI) that live in the Salar de Atacama basin (CORFO, 2023). SQM must also contribute 1.3% of its sales to the Regional Government (GORE) of Antofagasta, 0.2% to the municipality of San Pedro de Atacama, and 0.1% to the municipalities of Antofagasta and María Elena (Poveda, 2020).

Although there is **no public information on the contributions made** by Albemarle to these communities or how they have been carried out, the contributions made by SQM have been the most controversial. With respect to its contributions to communities, the Camar people went to the court

²⁸ For more information, see the article "Sufren las arcas fiscales: el boom del litio se esfuma y su precio baja más del 70% desde su máximo histórico", (Fiscal coffers are hurting: the lithium boom fizzles out and its price drops more than 70% from its historical peak) published by La Tercera on September 25, 2023. Available at: <https://www.latercera.com/pulso/noticia/sufren-las-arcas-fiscales-el-boom-del-litio-se-esfuma-y-su-precio-baja-mas-del-70-desde-su-maximo-historico/QIQMP4LLYJCNLNX73PCKAFLM2Q/?md5=0a8002fda58fb8639ac11612424c4dca>

claiming that the **process and criteria for allocating resources** were not submitted to indigenous consultation as established by ILO Convention 169. The judiciary agreed, and the Supreme Court ordered a halt to SQM's contributions,²⁹ of which approximately \$14.2 billion USD were delivered for the 2018-2020 period and \$20.4 billion USD have yet to be allocated. \$28.9 billion USD corresponding to the years 2021 and 2022 will be distributed once the formal consultation process is complete (CORFO, 2023).

Moreover, SQM's contributions to the GORE of Antofagasta and the aforementioned municipalities have also been challenged. The Comptroller General of Chile (CGR) has stated in two of its opinions³⁰ that it is **not appropriate for municipalities and regional governments to enter into agreements or receive contributions from individuals or legal entities** that have or may have an interest in matters that must be resolved by the local authorities, including environmental qualification processes. In addition, the former mayor of the municipality of Antofagasta, Karen Rojo (2012-2020), who was suspended from office in 2020 and later convicted of tax fraud, collected more than one billion pesos in the final months of her term³¹. Finally, it is important to point out that the direct contributions made by both companies are not subject to legislative review like

the annual national budget is, and therefore have weak oversight by government authorities and the public (CFA, 2023) as well as "non-existent" public accountability by local authorities.

Potential actions: two areas of action and/or opportunities for change are identified to help solve the issues outlined above. The first is to ensure that in future contracts established by CORFO or any other public entity with private parties, **all related revenue and expenses should be subject to the general rules of allocation and accountability defined in the Budget Act**, thus guaranteeing proper transparency with respect to their management and subsequent use (CFA, 2023). And secondly, **CORFO could periodically report on the amount and use of the direct contributions already established in the aforementioned contracts (which are off-budget)** (CFA, 2023), as well as **design a regulation that regulates private donations to GOREs and municipalities**.

3.1.5 State-owned enterprises

In 2014, in view of the imminent boom in lithium demand, former President Michelle Bachelet created a Ministerial Advisory Commission called the National Lithium Commission which was tasked with identifying and defining a framework

²⁹ For more information, see the article "SQM tiene US\$ 29 millones 'congelados' que debe entregar a pueblos atacameños", (SQM has \$29 million USD "frozen" that it must deliver to Atacameño communities) published by Diario Financiero on March 11, 2023. Available at: <https://dfmas.df.cl/df-mas/por-dentro/sqm-tiene-us-29-millones-congelados-que-debe-entregar-a-pueblos>

³⁰ Opinion N° 7,213 of 2020 and Opinion N° 00439 of 2010.

³¹ For more information, see the article "Convenios en la mira: Municipalidad de San Pedro de Atacama ha recibido más de 22 mil millones de pesos en aportes de SQM y Albemarle", (Agreements under scrutiny: Municipality of San Pedro de Atacama has received more than 22 billion pesos in contributions from SQM and Albemarle) published by El Ciudadano on September 4, 2023. Available at: <https://www.elciudadano.com/reportaje-investigacion/convenios-en-la-mira-municipalidad-de-san-pedro-de-atacama-ha-recibido-mas-de-22-mil-millones-de-pesos-en-aportes-de-sqm-y-albemarle/09/04/>

for public action regarding lithium production and value addition. The result was the National Salt Flat Governance and Lithium Policy (Poveda, 2020). The Commission issued a report that recommended³² preserving the strategic and non-leasable status of lithium, creating a state-owned enterprise, and strengthening the role of the State by reviewing CORFO's current contracts with Albemarle and SQM, among other recommendations (Ministry of Mining, 2016). Years later, in April 2023, President Gabriel Boric presented the National Lithium Strategy (Ministry of Mining, 2023) in which he announced the government's role in leading the industry's development and the creation of a National Lithium Company, which has not yet been designed or discussed in Congress. Initially, the President instructed CORFO to mandate CODELCO to conduct the necessary negotiations to allow the government to participate in the production of lithium in the Salar de Atacama.

Following this mandate, CODELCO entered into confidential negotiations with both SQM and the owners of the Salar Blanco project in 2023. As mentioned above, CODELCO signed a Memorandum of Understanding (MoU) with SQM at the end of 2023 to jointly mine the Salar de Atacama until the year 2060, proposing majority ownership by CODELCO (more than 50% of the company) starting in 2031 (upon termination of the CORFO - SQM contract); an increase in production from 165,000

to 300,000 LCE tons; and technological changes to the lithium extraction process; among other aspects (CODELCO, 2023). It is important to note that the MoU is not a definitive agreement but part of the negotiation process between both enterprises.

As for the Salar Blanco project, in October 2023, CODELCO announced that it would acquire the Australian company Lithium Power International, the owner of the project, which is the only one with an approved environmental permit (RCA) to extract lithium from the Salar de Maricunga in the Atacama Region. In the words of Máximo Pacheco, Chairman of the Board of CODELCO, the purchase of Salar Blanco, valued at \$244 million USD, is a "strategic acquisition for creating value for CODELCO and for Chile, positioning us as a major player in the energy transition".

Given the initial talks between CODELCO and SQM and the recent purchase of the Blanco project, at this stage we can only guess at some of the risks involved in these potential partnerships or CODELCO's future involvement in the production and commercialization of lithium. One issue that could pose a future corruption risk would be **cases of bribery or collusion in licenses, contracts, or commercial agreements** under the public-private partnership between CODELCO and SQM. As it is one of the only two companies mining lithium in Chile, with the installed capacity and knowledge

³² For more information, see the article "Las propuestas de la Comisión del Litio", (The proposals of the Lithium Commission) published by Minería Chilena on March 9, 2015. Available at: https://issuu.com/revistamch/docs/mch_405

of the production process that this entails (leading to information asymmetry), SQM holds a privileged position in these negotiations. Termination of its operations as a result of not renewing its license or not reaching an agreement with CODELCO would imply a significant reduction in public revenues and weaken Chile's standing as a lithium exporter. This should be interpreted as a warning sign for future contract conditions and clauses that may be negotiated with the state-owned enterprise, showing a likely risk of **policy capture**.

3.2 Selection of areas of focus

The preliminary research conducted in the previous section made it possible to identify practices of state capture and the main corruption risks for each of the six areas of focus. As a result of this analysis, four significant risks were identified for the area of Decision to Extract; Licensing and Contracting; three for Operations; two for Revenue Collection; and one for Revenue Management. With respect to State-Owned Enterprises, a latent risk of corruption was perceived in the pending negotiations for a possible public-private partnership between CODELCO and SQM. The area of Energy Transition is a different case entirely: this tool is focused on the fossil fuel sector and its potential obstruction of the transition to "cleaner" energies, which is why it does not apply to the raw material analyzed in this study, since lithium is considered an essential transition resource rather than an obstacle.

An analysis of the quantity and frequency of the incidents that have caused the most media attention in Chile shows that the first stage of lithium industry, the Decision to Extract, is undoubtedly the area where most irregularities are found, followed by the areas of Operations and Revenue Collection. For the second stage, two of the three findings are related to and can be addressed, at least tangentially, by other areas of focus: specifically, Area 1: Decision to Extract; Licensing and Contracting and Area 3: Revenue Collection.

These areas are particularly relevant given the current national debate over the National Lithium Strategy and the uncertain outcome of the CODELCO negotiations, since the underlying causes of the identified corruption risks are still ongoing and, therefore, may allow such irregularities to reappear.

It is important to mention the two trips Terram made to the Atacama and Maricunga salt flats as part of this study, where we conducted interviews with different stakeholders in the lithium industry (regional authorities, local authorities, indigenous communities, academics, trade associations, etc.), which helped us to search for and identify the aforementioned risks and the related stages.

Finally, the table below shows the qualitative prioritization of the areas investigated. It shows that the first three areas of focus have equal significance and opportunities for change. However, as explained in the second paragraph above, we decided to focus Step 4 of the NRG1 tool on Area 1: Decision to Extract; Licensing and Contracting, on Area 3: Revenue Collection, since we consider that these areas cover part of the findings for the area of Operations

Table 3: Prioritized areas of focus.

Area of focus	1. Is the area of focus significant?	2. Is corruption in this area a serious and harmful problem?	3. Are there opportunities for action and positive change?
Decision to extract, license, and contract	Yes	Yes	Yes
Operations	Yes	Yes	Yes
Revenue collection	Yes	Yes	Yes
Revenue management	Yes	Somewhat	Somewhat
State-owned enterprises (SOEs)	Somewhat	No	No
Energy transition	No	No	No

4. Diagnosing corruption

4.1 Decision to extract; licensing and contracting

4.1.1 Area background

Until 1979, lithium, like all other minerals in Chile, was subject to the Mining Code of 1932 (DL N° 488, repealed in 1983)³³, which in the first paragraph of Article 3 stated that any interested party could acquire holdings in mines of gold, nickel, cobalt, molybdenum, zinc, mercury, and lithium, among other minerals. Following the enactment of Decree Law N° 2,886³⁴ of 1979 by the Ministry of Mining, it was established that lithium was to be reserved for the state because it was of strategic and national interest due to its importance in nuclear fusion. Article 5 of the decree exempted mining holdings established before January 1 of that year, thus setting a temporary milestone that changed the legal regime for the exploration and extraction of lithium.

A year later, in 1980, the current Political Constitution of the Republic came into force, which was amended in 2005. In Article 19, paragraph 24, it states that “the exploration, mining, or processing of deposits containing substances not subject to

concession may be carried out directly by the State or by its enterprises, or by means of administrative concessions or special operating contracts, following the requirements and the conditions determined by the President of the Republic, for each case, by supreme decree”. This was further ratified in the amendment of the Constitutional Organic Act on Mining Concessions in 1982 (Act N° 18,097) and in the enactment of the new Mining Code in 1983 (Act N° 18,248)³⁶, which explicitly declared non-leasability and laid the legal foundations for today’s Special Lithium Operation Contracts (CEOL). As stated by the National Economic Prosecutor’s Office in its report ROL N° 2687-21 (FNE, 2022), CEOLs are not subject to specific regulations regarding content or limits, and therefore their terms and conditions must be established in a Supreme Decree issued by the Ministry of Mining on behalf of (by order of) the President of the Republic (Supreme Decree N° 19, 2011, Ministry General Secretariat of the Presidency)³⁷.

³³ For more information, see: <https://bcn.cl/2l1e4>

³⁴ For more information, see: <https://bcn.cl/2ho83>

³⁵ For more information, see: <https://bcn.cl/2j4vv>

³⁶ For more information, see: <https://bcn.cl/2fcpf>

³⁷ For more information, see: <https://bcn.cl/2ln40>

In 2012, there was a new development regarding contracts when the Ministry of Mining enacted Supreme Decree N° 16³⁸ that “establishes the terms and conditions of the special operation contract for the exploration, mining, and processing of lithium deposits, which the State will enter into accordance with the criteria of the national and international public tender that will be approved for this purpose”, motivated by the country’s large lithium reserves, the increase in global demand, and the importance of developing of the industry and maintaining Chile’s strategic participation. This was the first attempt to introduce CEOLs. Before 2012, the only lithium mining operations in Chile were located in the Salar de Atacama and were operated by SQM and Rockwood (now Albemarle) through administrative leases with CORFO, in the “OMA” holdings that the Corporation had already claimed before January 1, 1979 (Iribarnegaray et. al., 2022).

The Ministry of Mining is the government agency in charge of establishing terms and conditions for each of the contracts (CEOL) to be tendered by the State by means of a Supreme Decree, as well as authorizing the tender, approving its criteria, and choosing the winning bid by means of an Exempt Resolution. Once a CEOL is awarded, the chosen company will then have to obtain the necessary mining permits from the corresponding agencies, such as the Chilean Nuclear Energy Commission

(CCHEN), the Environmental Assessment Service (SEA), and the General Water Directorate (DGA), among others. Although the award criteria are published on the Ministry of Mining’s website, a payment must be made on the page in order to access them, which makes them difficult to access and weakens the transparency of the process. However, this only applies to private companies, as the signing of a CEOL between the state and a state-owned enterprises is done directly without opening a public tender or competitive process (FNE, 2022) and these contracts are not available in a single registry for the public to monitor or inspect.

Regarding leases and/or project contracts, CORFO is responsible for negotiating and establishing the requirements, conditions, royalties, and other terms in the contracts signed with parties interested in mining holdings established in the Salar de Atacama. As such, during the presidency of Michelle Bachelet, CORFO renegotiated its contracts with Albemarle (2016) and SQM Salar (2018) (CORFO, 2018), correcting, improving, and including new aspects in the contracts.

The following table summarizes the principal functions of the agencies in charge of executing lithium exploration and extraction contracts:

³⁸ For more information, see: <https://bcn.cl/3fpbg>

Table 4: Summary of the competencies of the government agencies involved in lithium contracts.

Agency	Roel
Ministry of Mining	Establish the terms and conditions for each CEOL. Approve the criteria of the public tender and award the CEOL(s.) by Supreme Decree.
CORFO	Negotiate and sign lease agreements with Albemarle and SQM, protecting the national interest in economic, social, and environmental matters, among others.

Source: Terram, based on information from Poveda, 2020, and FNE, 2022.

Finally, in 2023, President Gabriel Boric presented the National Lithium Strategy (Ministry of Mining, 2023), which proposes the establishment of public-private partnerships with government control of production decisions. To this end, he announced that, starting in 2024, CEOLs for exploration and mining would be awarded to subsidiaries of state-owned enterprises (CODELCO and ENAMI) and put out to tender to private companies in salt flats previously registered by SERNAGEOMIN, for which no additional information has yet been made available to the public.

In this context and after our preliminary research on the “General assessment of corruption in the Chilean lithium industry”, we reviewed the main milestones related to this area and identified the following practices of capture and risks of corruption:

4.1.2 State capture

As described in the previous section, SQM’s **undue private influence over laws and regulations**, such as during the passage of Act N° 20,469 of 2010, which reformed the taxation of mining activities, and the reform of the Act N° 19,300 (2008-2010, known as the Environmental Act) through the discussion of Act N° 20,417 that “creates the Ministry, the Environmental Assessment Service and the Superintendency of the Environment”³⁹, represent practices of **state capture** as specified in the methodology cha of this report. These practices can be characterized as an early stage of capture or showing a high risk of systematic capture. The following section will review the details of the company’s influence on the reform of the Environmental Act and the mining tax reform will be addressed in the following section on Revenue Collection.

³⁹ For more information, see: <https://www.bcn.cl/leychile/navegar?idNorma=1010459>

To understand the context of the Environmental Act, we must go back to 2008 when Chile began to transform the former National Commission for the Environment (CONAMA) into the current Ministry of the Environment (MMA), proposing the creation of the Superintendency of the Environment (SMA) and the establishment of a new Environmental Impact Assessment System through the modification of Act 19,300 on General Bases for the Environment⁴⁰. Although the bill was introduced during the first presidency of Michelle Bachelet (2006–2010), SQM played a significant role during its discussion in Congress, working to “soften” the text of the law that was eventually approved so that it would be much less ambitious and the SMA would have fewer regulatory tools, among other aspects. Additionally, in order to facilitate the passage of the law, a “political agreement” was negotiated in the Senate in which Pablo Longueira (connected to irregular financing by SQM, which will be detailed in later sections) presided over the Environment Committee.

SQM sent the briefing “Diagnosis and proposals for the improvement of the new environmental institutionalism bill” through informal channels (an e-mail called “Grillo”, grillo10@hotmail.com) to members of Congress with whom it had a direct relationship, many of whom were later investigated for receiving irregular political funding from SQM.⁴¹ The briefing contained 41 proposed amendments

to the original bill proposed by the presidency, of which five were introduced using the same wording as in the briefing and another four others in a way that would have the same effect as that sought by the mining company. In the end, five of the nine were approved, amending the original bill to serve SQM’s interests⁴².

The risk factors identified in this case include the **lack of transparency and the absence of a law regulating this type of activity**. While it is normal for a company to act on behalf of its own interests before the government, other stakeholders –residents or indigenous communities affected by mining– do not have equal access to political authorities. We also detected **weak integrity measures**, as there was no practical way to prevent these practices of irregular political financing.

One of the underlying causes of these incidents is the lack of regulations on **lobbying and political donations by the companies active in the lithium sector**. This problem is the result of the fact that politics is financed by contributions from companies with no transparency at that time as to the recipients, amounts, or methods of financing. This financing mechanism and the lack of transparency created a vicious cycle that damaged the credibility of political institutions (Orellana, 2019), causing public apathy and detachment from politics, thus

⁴⁰ For more information, see: <https://bcn.cl/2f707>

⁴¹ The Center for Investigative Reporting (CIPER) highlighted the role of Representative Roberto León of the Christian Democratic Party, who is considered one of the “top ten” politicians receiving irregular funds from SQM. For more information, see the article “SQM: Los ‘top ten’ del millonario financiamiento político ilegal de parte de la minera controlada por Ponce Lerou”, published by El Mostrador on September 2, 2015. Available at: <https://www.elmostrador.cl/noticias/pais/2015/09/02/sqm-los-top-ten-del-millonario-financiamiento-politico-ilegal-de-parte-de-la-minera-controlada-por-ponce-lerou/>

⁴² For more information, see the article “La intervención de SQM que cambió la Ley de Medioambiente”, published by CIPER on May 24, 2018. Available at: <https://www.ciperchile.cl/2018/05/24/la-intervencion-de-sqm-que-cambio-la-ley-de-medioambiente/>

distancing it from what is most needed: **public oversight and vigilance** with regard to these incidents.

Finally, to mitigate the identified risks of **capture**, we need to strengthen oversight and social participation in regulating the **management of private interests**. In Chile, Act N° 20,730⁴³, known as the Lobby Act, was enacted only in 2014, and it has helped to partially regulate the management of interests between private individuals and public authorities. On the other hand, although the extractive sector is not directly responsible for financing political parties, the risk of capture

by economic groups must be avoided. In 2016, thanks to the recommendations of the so-called Engel Commission, Act N° 20,900⁴⁴ on Democratic Strengthening and Transparency was enacted, which has helped somewhat to regulate campaign financing, electoral spending and penalties for offenders. Although contributions from legal persons (such as companies) are currently not allowed and only donations from individuals are permitted, economic groups can continue to tilt the balance of electoral financing towards the party of their choice through individuals, so it is necessary to continue making progress to prevent this.

Poster in a street of San Pedro de Atacama, closest city to Salar de Atacama.

Photo: Terram Foundation | Cristóbal Moreno



⁴³ For more information, see: <https://bcn.cl/2f8jc>

⁴⁴ For more information, see: <https://bcn.cl/2owom>

4.1.3 Policy capture

The process of **policy capture** identified for the area of focus is comprised of two main corruption risks: the **obstruction of third party participation in future contracts and licenses**, and **favoritism in licensing processes and decisions** that SQM has taken advantage of to mine the Salar de Atacama. Both situations reflect how the political decisions of successive administrations have benefited SQM to the detriment of the public interest, which is referred to as capture in the methodology section of this report. Each corruption risk can be characterized as follows:

Obstruction of third party participation in future contracts and licenses

Given the reprehensible behavior of SQM, which repeatedly breached its contracts with CORFO – including failing to pay rents in full between 2009 and 2014, concealing relevant information about its financial and environmental performance, and taking measures to impede future tenders in the Salar de Atacama– CORFO filed two lawsuits in 2014 and 2016 at the Mediation and Arbitration Center of the Santiago Chamber of Commerce, petitioning the arbitrator for the early termination of the contracts and the return of the holdings leased to the company (CORFO, 2016; CORFO, 2018). In particular, CORFO pointed out that the company took “measures to make the competitive tender of the Salar unfeasible in the future” by not complying with the measurement requirements established

in the contract. This occurred when, without prior notice to CORFO, SQM established exploration concessions on the boundaries of (and in some cases overlapping) CORFO’s mineral holdings (OMAs)⁴⁵, as well as water rights for 300 L/s on lands bordering the OMAs. These actions sought to **limit state control over the salt flat and therefore the participation of third parties** once the lease is terminated in 2030 (CORFO, 2016).

Along the same lines, SQM has the largest concentration of mining holdings in Chile, which could potentially extend the obstructive practice described above. In fact, according to the Mining Property Department of the National Geology and Mining Service, SQM S.A. holds the largest number of hectares under concession for extraction in the country, with a total of 2,687,630 hectares, equivalent to 16.2% of the total national surface area under concession (SERNAGEOMIN, 2023). It is important to mention that there is no publicly available information on the principal and secondary minerals declared for these holdings, therefore this figure may include metals or non-metals.

Among the risk factors identified in this case is the **lack of transparency in the awards process for concessions and licenses**, which is reflected, for example, in the lack of knowledge about the exact location of SQM’s holdings, therefore making public oversight difficult. Although SERNAGEOMIN has a web page to make requests, specific information is required that is not freely available.

⁴⁵ OMAs are mining concessions held by CORFO in the Salar de Atacama, mainly for the exploration and extraction of lithium.

The underlying causes identified for the case include the improper and/or speculative use of the mining concessions model, which legally constitutes the ownership of mineral holdings by private parties. These holdings are indefinite and inheritable, and can be therefore transferred by contract or succession by cause of death (Cárcamo, Monardes, & Moya, 2018). This model has allowed SQM to concentrate and/or profit from its holdings, giving it the corporate “weight” to influence mining in Chile.

To mitigate and/or reduce the risk of corruption described above, it is clear that it is necessary to create a single, comprehensive, and easily accessible registry of mining concessions, be they approved, pending, or expired. In addition, it is also important to establish restrictive criteria for the awarding and retention of mineral holdings, subjecting companies to standards of good corporate behavior in environmental, social, and fiscal matters, among other aspects.

Favoritism in licensing processes and decisions

This area characterizes SQM’s privileged position to extract lithium in Chile, despite its reproachable corporate behavior in legal, contractual and socio-environmental issues.

To begin, we can highlight the company’s arbitration procedures with CORFO between 2013 and 2018, mentioned in the previous section, in which the government agency claimed that SQM

breached its contracts and violated the government’s rights, as well as requesting the early termination of the lease and project contracts (CORFO, 2016). In the end, the arbitrator encouraged the parties to reach a settlement in which, in spite of the facts exposed, **the contracts were amended to increase the company’s extraction quota** and incorporate clauses that distributed its revenue, among other aspects. The settlement also required SQM to modify its corporate governance (demanding the exit of Julio Ponce Lerou) and a monetary compensation for CORFO of \$17.5 billion USD (CORFO, 2018). SQM stated that it made the payment for the sole purpose of terminating the arbitration proceedings, without implying that it recognized owing any debt (SQM, 2018). The outcome demonstrated that the company’s contractual breaches were not sufficient reason to terminate the contractual relationship and, on the contrary, SQM’s participation in the mining of the Salar de Atacama was reaffirmed by increasing its lithium extraction quota.

A second example is the irregular awarding of the country’s first CEOL in 2012. The purpose of this process was to award mining rights for 100,000 tons of lithium to the company that made the best economic offer through a 20-year public tender⁴⁷. Although the companies Posco Consortium and SLM NX Uno de Peine also participated, SQM won the proposal while offering a higher price than the rest. However, after the bid was awarded, it was discovered that the company was not in compliance with the award criteria, which required that the participants not have pending litigation with the government. SQM lied and claimed it did not, and

⁴⁶ For more information, see: <https://www.sernageomin.cl/consulta-rol-explotacion/>

⁴⁷ For more information, see the article “Las inconsistencias que aún penan tras la invalidación de la licitación del litio”, (The remaining inconsistencies after the annulment of the lithium tender) published by CIPER on November 22, 2012. Available at: <https://www.ciperchile.cl/2012/11/22/las-inconsistencias-que-aun-penan-tras-la-invalidacion-de-la-licitacion-del-litio>

therefore the award should have been annulled. The failed tender led to the resignation of the then Undersecretary of Mining, Pablo Wagner. It was later discovered that Wagner had intervened in the tender on behalf of SQM, as well as receiving funds from both the lithium company and another economic group even when he was in office⁴⁸.

Finally, as part of the implementation of the National Lithium Strategy, which contemplates public-private partnerships to extract lithium as one of its priorities, CODELCO was instructed by President Boric in December 2023 to establish a Memorandum of Understanding (MoU) with SQM to jointly mine the Salar de Atacama until the year 2060 (CODELCO, 2023). Broadly speaking, by 2030 CODELCO will have a majority stake (50 + 1) in the new company and with it the ability to make decisions on the board of directors and at the shareholders' meeting. However, the process has been questioned for not holding a competitive international tender that would open production to new partners and for failing to consult Atacameño communities, once again demonstrating SQM's privileged position in the lithium sector.

The risk factors identified for the events described above include **a lack of transparency in the awards processes for contracts and licenses**, given that, for example, the awards procedure for the 2012 CEOL was not publicly available, but instead payment was required to access the award criteria. Moreover, the application of these criteria was biased, since SQM had pending litigation with the government. On the other hand, the intervention

of former Undersecretary of Mining, Pablo Wagner, in favor of the company during the failed tender was not only a real act of corruption and bribery, but also revealed the presence of **weak institutions and processes** as another risk factor for the sector, as well as **weak integrity measures** due to the lack of clear **restrictions on revolving doors between personnel in the public and private sectors**.

Among the causes underlying the favoritism of SQM is the **lack of technical capacity of the authorities involved in the decision-making process** for the awarding of contracts and licenses. In addition, these authorities do not conduct **robust, risk-based due diligence on companies** applying for contracts and licenses, considering that SQM was awarded a CEOL despite having open investigations into legal and contractual non-compliance, as well as renewing its lease and project contracts without taking responsibility for the charges that led to arbitration with CORFO.

In order to reduce the identified events of capture and corruption, two approaches are proposed. The first is to **enhance transparency in the awards processes for contracts and licenses**, where progress is needed in the publication of technical requirements and assessment rubrics for future public tenders, as well as the mining contracts signed between public and private enterprises. The second is to **promote anti-corruption practices that ensure greater integrity among public authorities** that make decisions regarding mining contracts and licenses.

⁴⁸ For more information, see "Caso Litio: Pablo Wagner pagará \$1 millón a Bomberos para evitar juicio oral," (Lithium Affair: Pablo Wagner will pay \$1 million to Fire Department to avoid oral proceedings) published by La Tercera on February 7, 2017. Available at: <https://www.latercera.com/noticia/caso-litio-pablo-wagner-pagara-1-millon-bomberos-evitar-juicio-oral/>

4.1.4 Manipulation of community consultations

In 1993, Act No. 19,253 was passed, which “establishes regulations for the protection, support, and development of indigenous peoples, and creates the National Corporation for Indigenous Development” (CONADI).⁴⁹ With the passage of this act, known as the Indigenous Act, the Rapa Nui, Mapuche, Aymara, Quechua and Atacameño peoples, among others, were recognized as Chile’s primary indigenous groups and the legal concept of **Indigenous Community** was introduced. In the case of the Atacameño community, this is located in the towns and rural localities of the province of El Loa (Gundermann & Göbel, 2018). However, despite the ratification of ILO Convention N° 169 in 2008 (Supreme Decree N° 236, Ministry of Foreign Affairs)⁵⁰, and decades of lithium mining in the Salar de Atacama, it was not until after the early 2010s that we begin to see companies take local communities into account (Lorca, Olivera, & Garcés, 2023). As mentioned above, companies began to develop bilateral agreements with communities called “Cooperation Agreements”, in which they directly transfer a percentage or part of their sales.

For this area of focus, two circumstances were identified as posing potential corruption risks to

community consultation processes: the first related to the 2018 amendments to the lease agreement between CORFO and SQM; and the second related to a CEOL tender in 2021 (Supreme Decree N° 23, Ministry of Mining)⁵¹, which was eventually awarded. In the first case, and as a result of the negotiations that sparked the litigation between CORFO and SQM, it was established that the company should contribute 1,7% of its total yearly sales to the Antofagasta Region and between \$10 and \$15 million USD to Atacameño communities (Iribarnegaray et. al., 2022). Under the contract, the beneficiaries of these funds are selected by CORFO, which is responsible for their allocation and distribution. As a result, the Camar Indigenous Community, one of the beneficiaries, filed an appeal for protection against CORFO on the grounds that the processes and mechanisms established by the agency violate the obligations contained in ILO Convention N° 169 on **indigenous consultation**. This appeal, initially rejected by the Antofagasta Court of Appeals, was subsequently upheld by the Supreme Court, which ruled that CORFO must undertake a process of indigenous consultation with the Camar and other communities located in the project’s area of influence in order to allocate the pledged resources in the coming years^{52, 53}.

⁴⁹ For more information, see: <https://bcn.cl/2f7n5>

⁵⁰ For more information, see: <https://bcn.cl/2fx8e>

⁵¹ For more information, see: <https://bcn.cl/2vxy4>

⁵² For more information, see the article: “CORFO debe cumplir con el Convenio 169 de la OIT en lo referido al proceso de consulta para asignar los recursos destinados por SQM al desarrollo de comunidades indígenas ubicadas en el Salar de Atacama, resuelve la Corte Suprema”, published by Diario Constitucional on August 31, 2022. Available at: <https://www.diarioconstitucional.cl/2022/08/31/CORFO-debe-cumplir-con-el-convenio-169-de-la-oit-en-lo-referido-al-proceso-de-consulta-para-asignar-los-recursos-destinados-por-sqm-al-desarrollo-de-comunidades-indigenas-ubicadas-en-el-salar-de-ataca/>

⁵³ For more information, see the article: “Consulta indígena bloquea entrega de USD29 millones de SQM a pueblo atacameños”, (Indigenous consultation blocks delivery of \$29 million USD by SQM to Atacameño people) published by EL Mostrador on May 10, 2023. Available at: <https://www.elmostrador.cl/cultura/2023/05/10/consulta-indigena-bloquea-entrega-de-us29-millones-de-sqm-a-pueblo-atacameno/>

The second case has to do with the content of the CEOL tendered by the Ministry of Mining during the second term of President Sebastián Piñera (2018-2022), which specified the term of the contract and the total quantities and extraction quotas in terms of lithium metal equivalent, but not the area of extraction. For this reason, the Camar and Coyo indigenous communities filed an appeal for protection on the grounds that Convention N° 169 had again been violated as they were unable to participate in an indigenous consultation due to the lack of knowledge of the precise location affected by the administrative measure⁵⁴. This appeal was accepted by the Supreme Court, annulling the contract awarded to the companies BYD Chile SpA and Servicios y Operaciones Mineras del Norte SA (Exempt Decree 11, Ministry of Mining)⁵⁵.

The risk factors identified for these events include a **lack of transparency** prior to the request for bids, which would allow local and indigenous communities to participate in consultation processes; **arbitrariness and disregard for the negotiations, annexes and modifications of CORFO contracts; lack of oversight in the mechanisms for allocating and distributing resources** and determining the terms, quotas, location, and criteria of the CEOLs tendered, both with private companies and state-owned enterprises. In addition, there

is a **lack of government involvement** in bilateral agreements between companies and communities, revealing the **lack of a clear and transparent procedure for relations between the parties**, which can lead to co-optation or unequal negotiations.

This situation has several underlying causes. The first is the **historical neglect of indigenous communities** in Chile, which has led to abuses and infringed upon their territories. The second is the regulatory disconnect from the ancestral worldview of these communities, i.e., decision-making is independent and sectoral and therefore does not take into account the importance and significance of the indigenous world, hence the lack of consultation processes or their partial implementation in the decision-making processes.

Finally, the President's announcements regarding adherence to the Extractive Industries Transparency Initiative (EITI) and the launch of the National Lithium Strategy contain aspects that are aimed at **improving transparency in indigenous consultation and knowledge regarding salt flats**. These tools, together with **stronger government oversight of citizen participation** in the awards processes for licenses and contracts, could be effective measures to prevent the irregularities and risks of corruption noted in this section.

⁵⁴ For more information, see the article: "Corte Suprema deja sin efecto licitación del litio impulsada por gobierno de Piñera", (Supreme Court annuls lithium tender promoted by Piñera administration) published by El Dinamo on June 2, 2022. Available at: <https://www.eldinamo.cl/pais/2022/06/02/corte-suprema-deja-sin-efecto-licitacion-del-litio-impulsada-por-gobierno-de-pinera/>

⁵⁵ For more information, see: <https://bcn.cl/3fsk7>

4.2 Revenue collection

4.2.1 Area background

In general terms, the fiscal framework for lithium mining can be classified into three main collection channels: (i) the first is the different tax instruments levied on mining activities, including the First Category Income Tax (IDPC), which is generally applied to all types of companies, the Additional Tax (IA), which is applied to companies that remit their profits abroad, and the Specific Mining Tax (IEAM), among other taxes such as the Value Added Tax (VAT); (ii) the second is the non-tax instruments

specified in the legal framework for mining, such as the payment of mineral patents for concession rights, and royalties or sales commissions specified in the contracts signed by CORFO with SQM and Albemarle; (iii) finally, the third consists of the latest amendments to these contracts that establish direct contributions from the companies for local communities and for research and development (R&D). The following table gives a breakdown of the different tax collection channels:

Chart 1: Fiscal framework for lithium mining in Chile****

Tax instruments	Non-tax instruments*	Other contributions*
Specific Mining Tax (IEAM)****: effective rates between 5 and 14% of RIOM, according to MOM.	Patents for control of exploration and extraction concessions**: Legal benefit for non-metallic extraction with a discounted cost of one trillion UTM for each hectare of concession (1/30 UTM x ha).	Direct contributions to local communities: Albemarle 3.5% of sales / SQM between \$10 and \$15 billion USD.
First Category Tax (IDPC): 27% of taxable income, since 2018.	Royalties** (sales commission) from 6.8 to 40% of the lithium price.	R&D contributions: Albemarle between \$6 and \$12.4 billion USD / SQM between \$10.7 and \$18.9 billion USD
Additional Tax (IA): general rate of 35% on income attributed to withdrawals, dividends or remittances of profits abroad.		
Other taxes (VAT, etc.)		

* The non-tax instruments and other contributions indicated in the table were recently incorporated through amendments to CORFO's contracts with Albemarle (2016) and SQM (2018).

** The company SQM has annual payments of patents and royalties as established in its 1993 lease agreement. However, the value of the royalty indicated in the table reflects the value established in the amendments to the contract made in 2018.

*** RIOM: Taxable Operating Income of Mining Operator⁵⁶; MOM: Mining Operating Margin.

**** The tax instruments shown in the table are payable on an annual basis.

Source: Terram, based on information from Cerda, 2019; SII, 2018, and Poveda, 2020.

⁵⁶ The RIOM is determined by adjusting the net taxable income (base of the IDPC) which, in general terms, considers only revenues and expenses related to the mining activities and restricts the acceleration of expenses (depreciation and amortization) allowed by the law for the purpose of determining the first category tax.

The public agencies that regulate the taxation of the lithium industry include the Internal Revenue Service (SII), the General Treasury of the Republic

(TGR) and CORFO. Table 5 below describes the role of each agency:

Table 5: Institutions with fiscal competence in the Chilean lithium industry.

Agency	Role
Internal Revenue Service (SII)	Responsible for enforcing and administering the internal tax system, for auditing taxpayers for compliance with tax regulations and for facilitating such compliance.*
General Treasury of the Republic (TGR)	Responsible for collecting, safekeeping and distributing the resources of the Public Treasury through a modern, efficient and secure management that facilitates interaction with our users and citizens and contributes to the development of the country.**
Production Development Corporation (CORFO)	Responsible for ensuring compliance with the contracts signed with SQM and Albemarle for the extraction of lithium in the Salar de Atacama. In fiscal matters, it must ensure compliance with the payment of sales commissions (royalties) and direct contributions to R&D for communities and local governments (Poveda, 2020).

* Information available at: https://www.sii.cl/sobre_el_sii/mision.html

** Information available at: <https://www.tgr.cl/sobre-tgr/>

Source: Terram, based on information available on the SII and TGR websites; and Poveda, 2020.

During the renewal of CORFO's contracts with Albemarle (2016) and SQM (2018) the government agency estimated that for the period from 2018 to 2030 the total additional contribution of the industry is projected to be more than \$12 trillion USD, which consists of more than \$10 trillion USD paid to the government for taxes and royalties; \$980 billion USD destined for the Antofagasta Region and Atacameño communities; and close to \$350 billion USD destined for research and development

(Poveda, 2020). Despite this, there are large **gaps in terms of tax reporting and transparency** in the sector, which **make it difficult to monitor and guarantee tax collection**.

Given the record high prices seen in 2022, which hit \$80 million USD per metric ton of lithium carbonate⁵⁷, the **industry's lack of fiscal transparency** has become one of its main public problems (which has been pointed out by Jorrat,

⁵⁷ For more information, see the article: "Sufren las arcas fiscales: el boom del litio se esfuma y su precio baja más del 70% desde su máximo histórico" published by La Tercera on September 25, 2023. Available at: <https://www.latercera.com/pulso/noticia/sufren-las-arcas-fiscales-el-boom-del-litio-se-esfuma-y-su-precio-baja-mas-del-70-desde-su-maximo-historico/QIQMP4LLYJCNLNK73PCKAFLM2Q/?md5=0a8002fda58fb8639ac11612424c4dca>

2022; Yurisch & Martínez, 2022; CFA, 2023; and others). Specifically, there is currently no public record of the general tax aspects of lithium mining, since such information is subject to tax secrecy (Jorrat, 2022; Yurisch & Martínez, 2022). By making requests using the Transparency Act (Act N° 20,285 of 2008), which came into force in 2008, we have only been able to access the historical payment of commissions for lithium sales (royalties)⁵⁸ made by both companies to CORFO under the lease and project contracts, however, there is no detailed information on direct contributions to R&D or to local governments and communities.

This public problem has been reflected in the President Boric's recent National Lithium Strategy, which proposes that Chile join the EITI in order to ensure greater transparency and integrity in all extractive industries, including lithium mining, thus complying with the highest international standards (Ministry of Mining, 2023). The Boric administration has already submitted a formal letter to the International Secretariat of EITI confirming its intention to implement the transparency initiative.⁵⁹

Following the methodology in the context of the industry's tax obligations, in our "General assessment of corruption in the Chilean lithium industry" it was possible to identify a practice of state capture and a corruption risk for this

area of focus: 1) Undue influence over revenue collection laws and regulations and 2) Companies manipulate the factors that determine their revenue obligations. The following section will characterize these elements by identifying risk factors and their causes, as well as the measures that may help mitigate them:

4.2.2 State capture

Continuing with the analysis of the process of capture identified in Area 1: Decision to extract; Licensing and Contracting, we will now examine in detail the **undue private influence over laws and regulations** exercised by SQM in the legislative process of the 2010 mining tax reform.

By way of context, during 2016, various independent investigative journalism organizations, including Qué pasa and CIPER, uncovered a major case of illegal political finance in Chile, linked to the undue influence exercised by SQM when Congress was modifying the conditions for the application of the Specific Mining Tax (IEAM). As revealed by CIPER,⁶⁰ on August 5, 2010, then Senator Pablo Longueira received an email from Franco Devillaine, a prosecutor at the Ministry of Mining, which contained a draft of the articles that the administration was preparing in order to modify the taxation of mining activities.

⁵⁸ Information provided in Transparency Act request N° AH004T0003968 dated September 08, 2021, addressed to CORFO.

⁵⁹ For more information, see the press release "Chile confirms its intention to join the EITI", published by EITI on June 9, 2023. Available at: <https://eiti.org/news/chile-confirms-its-intention-join-eiti>

⁶⁰ For more information, see the article "Cambio clave de la Ley de Royalty que benefició a SQM salió del computador de Contesse", published by CIPER on March 7, 2016. Available at: <https://www.ciperchile.cl/2016/03/07/cambio-clave-de-la-ley-de-royalty-que-beneficio-a-sqm-salio-del-computador-de-cesse/>



Albemarle Lithium Processing Plant located in Antofagasta.

Photo: Terram Foundation | Cristóbal Moreno.

Eleven minutes later, Longueira forwarded the e-mail with the draft bill to the former CEO of SQM, Patricio Contesse, who responded by commenting that what was sent by the former senator was “a joke” and attached a letter containing a new proposal of articles that would benefit SQM, with an “blank space” to fill in the name of the “sender” and the name “Pablo Longueira” in the signature box. Finally, a few days later, Longueira sent the letter to Cristián Larroulet, former Minister of the General Secretariat of the Presidency (SEGPRES, the ministry tasked with passing the bill through

Congress) without clarifying that the proposal came from SQM⁶¹. These proposed amendments were taken and introduced by the administration during the discussion of the bill in Congress (in which Longueira intervened) and were approved with minor changes in the Fourth Transitory Article of the billlaw.⁶²

In general terms, this new article allowed SQM to obtain the benefit of tax invariability, which it did not enjoy previously and which was originally reserved only for foreign investors that already had

⁶¹ For more information, see the article “Las 4 pruebas contra Pablo Longueira por el caso SQM” (Four pieces of evidence against Pablo Longueira in the SQM affair) published by El Dinamo on September 3, 2020. Available at: <https://www.eldinamo.cl/pais/2020/09/03/pruebas-irrefutables-contra-pablo-longueira-por-el-caso-sqm/>

⁶² For more information, review the contents of the Fourth Transitory Article at: <https://ciperchile.cl/wp-content/uploads/Articulo-cuarto-transitorio.pdf>

an investment contract with the government. As a result, both SQM Salar and SQM Nitratos were able to enjoy invariable tax rates until 2025, meaning a transitional flat rate of 5% for the IEAM tax between 2013 and 2018, just like foreign companies with valid investment contracts. They would otherwise have been subject to the increased mining tax between 5% and 14%, depending operating margins⁶³.

It should also be noted that, between 2007 and 2013, Longueira received payments from SQM in various ways, including direct contributions to more than 20 individuals (family members and close associates) and legal entities (companies jointly owned with his wife) linked to the former senator and former Minister of Economy. The investigations by the SII and the Public Prosecutor's Office have unveiled a veritable network made up of dozens of people linked to Longueira who issued fraudulent invoices to SQM. These "contributions" that he not only received during his term as senator (2006-2011), but also continued when he became Minister of Economy (2011-2013) and even after he left the government in 2013 to run for president⁶⁴.

These events led the Public Prosecutor's Office, to indict Longueira in June 2016 for taking bribes and Contesse for bribery during the passage of Act N° 20,469 of 2010. In Longueira's case, the crime of taking bribes can be established based on the report by Shearman & Sterling, the U.S. audit firm that analyzed more than 3.5 million SQM documents and systematized this information at the request of the company itself, in which it identified Pablo Longueira as the politician who benefited most from the company's irregular political financing⁶⁵.

As of this writing, the Third Oral Criminal Court of Santiago has not yet ruled on the charges brought by the Public Prosecutor's Office against Longueira and Contesse. Seven years after the indictment, the oral proceedings for the SQM illegal political financing affair resumed in February 2023, where an investigation of at least two years (2025) is expected and Longueira risks 818 days of imprisonment and fines if proven guilty⁶⁶. In the case of Patricio Contesse, he risks a sentence of 7 years for tax offenses and 818 days for bribery⁶⁷.

⁶³ For more information, see the article "Las 4 pruebas contra Pablo Longueira por el caso SQM", published by El Dínamo on September 3, 2020. Available at: <https://www.eldinamo.cl/pais/2020/09/03/pruebas-irrefutables-contra-pablo-longueira-por-el-caso-sqm/>

⁶⁴ For more information, see the article "Cambio clave de la Ley de Royalty que benefició a SQM salió del computador de Contesse", published by CIPER on March 7, 2016. Available at: <https://www.ciperchile.cl/2016/03/07/cambio-clave-de-la-ley-de-royalty-que-beneficio-a-sqm-salio-del-computador-de-contesse/>

⁶⁵ Ibid.

⁶⁶ For more information, see the article "Después ocho años, este lunes inició el juicio oral contra Longueira y ME-O por el caso SQM", published by Cooperativa on February 13, 2023. Available at: <https://cooperativa.cl/noticias/pais/politica/caso-sqm/tras-ocho-anos-este-lunes-inicio-el-juicio-oral-contra-longueira-y-me-o/2023-02-13/093640.html>

⁶⁷ For more information, see the article "Tras 8 años de investigación: comenzó juicio oral por caso SQM y se extendía por al menos 18 meses", (After 8 years of investigation: oral proceedings for the SQM affair began and will last for at least 18 months) published by Bio Bio on February 13, 2023. Available at: <https://www.biobiochile.cl/noticias/nacional/chile/2023/02/13/tras-8-anos-de-investigacion-comenzo-juicio-oral-por-caso-sqm-y-se-extenderia-por-al-menos-18-meses.shtml>

It is important to note that the SII has two types of procedures for prosecuting tax offenses: one for crimes and one for infractions. In the case of SQM, who irregularly financed politics, and of Pablo Longueira, who (among others) received part of this financing through the fraudulent issuance of invoices for services rendered (without having provided any work to justify them), the tax authorities decided not to file a criminal complaint for tax offenses, but to proceed through the “administrative route”, in which the implicated parties only agreed to pay adjusted fines for their misconduct.⁶⁸

This area of analysis has risk factors that are shared across the events identified in the previous section related to SQM’s undue influence in the discussion of the Environmental Law, which include: a **lack of transparency** and the **lack of a law regulating lobbying activities and political donations**, as well as **weak integrity measures** that did not prevent irregular political financing. These institutional weaknesses can be seen in the **SII’s failure to sanction tax offenses** related to the issuance of “ideologically false” invoices⁶⁹ and SQM’s irregular political financing, effectively demonstrating that the tax authority lacks political

autonomy, professionalism and responsibility. Another weakness is the **inaction of the criminal justice system**, which took seven years to establish a penalty (which in fact has still not yet been established) for bribery and taking bribes.

Additional underlying causes include **SQM’s corporate culture, which has low ethical standards regarding corruption**, as well as a **lack of integrity and transparency among public employees**. Likewise, aided by high prices, the lithium-mining sector **plays an outsized role in the country’s economy and politics**, which has allowed it to influence the design and implementation of public policy.

In line with the above, in order to mitigate the identified risks of capture, it is important to ensure the effective implementation of Act N° 20,730 on Lobbying and Act 20,900 on Democratic Strengthening and Transparency, which will help to better **regulate the management of interests between private and public entities**. It will also ensure that the **SII can more effectively execute its regulatory powers and sanctioning procedures** for tax offenses related to irregular political financing.

⁶⁸ For more information, see the article “Historia de una batalla en el SII: El debate sobre querellarse o no querellarse contra políticos que reaparece con Longueira”, (History of a battle at the SII: The debate on whether or not to sue politicians that reappears with Longueira) published by La Tercera on April 3, 2019. Available at: <https://www.latercera.com/la-tercera-pm/noticia/historia-una-batalla-sii-debate-querellarse-no-politicos-reaparece-longueira/599044/>

⁶⁹ Invoices that do not correspond to a real transaction or that lack supporting documentation.

4.2.3 Companies manipulate the factors that determine their revenue obligations

Two findings were identified that could constitute potential corruption risks for the lithium industry. The first is related to the **legal dispute between the SII and SQM regarding the payment of the IEAM tax for the production and commercialization of lithium compounds.**

As a result of the arbitration proceedings brought by CORFO against SQM due to breaches of contract, in 2016 the Chamber of Deputies formed a Lithium Investigation Commission⁷⁰ that instructed the SII to notify the changes in its criteria for applying IEAM, given that, as of that year, they began to collect this tax on lithium mined in the Salar de Atacama.

In general terms, the legal controversy lies in the leasability of lithium and the “mining operator” status of the companies that extract it in the Salar de Atacama. This legal dispute reached the Court of Appeals of Santiago, where the SII argued that the lithium extracted from the Salar corresponds to mineral holdings that were awarded by the Mining Code of 1932, when the mineral was leasable, and therefore the companies that currently extract it have the legal status of “mining operator” and

their activities are subject to IEAM. SQM claims that lithium is a non-leasable mineral according to Article 7 of the Mining Code of 1983 and therefore the SII’s new interpretation, that the company’s extraction and commercialization of lithium is subject to the tax, is not applicable. It is also important to note that Albemarle has complied with the SII’s definition from the beginning and has paid the specific tax (IEAM) for its lithium mining activities⁷¹.

Given the high prices seen in the last 3 years (2021-2023), the tax revenue from IEAM is not insignificant. To date, there have been 10 years of tax collection gaps between the SII and SQM for the payment of IEAM. For tax years 2012 to 2018, the SII calculated IEAM tax gaps amounting to \$127 billion USD, which SQM paid in full, but filed three complaints regarding the matter. For the 2019 tax year, the Service calculated gaps of \$36 billion USD, which were paid by SQM to avoid future fines and interest. Finally, for the 2020-2022 period, the Service made a new calculation for the specific tax which, according to SQM’s estimates, would correspond to \$745 billion USD. It is important to bear in mind that, in the event of a favorable court decision for SQM, the TGR must return all payments made by the company corresponding to the IEAM tax gaps calculated by the SII⁷².

⁷⁰ For more information, see the website of the Chamber of Deputies, Comisión Especial Investigadora de la participación de organismos públicos en la exploración, procesamiento, explotación, exportación y transporte de litio, así como de las características del contrato suscrito entre CORFO y SQM (2017). Available at: <https://www.camara.cl/legislacion/comisiones/sesiones.aspx?prmlD=1181&prmlDtipo=2103>

⁷¹ For more information, see the article “SQM vs. SII: la disputa por el pago del impuesto específico al litio,” published by La Tercera on March 29, 2022. Available at: <https://www.latercera.com/pulso-pm/noticia/sqm-vs-sii-la-disputa-por-el-pago-del-impuesto-especifico-al-litio/ZIMDB7MXUVUZNT5SLATAJIN7M/>

⁷² For more information, see the article “SII vs. SQM: autoridad exige a minera pagar royalty de años tributarios 2020, 2021 y 2022,” published by La Tercera on May 3, 2023. Available at: <https://www.latercera.com/pulso/noticia/sii-vs-sqm-autoridad-exige-a-minera-pagar-royalty-de-anos-tributarios-2020-2021-y-2022/3ICWSJGJRVCS5N445J2ZD6E4MI/>

The second finding regarding corruption vulnerabilities concerns **the disputes between CORFO and both lithium companies regarding the calculation of their tax obligations**, which has been the subject of several arbitration processes in chambers of commerce. The first dispute was in 2014 with SQM: CORFO filed for arbitration before the Santiago Chamber of Commerce requesting the early termination of the contracts due to non-payment of leases between 2009 and 2013. These gaps were estimated at no less than \$8.9 billion USD and according to CORFO were explained by, among other aspects: the use of transfer prices –lower than market prices– between related companies (KOWA, for example); arbitrarily high costs and deductible expenses, in order to reduce the payment of rents; and the lack of operational and expense information provided by the company (CORFO, 2016). In the end, the arbitrator urged the parties to reach a settlement where SQM would pay a monetary compensation of \$17.5 billion USD to CORFO (CORFO, 2018), among other demands. The company made the payment for the sole purpose of ending the arbitrations, without acknowledging any debt or fault (SQM, 2018).

In January 2021, once again faced with the same scenario, CORFO filed a new arbitration proceeding at the International Chamber of Commerce (ICC), this time against Albemarle for non-payment of royalties

for the 2020 business year. According to what was presented by CORFO, the mining company altered the royalty calculation mechanism established in the contract, which it had implemented and complied with without problems between 2017 and 2019, and which resulted in the royalties paid to CORFO being substantially lower than those agreed in the contract, a loss estimated at \$15 billion USD⁷³.

The risk factors identified for these findings are related to the **gaps in capacity and coordination between the government agencies** in charge of controlling exports of mineral substances and their respective tax payments. These agencies are: COCHILCO, Customs, and the SII. Specifically, it is important to **strengthen the capacity to regulate transfer pricing in the lithium industry** by establishing a specialized unit of CORFO (since it is in charge of the contracts with the lithium companies) and, at the same time, by **strengthening the SII's control and collection processes** in this area.

The main underlying causes of these Revenue Collection issues include **gaps in fiscal transparency and reporting in the industry**, a **corporate culture of low transparency standards**, and **poor compliance with tax obligations**.

⁷³ For more information see the article "CORFO inicia arbitraje contra Albemarle por incumplir contrato de litio con el Estado de Chile", published by CORFO on February 22, 2021. Available at: https://www.corfo.cl/sites/Satellite?c=C_NoticiaNacional&cid=1476728125492&d=Touch&pagename=CorfoPortalPublico%2FC_NoticiaNacional%2FCorfoDetalleNoticiaNacionalWeb

In view of the above, three areas of action are proposed. The first one is related to the lack of price transparency in the market. To this end, it is important that **specialized government bodies such as COCHILCO or the Central Bank of Chile (BCCh) periodically publish lithium compound trading prices** (CFA, 2023) and encourage lithium to be traded on the London and Shanghai metal exchanges in order to have reference prices going forward. On the other hand, and as stated in the recent National Lithium Strategy, it is important for

Chile to **improve the fiscal transparency of the lithium industry and implement the EITI standard**, which would make it possible to comprehensively systematize all the industry's fiscal information in a single instrument. Finally, there is an urgent need to **strengthen the institutions in charge of the control and valuation processes of the mineral products on the market (Customs and the SII)** in order to prevent and penalize the application of transfer pricing mechanisms between related companies.

5. Prioritization and Action plan

As mentioned in the previous step, Areas 1 (Decision to extract; Licensing and Contracting) and 3 (Revenue Collection) of the lithium value chain described in the methodology were prioritized. Four

corruption risks were found for Area 1 and two risks for Area 3. A summary of the findings is presented in the table below:

Table 6: Summary of prioritized areas, type of capture, and related corruption risks.

Prioritized area of focus	Type of capture	Corruption risk
Decision to extract; licensing and contracting	State capture	Undue private influence over laws and regulations.
	Policy capture	Obstruction of third party participation in contracts and licenses.
		Favoritism in licensing processes and decisions.
		Manipulation of community consultations.
Revenue collection	State capture	Undue influence over revenue collection laws and regulations.
		Companies manipulating the factors that determine their revenue obligations.

* These actions were prioritized in the respective diagnosis.

Source: Terram.

In the area of Extraction, Licensing, and Contracting, we identified instances of *state capture* that can be seen in 1) Undue private influence over laws and regulations, as well as processes of *policy capture* that can be seen in the risks of 2) Obstruction of third party participation in contracts and licenses, and 3) Favoritism in licensing processes and decisions; and there is a corruption risk related to 4) Manipulation of community consultations.

On the other hand, for Area 3 - Revenue Collection, we identified practices of *state capture* associated with 1) Undue influence over revenue collection laws and regulations; and corruption risks linked to 2) Companies manipulating of the factors that determine their revenue obligations. Priority Area 1 and 3 share the same form of corruption: *Undue private influence over laws and regulations*, Undue private influence over laws

and regulations, for which measures have already been implemented by the government to reduce the related risk of capture, including initiatives such as the enactment Act N° 20,730 on Lobbying and Act 20,900 on Democratic Strengthening and Transparency in 2014, which have helped better regulate the management of interests between private and public entities.

We then proceeded to prioritize the forms of corruption identified within each area of focus in order to design an action plan and specific measures for the most urgent risks. An analysis was conducted in terms of likelihood, impact, and feasibility of positive change for each form, scoring each of these factors between 1 (low) and 5 (high) (Annex 2). As a result, the main factors in Area 1 are related to instances of policy capture, which are expressed in the corruption risks: *Favoritism in licensing processes and decisions* and *Obstruction of third party participation in contracts and licenses*. For Area 3, the form of corruption with the highest final score was: *Companies manipulate the factors that determine their revenue obligations*.

In the case of Area 1, only the risk of *Favoritism* was given 5 points for likelihood, which is due to the frequency of this form of corruption in the past and the likelihood of it happening again. This is in keeping with historical precedents and political ties documented in the previous chapter and the public-private partnership between SQM and CODELCO that was recently announced through the Memorandum of Understanding. We also identified that this risk has a significant impact, reflected in SQM's repeatedly poor record on environmental

and tax issues. Finally, regarding the feasibility of positive change, in recent years a series of reforms have been approved and presented that can contribute to improving transparency and reducing this corruption risk.

The form of corruption with the second highest priority for this area is the *Obstruction of third party participation*, which has a particularly significant impact, as it impedes and/or prevents broader competition in public tenders. This translates into a process of policy capture that gives SQM a privileged position in the Chilean lithium industry.

Finally, for Area 3, the impact factor has the highest scores in the prioritization of risks, just like in the previous form. This is primarily due to the two CORFO-SQM arbitrations in the Santiago Chamber of Commerce for breach of contract related non-payment (among other aspects) with the consequent fiscal gaps, highlighting the need to work towards reference prices and fiscal transparency.

Following the methodology, the Action Plan (Annex 3) designed to address these three prioritized risks consists of defining general objectives for each weakness identified for each of the three forms of corruption. Concrete actions are then designed, proposing responsible actors, timeline, next steps, and indicators.

For the case of *Favoritism in licensing processes and decisions*, two central objectives were proposed: the first aimed at enhancing transparency in the awards processes for contracts and licenses; and the second at promoting anti-corruption measures

and practices that ensure greater integrity among public officials. For the first objective, four specific actions were proposed to be carried out mainly by the Ministry of Mining and CORFO in the second half of 2024. For the second objective, four actions were proposed related to legislative reforms concerning integrity to be carried out by Congress.

For the second form of corruption, Obstruction of *third party participation in contracts and licenses*, only one objective was proposed: increasing the participation of the state and/or third parties in these processes. For this objective, two actions were defined for the Ministry of Mining to carry out in the second quarter of 2024, both aimed at promoting the establishment of minimum conditions and exclusion clauses that penalize companies with poor performance in environmental and tax matters.

Finally, with regard to *Companies manipulating the factors that determine their revenue obligations*, three central objectives were proposed, aimed at promoting the establishment of a reference price in the lithium industry, increasing fiscal transparency, and strengthening the institutions in charge of the control and inspection processes of products on the market. A total of ten concrete actions were presented to achieve these objectives, to be carried out primarily by the Ministry of Mining, the Treasury, SII, and Customs, with activities to be carried out between the end of 2024 and the beginning of 2025.

Based on the proposed Action Plan, outreach and advocacy efforts will be made in order to improve the governance of the lithium industry and thereby reduce the prioritized corruption risks. The next steps to be taken include establishing an ongoing dialogue with decision-makers in the sector, both public and private, as well as activities to share the plan with organized civil society and therefore coordinate an agenda to collaborate on the issues of fiscal transparency and contracts. Finally, focused advocacy work will be carried out with the Ministry of Mining and CORFO on transparency issues in the industry.

6. References

- Alonso, H., & Risacher, F. (1996). The Salar de Atacama Geochemistry, part 1: The origin of components and saline balance. *Revista Geológica de Chile*, 23, 113-122.
- Azócar, R. (2022). La instalación de la minería de litio en el Salar de Atacama y su relación inicial con las comunidades atacameñas: obreros, campamentos y asistencialismo (Chile, 1962-1998). *Estudios Atacameños*, 68. doi: <http://orcid.org/0000-0002-7599-2812>
- Cabello, J. (2022). Reserves, resources and lithium exploration in the salt flats of northern Chile. *Andean Geology*, 49(2), 297-306. doi: <http://dx.doi.org/10.5027/andgeov49n2-3444>
- Cárcamo, P., Monardes, M., & Moya, E. (2018). *Riesgos de corrupción en concesiones mineras y otorgamiento de permisos ambientales: el caso de Chile. Proyecto de minería para un desarrollo sostenible*, Chile Transparente, Transparency International.
- Carpenter, D., & Moss, D.A. (Eds.). (2013). *Preventing regulatory capture: Special interest influence and how to limit it*. Cambridge University Press.)
- Cerda, R. (2019). *Informe de finanzas públicas. Second quarter 2019*. Publicación de la Dirección de Presupuesto, Dipres. Ministry of Finance. Santiago, Chile. <http://bibliotecadigital.dipres.gob.cl/handle/11626/16876>
- CFA. (2023). *Reflexiones sobre los desafíos fiscales del litio en Chile*. Nota del CFA N°15. Santiago, Chile. <https://www.cfachile.cl/noticias/cfa-plantea-ahorrar-un-componente-importante-de-los-mayores-ingresos-fiscales>
- COCHILCO. (2023). *El Mercado del litio. Desarrollo reciente y proyecciones al 2035*. Actualización a mayo 2023. Chilean Cooper Commission, 43. [https://www.cochilco.cl/Mercado%20de%20Metales/Mercado%20del%20Litio%20-%20Proyecciones%20al%202035%20-%20actualizacion%20mayo%202023%2006.06.2023%20con%20RPI%20%20rev%20CRL%20\(002\).pdf](https://www.cochilco.cl/Mercado%20de%20Metales/Mercado%20del%20Litio%20-%20Proyecciones%20al%202035%20-%20actualizacion%20mayo%202023%2006.06.2023%20con%20RPI%20%20rev%20CRL%20(002).pdf)
- CODELCO. (2023). *Memorandum de Entendimiento entre CODELCO y SQM*. https://www.codelco.com/prontus_codelco/site/docs/20160401/20160401130745/2023_12_27_memorando_de_entendimiento_codelco__sqm.pdf

- CORFO. (2016). *Presentación Cámara de Diputados* [PowerPoint Slides]. Comisión Investigadora Litio. <https://www.camara.cl/verDoc.aspx?prmlID=63026&prmTIPO=DOCUMENTOCOMISION>
- CORFO. (2018). *Bases de conciliación proceso arbitral Corfo-SQM* [PowerPoint Slides]. Santiago, Chile: Production Development Corporation.
- CORFO. (2018). *Modificación de contratos del Estado de Chile con Albemarle y SQM*. Santiago: Production Development Corporation. <http://bcn.cl/2ph7u>
- CORFO. (2023). *Informa el tenor de los solicitado por el H. Diputado Sr. Boris Barrera Moreno, sobre aportes a las Comunidades Indígenas del Salar de Atacama*. Santiago, Chile.
- FNE. (2022). *Informe sobre Consulta de Compañía Minera Salares del Norte Spa sobre bases de licitación para suscripción de contrato especial de operación para la exploración, explotación y beneficio de yacimientos de litio*. Rol N°2687-21. Santiago, Chile. https://www.fne.gob.cl/wp-content/uploads/2022/03/NC-505-2021_FNE_Aporta-antecedentes-Litio-1.pdf
- Terram Foundation. (2023). *Balance Ambiental 2023: LLeve su "Chile Verde"*. https://www.terram.cl/descargar/balance_ambiental/Balance-Ambiental-2023-Fundacion-Terram.pdf
- Gillies, A., Salomon, M., Sahla, S. & Shipley T. (2021). *Diagnóstico de la corrupción en el sector extractivo: una herramienta para la investigación y la acción*. Natural Resource Governance Institute, NRGi. 58 p.
- Gundermann, H., & Göbel, B. (2018). Comunidades indígenas, empresas del litio y sus relaciones en el Salar de Atacama. *Chungará (Arica)*, 50(3), 471-486. doi: <http://dx.doi.org/10.4067/S0717-73562018005001602>
- Hellman, J. & Kaufmann, D. (2001). 'Confronting the Challenge of State Capture in Transition Economies', *IMF Finance and Development* 38(3). <https://www.imf.org/external/pubs/ft/fandd/2001/09/hellman.htm>
- Hellman, J. & Kaufmann, D. (2018). 'State Capture in Transition: Submission to the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State'.
- Hernández, Y. (2020). Cambio Climático: Causas y Consecuencias. *RenovaT*, 4(1), 38-53. <https://revistas.sena.edu.co/index.php/rnt/article/view/3517/3953>

- Iribarnegaray, M., Jiménez, E., Garcés, I., Lorca, M., Escosteguy, M., Díaz, W., & Clavijo, A. (2022). Análisis de los marcos institucionales para la explotación de litio en sudamérica. En C. Brannstrom, L. Seghezze, & A. Gorayeb (Edits.), *Descarbonização na América do Sul: conexões entre o Brasil e a Argentina*. (págs. 382-400). Mossoró, Brasil: Universidade do Estado do Rio Grande do Norte (UERN). https://www.researchgate.net/profile/Martin-Alejandro-Iribarnegaray/publication/353741666_Analisis_de_lo_marcos_institucionales_para_la_explotacion_de_litio_en_Sudamerica/links/64b92b908de7ed28baaf4b96/Analisis-de-lo-marcos-institucionales-para-la-explora
- Jorrat, M. (2022). Renta económica, régimen tributario y transparencia fiscal de la minería del litio en la Argentina, Bolivia (Estado Plurinacional de) y Chile. *Documentos de Proyectos (LC/TS.2022/14)*. Economic Commission for Latin America and the Caribbean (ECLAC). Santiago, Chile. <https://repositorio.cepal.org/server/api/core/bitstreams/e2cab4d6-2708-461e-9940-6e990c0d1048/content>
- Lorca, M., Olivera, M., & Garcés, I. (2023). "Se instaló el diablo en el salar". Organizaciones atacameñas, agua y minería del litio en el salar de Atacama. *Estudios Atacameños*, 69. doi: <http://dx.doi.org/10.22199/issn.0718-1043-2023-0004>
- Mascareño Orellana, C. (2019). *El financiamiento irregular en los sistemas político y económico en Chile 2015. La corrupción y el aumento de complejidad tras los casos Penta, Caval y SQM*. Disponible en <https://repositorio.uchile.cl/handle/2250/183603>
- Ministry of Mining. (2023). *Estrategia Nacional del Litio*. https://s3.amazonaws.com/gobcl-prod/public_files/Campa%C3%B1as/Litio-por-Chile/Estrategia-Nacional-del-litio-ES_14062023_2003.pdf
- OECD (2017). *Preventing Policy Capture: Integrity in Public Decision Making*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264065239-en>
- Polanco, E. (2015). Historia de SOQUIMICH, una revisión. Conference: XIV Congreso Geológico Chileno, La Serena. National Geology and Mining Service (SERNAGEOMIN): Santiago, Chile.
- Poveda, R. (2020). *Estudio de caso sobre la gobernanza del litio en Chile. Serie Recursos Naturales y Desarrollo, N° 195 (LC/TS.2020/40)*, Economic Commission for Latin America and the Caribbean (ECLAC). Santiago, Chile.
- SEA. (2020). *Resolución de Calificación Ambiental Proyecto Blanco*. https://seia.sea.gob.cl/expediente/ficha/fichaPrincipal.php?modo=ficha&id_expediente=2141401298

SERNAGEOMIN. (2023). *Anuario de la Minería de Chile*. Santiago: : National Geology and Mining Service. https://www.sernageomin.cl/pdf/Anuario_2022_310523.pdf

SII. (2018). *Litio en Chile: Aspectos tributarios*. . Lithium Commission Santiago, Chile.

SQM. (2018). *Presentación SQM Salar. Comisión especial investigadora de los actos del Gobierno relativos al origen y adopción del acuerdo entre CORFO y SQM, sobre la explotación del litio en el Salar de Atacama y su ejecución [PowerPoint presentation]*. SQM, September 2018. <https://www.camara.cl/verDoc.aspx?prmID=148787&prmTIPO=DOCUMENTOCOMISION>

Yurisch, T., & Martínez, I. (2022). *Minuta : Opacidad fiscal en la industria del litio y los problemas de acceso a la información*. Fundación Terram. Santiago, Chile. https://www.terram.cl/descargar/recursos_naturales/mineria/Minuta-Opacidad-fiscal-en-la-industria-del-litio.pdf

Cited Legislation

Exempt Decree No. 11, Ministry of Mining, 2022. Implements Sentence No. 99, 2022, of the Supreme Court, and annuls Supreme Decree No. 23, 2021, of the Ministry of Mining.

Decree Law No. 2,886, Ministry of Mining, 1979. Subjects the establishment of mining holdings on calcium carbonate, phosphate, and potassium salts to the General Regulations of the Mining Code, reserves lithium for the State, and interprets and modifies the indicated laws.

Supreme Decree No. 19, Ministry General Secretariat of the Presidency, 2001. Empowers the State Ministers to sign "by order of the President of the Republic."

Supreme Decree No. 236, Ministry of Foreign Affairs, 2008. Promulgates the International Labor Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

Supreme Decree No. 16, Ministry of Mining, 2012. Establishes terms and conditions of the Special Operation Contracts (CEOL) for the exploration, mining, and processing of lithium deposits, which the State of Chile will enter into in accordance with the criteria of the national and international public tender that will be approved for this purpose.

Supreme Decree No. 64, Ministry of Mining, 2017. Establishes terms and conditions of the Special Operation Contracts (CEOL) for the exploration, mining, and processing of lithium deposits in the Salar de Maricunga and its surroundings, which the State of Chile will enter into with Salar de Maricunga S.P.A.

Supreme Decree No. 23, Ministry of Mining, 2021 (repealed). Establishes terms and conditions of the Special Operation Contract (CEOL) for the exploration, mining, and processing of lithium deposits, which the State of Chile will enter into in accordance with the criteria of the national and international public tender that will be approved for this purpose.

Act No. 18,097, Ministry of Mining, 1982. Constitutional Organic Act on Mining Concessions.

Act No. 18,248, Ministry of Mining, 1983. Establishes the Mining Code.

Act No. 19,253, Ministry of Planning and Cooperation, 1993. Establishes norms for the protection, support, and development of indigenous people, and creates the National Corporation for Indigenous Development (CONADI).

Act No. 19,300, Ministry General Secretariat of the Presidency, 1994. On General Bases of the Environment.

Act No. 20,285, Ministry General Secretariat of the Presidency, 2008. On Access to Public Information. Known as the Transparency Act.

Act No. 20,417, Ministry General Secretariat of the Presidency, 2010. Creates the Ministry of the Environment, the Environmental Assessment Service, and the Superintendency of the Environment.

Act No. 20,469, Ministry of Finance, 2010. Modifies the taxation of mining activities.

Act No. 20,730, Ministry General Secretariat of the Presidency, 2014. Regulates lobbying and the actions that represent private interests before public authorities and officials.

Act No. 20,900, Ministry General Secretariat of the Presidency, 2016. On Democratic Strengthening and Transparency.

Act No. 21,644, Ministry of Justice and Human Rights, 2024. Amends the Constitution to create the Supraterritorial Prosecutor's Office, specialized in organized crime and highly complex crimes, as part of the Public Prosecutor's Office.

Bills of Law

Bulletin No. 10,616-06. Bill that amends several pieces of legislation, expanding disqualifications and restrictions between the public and private sectors.

Bulletin No. 16,475-05. Bill that creates a National Registry of Final Beneficiaries.

Bulletin No. 10.155-07. Bill that classifies the crime of corruption between private parties and modifies provisions of the Penal Code related to crimes involving public officials.

7. Annexes

7.1 Annex 1: Summary report

Area 1 Decision to extract; licensing and contracting	
Is this area significant?	[Yes/No/Somewhat]
<p>Yes, because lithium is a non-leasable mineral that is considered strategic and reserved for the state. Only two companies extract lithium in Chile. Of these, SQM is the largest producer and has a history of illegal political financing, among other issues.</p> <p>We were able to identify four corruption risks for this area.</p>	
Is corruption in this area a serious and harmful problem?	[Yes/No/Somewhat]
<p>Yes, given that there are processes of policy capture and state capture that can be seen in favoritism in licensing processes and decisions, obstruction of the third party participation in mining, and irregular political financing. In addition, community consultation processes are absent or incomplete.</p>	
Are there opportunities for action and positive change?	[Yes/No/Somewhat]
<p>Yes, progress can be made on an agenda of anti-corruption and integrity measures, as well as greater transparency in contracting and licensing. In addition, it is important to increase the participation of the state and/or third parties in the exploration and extraction of lithium.</p>	

Area 2 Operations	
Is this area significant?	[Yes/No/Somewhat]
<p>Yes, because salt flats are fragile ecosystems with complex hydrogeological features that are inhabited by indigenous communities (Lickanantay, Colla, Quechua, and Aymara, among others). In addition, there are corporate "shared value" strategies in the form of payments to local stakeholders, even when companies fail to comply with their environmental obligations.</p> <p>We were able to identify three corruption risks for this area.</p>	
Is corruption in this area a serious and harmful problem?	[Yes/No/Somewhat]
<p>Yes, since there are unusual community relations and/or "shared value" strategies in the form of payments to local stakeholders (GORE, municipalities and indigenous communities). This process has institutionalized the renewed contracts between CORFO and the mining companies, and in the relationship between the Colla communities and the "Blanco" project in the Salar de Maricunga.</p>	
Are there opportunities for action and positive change?	[Yes/No/Somewhat]
<p>Yes, because public institutions can be strengthened and processes that regulate private financing (payments) to local stakeholders can be improved. In addition, greater transparency is needed regarding national and sub-national payments.</p>	

Area 3 Revenue collection

Is this area significant?

[Yes/No/Somewhat]

Yes, because there are major shortcomings in terms of reporting and fiscal transparency, as well as a lack of transparency in mineral market prices. Companies have failed to comply with their fiscal obligations, and SQM also has also engaged in irregular political financing.

We were able to identify two corruption risks for this area.

Is corruption in this area a serious and harmful problem?

[Yes/No/Somewhat]

Yes, because SQM takes various legal actions to avoid its fiscal obligations. In addition, CORFO has reported gaps in the calculation of its fiscal obligations with both companies, including the non-payment in full of leases.

Are there opportunities for action and positive change?

[Yes/No/Somewhat]

Yes, a public policy agenda is needed to establish reference prices for the lithium market, as well as greater transparency in national and sub-national payments. The institutions in charge of the control and valuation of lithium exports also need to be strengthened.

Area 4 Revenue management

Is this area significant?

[Yes/No/Somewhat]

Yes, because there are large gaps in fiscal transparency and reporting. Direct contributions to regional governments (GORE), municipalities, and communities are established in renewed contracts.

We were able to identify just one corruption risk for this area.

Is corruption in this area a serious and harmful problem?

[Yes/No/Somewhat]

Somewhat, since there are concerns about the applicability, distribution criteria, transparency, and accountability of subnational allocations of funds. In addition, resources are distributed to communities without consultation processes, in addition to private contributions to municipalities that are not specifically regulated or included annual budgets.

Are there opportunities for action and positive change?

[Yes/No/Somewhat]

Somewhat. Greater transparency is needed regarding national and sub-national payments. Institutions and regulations governing private contributions to local governments also need to be strengthened.

Area 5 State-owned enterprises	
Is this area significant?	[Yes/No/Somewhat]
<p>Yes, because already the National Lithium Commission (2014) recommended that the government should have a larger role and that a national lithium company should be established. Thus, the National Lithium Strategy (2023) proposes the creation of a “national lithium company” and a leading role for CODELCO and ENAMI in exploration and extraction.</p> <p>We were able to identify just one corruption risk for this area.</p>	
Is corruption in this area a serious and harmful problem?	[Yes/No/Somewhat]
<p>No, since there is still no state-owned lithium company. However, there are possible corruption risks posed by the CODELCO-SQM partnership to mine CORFO’s holdings in the Salar de Atacama, as well as a possible policy capture in the event of SQM holding a privileged position in the negotiation processes.</p>	
Are there opportunities for action and positive change?	[Yes/No/Somewhat]
<p>No, since it does not yet exist. However, progress still needs to be made in terms of anti-corruption and integrity measures, as well as greater transparency in contracting and licensing.</p>	

7.2 Annex 2: Diagnosing corruption (Step 4) and Prioritizing for action (Step 5).

DIAGNOSTIC TABLE AREA 1 Decision to extract, license, and contract					
Step 4: Diagnose corruption			Step 5: Prioritizing for action		
A	B	C			
What forms of corruptions are of significant concern?	What causes the different forms of corruption?	What measures could help prevent corruption?	D	Likelihood	5
<i>Favoritism in licensing processes and decisions</i>	<p>Risks: Favoritism in licensing processes and decisions; weak institutions; contracts and licenses not publicly available; and weak or nonexistent restrictions on revolving doors.</p> <p>Causes: Licensing authority is not very diligent with applicant companies; lack of knowledge of the technical opinions of the agencies involved in decision-making; some normalization of corruption and feeling that "that is just how the system works".</p>	Make progress in implementing standards; publish contracts and licenses in the extractive sector; standardize and automate licensing processes; publish information on all companies participating in award processes; and advance in greater transparency and governance in the sector.	E	Impact	5
			F	Feasibility	5
			G	Overall score (D+E+E+F)	20

DIAGNOSTIC TABLE AREA 1 Decision to extract, license, and contract					
Step 4: Diagnose corruption			Step 5: Prioritizing for action		
A	B	C			
What forms of corruptions are of significant concern?	What causes the different forms of corruption?	What measures could help prevent corruption?	D	Likelihood	3
<i>Undue private influence over laws and regulations</i>	<p>Risks: The SQM affair revealed a lack of transparency and the need for a law to regulate this type of activity, as the government did not investigate or sanction those involved; weak or nonexistent restrictions on revolving doors.</p> <p>Causes: Owners or controlling shareholders of the companies maintain close relations with decision makers; lobbying activities and political donations by companies operating in the sector; and weak oversight and public participation.</p>	Strengthen oversight and participation, for example with the enactment of the Lobby Act (N° 20,730) in 2014, and avoid the risk of capture by economic groups, even though the extractive sector is not directly responsible for financing political parties.	E	Impact	4
			F	Feasibility	2
			G	Overall score (D+E+E+F)	13
Step 4: Diagnose corruption			Step 5: Prioritizing for action		
A	B	C			
What forms of corruptions are of significant concern?	What causes the different forms of corruption?	What measures could help prevent corruption?	D	Likelihood	3
<i>Obstruction of third party participation in contracts and licenses</i>	<p>Risks: Lack of transparency in awards criteria and in the disclosure of awards criteria and contracts; lack of technical background and information on mining concessions awarded to companies; uncompetitive bidding process; and institutional weakness due to the lack of a comprehensive system for awarding permits and rights.</p> <p>Causes: Outsize corporate "weight" of one company (SQM) to influence the country's economy and development; mining concessions protected by property rights; and non-compliance and irregularities that are remedied with alternative or softer measures.</p>	Move to establish a single, comprehensive, and easily accessible public registry of mining concessions awards.	E	Impact	5
			F	Feasibility	4
			G	Overall score (D+E+E+F)	17

DIAGNOSTIC TABLE AREA 1 Decision to extract, license, and contract					
Step 4: Diagnose corruption			Step 5: Prioritizing for action		
A	B	C			
What forms of corruptions are of significant concern?	What causes the different forms of corruption?	What measures could help prevent corruption?	D	Likelihood	3
<i>Manipulation of community consultations</i>	<p>Risks: Lack of indigenous consultation processes in the criteria for award processes and operating contracts; lack of disclosure of consultation processes that allow for broad participation; non-binding indigenous consultation; lack of clear and transparent procedures for negotiation and relations between the companies and the community; and lack of government support in bilateral agreements.</p> <p>Causes: Historical neglect of indigenous communities in Chile and a regulatory disconnect from the ancestral worldview of these communities.</p>	Promote mechanisms to strengthen indigenous participation and achieve compliance with ILO Convention 169.	E	Impact	2
			F	Feasibility	2
			G	Overall score (D+E+E+F)	9

DIAGNOSTIC TABLE AREA 3 REVENUE COLLECTION					
Step 4: Diagnose corruption			Step 5: Prioritizing for action		
A	B	C			
What forms of corruptions are of significant concern?	What causes the different forms of corruption?	What measures could help prevent corruption?	D	Likelihood	2
<i>Undue influence over revenue collection laws and regulations</i>	<p>Risks: The SII's institutional weakness for pursuing sanction procedures for tax crimes related to the issuance of invoices with and irregular political financing by SQM; institutional and political weakness of the criminal justice system due to the delay of at least 7 years to establish a sanction; lack of regulation and/or restrictions on the processes of "donations" from individuals to political parties and/or public actors; lack of anti-corruption policies and procedures; and lack of transparency in lobbying activities and political donations by companies operating in the sector.</p> <p>Causes: Corporate culture with low ethical standards regarding corruption; lack of integrity and transparency among public employee; and the lithium mining sector plays an outsize role in the country's economy and politics.</p>	Monitor the effective implementation of Act N° 20,730 on Lobbying and Act N° 20,900 on Democratic Strengthening and Transparency; and ensure effective enforcement of the regulatory powers and criminal sanction proceedings brought by the SII in tax offenses related to irregular political financing.	E	Impact	2
			F	Feasibility	3
			G	Overall score (D+E+E+F)	9

DIAGNOSTIC TABLE AREA 3 REVENUE COLLECTION					
Step 4: Diagnose corruption			Step 5: Prioritizing for action		
A	B	C			
What forms of corruptions are of significant concern?	What causes the different forms of corruption?	What measures could help prevent corruption?	D	Likelihood	4
<i>Companies manipulate the factors that determine their revenue obligations.</i>	<p>Risks: The lithium market has an opaque pricing system; there is a lack of transparency regarding the sector's fiscal information; there are capacity and coordination gaps in the national institutions in charge of controlling exports of mineral substances and their respective tax payments; there is a low regulatory capacity for transfer pricing in the lithium industry; and there is little multi-stakeholder oversight of the fiscal contributions made by companies.</p> <p>Causes: Poor corporate compliance with fiscal obligations in the lithium industry; corporate culture with low standards of transparency and fiscal reporting; and the mining and lithium industry plays an outside role in the country's economy and politics.</p>	Make progress towards having specialized national institutions periodically publish the prices of lithium compounds; encourage lithium to be traded on the London and Shanghai metal exchanges; improve fiscal transparency in the lithium industry with the implementation of the EITI international transparency initiative; and strengthen the institutions in charge of the control and valuation processes of mineral products on the market.	E	Impact	5
			F	Feasibility	4
			G	Overall score (D+E+E+F)	18

7.3 Annex 3: Action plan for prioritized forms of corruptions (Step 6).

A Favoritism in licensing processes and decisions

Despite breaches of contract, withholding information, and illicit political ties, companies continue to be considered for future tenders and partnerships with the state.

Objective 1. Increase transparency in the processes for awarding contracts and tenders

Nº	Proposed action	Proposed responsible actor(s)	Timeline	Next steps	Indicators of progress
1	Publish the technical criteria for CEOLs (quotas, extraction areas, deadlines, etc.), value addition tenders, and other awards.	Ministry of Mining and its technical units.	Second quarter 2024	Create a web portal with systematized information on tender processes that is accessible, easy to understand, up-to-date, and comprehensive	Creation of website
2	Publish the information of the companies participating in awards processes, their evaluation, and the rubric, for CEOLs and other tenders	Ministry of Mining and CORFO	Second quarter 2024	Set up a publicly accessible portal on the Ministry's website containing systematized information that is accessible, easy to understand, up-to-date, and comprehensive	Company evaluation rubrics and award documentation
3	Publicar los contratos y Anexes suscritos por CORFO con las empresas litíferas del Salar de Atacama	CORFO	Second quarter 2024	Create a web portal with systematized information on tender processes that is accessible, easy to understand, up-to-date, and comprehensive	Creation of website
4	Publish the contracts and annexes signed by CORFO with lithium companies in the Salar de Atacama	Ministry of Mining	Second quarter 2024	Form a multi-stakeholder group to establish an action plan for transparency in contracts and licenses	EITI action plan

Objective 2. Promote anti-corruption practices that ensure greater integrity among public officials involved in decision-making processes.

Nº	Proposed action	Proposed responsible actor(s)	Timeline	Next steps	Indicators of progress
1	Promote a 3-year cooling-off period (OECD average) for public officials who transition to private companies that they previously regulated	Congress	Third quarter 2025	Restart discussion of the currently shelved 2016 bill on disqualifications and restrictions between the public and private sectors (Bulletin No. 10,616-06) that sought to end the "revolving door." A new bill must be drafted to move forward on this matter.	Consideration of the bill in Congress
2	Strengthen anti-corruption legislation	Congress	First quarter 2025	Monitor the bill that should be introduced to create the High Complexity Supraterritorial Prosecutor's Office after Congress passes the Constitutional Reform Bill that creates the position (Bulletin N° 16.015-07)	Consideration of the bill in Congress Monitor the implementation of Act No. 21,644
3	Work towards a National Registry of Final Beneficiaries	Congress	First quarter 2025	Monitor the bill that "creates a National Registry of Final Beneficiaries" (Bulletin No. 16.475-05) introduced in the Senate by the President to the Senate in 2023.	Consideration of the bill in Congress
4	Make progress on increasing penalties for irregular political financing	Congress	First quarter 2025	Increase the penalties for offenses/crimes associated with irregular financing, as well as the criminalization of related offenses. Monitor the bill that "criminalizes the crime of corruption between private parties and modifies provisions of the Penal Code related to crimes involving public officials" (Bulletin 10.155-07, consolidated with Bulletin 9.956-07).	Consideration of the bill in Congress

B Obstruction of third party participation in contracts and licenses

In order to speculate and block future bids, these companies claim mineral holdings on CORFO's OMAs and water rights in areas surrounding strategic salt flats, leading to lengthy arbitration processes

Objective Increase the participation of the state and/or third parties in the exploration and extraction of lithium

Nº	Proposed action	Proposed responsible actor(s)	Timeline	Next steps	Indicators of progress
1	Move to establish a single, complete, and easily accessible public registry of awarded, pending, and expired mining concessions.	SERNAGEOMIN	Second quarter 2024	Update the web portal with systematized information on mining concession processes that is accessible, easy to understand, up-to-date, and comprehensive.	Website updated with past and current information
2	Establish exclusion clauses in the award criteria that prevent the participation of companies with arbitration agreements with the government and/or sanctions for environmental non-compliance.	Ministry of Mining	Second quarter 2024	Develop a manual that establishes the following as exclusion clauses: participating companies must not be involved in any legal process (arbitration) with the government and/or have been sanctioned for environmental non-compliance.	Drafting and publication of a manual

C B. Companies manipulate the factors that determine their revenue obligations

Companies circumvent their fiscal obligations by lowering their tax base or evading the payment of taxes, for example, the Specific Mining Tax (IEAM).

Objective 1 Contribute to the establishment of a reference price for the lithium industry.

Nº	Proposed action	Proposed responsible actor(s)	Timeline	Next steps	Indicators of progress
1	Develop a historical record of prices implicit in the FOB value of lithium compound exports.	Customs	Fourth quarter 2024	Develop a methodology to collect and systematize the implicit FOB prices of lithium compound exports in the last decade. Create a publicly accessible website containing the information.	Creation of a public registry
2	Inter-sector coordination to create a lithium price indicator.	Central Bank, Ministry of Mining and its technical units	Fourth quarter 2024	Establish an inter-sector working group to consolidate available information and identify price opacity in the industry.	Develop an action plan
3	Fortalecer el trabajo intergubernamental con Argentina para sistematizar el comportamiento de los precios de exportación de litio.	Ministry of Mining, Ministry of Foreign Affairs	Second quarter 2025	Establish a bilateral cooperation agreement with the government of Argentina that provides for a joint flow of information and technical support on lithium compound pricing.	Creation of the cooperation agreement

Objective 2 Increase fiscal transparency in the lithium industry.

Nº	Proposed action	Proposed responsible actor(s)	Timeline	Next steps	Indicators of progress
1	Join the EITI to promote fiscal transparency	Ministry of Mining	Second quarter 2024	Form a multi-stakeholder group to establish an action plan for fiscal transparency.	EITI action plan
2	Foster collaboration among public institutions with technical competence to improve fiscal transparency in the lithium industry (TGR, SII, CORFO).	Ministry of Mining and technical institutions with fiscal competence	Third quarter 2024	Set up a publicly accessible portal on the Ministry of Mining's website containing systematized fiscal information on the lithium industry that is accessible, easy to understand, up-to-date, and comprehensive.	Creation of website

3	Publish lithium companies' corporate reports with disaggregated data on their tax contributions.	Ministry of Mining and companies	Second quarter 2024	Publish annual or other financial reports with disaggregated data on their fiscal contributions for each lithium project.	Creation of a link on the website.
4	Create a congressional discussion on the fiscal transparency of tax secrecy in strategic companies such as lithium producers.	Congress, Ministry of Mining, and Ministry of Finance	Third quarter 2025	Promote the creation of an Investigation Commission in the Chamber of Deputies to review fiscal transparency in the lithium industry with a focus on the application of tax secrecy	Publication of the Investigation Commission's report.

Objective 3 Strengthen the institutions in charge of the control and inspection of products on the market

Nº	Proposed action	Proposed responsible actor(s)	Timeline	Next steps	Indicators of progress
1	Progressively increase the budget allocated to institutions that control exports of lithium compounds.	Ministry of Finance	Second quarter 2024	Discuss an increase for the control items allocated to COCHILCO, SII, and Customs in the 2026 Budget.	Monitor budget items related to control.
2	Make progress in the development of a public registry of independent laboratories that inspect mineral exports.	Customs	First quarter 2025	Set up a publicly accessible portal with a national registry of independent, authorized laboratories that is accessible, easy to understand, up-to-date, and comprehensive.	Creation of web portal.
3	Regional technical cooperation between the countries of the Lithium Triangle regarding the control of mineral exports	Ministry of Mining	Third quarter 2024	Establish an intergovernmental working group on the control of mineral exports.	Establishment of an intergovernmental cooperation agreement.



Terram Foundation

General Bustamante 24, 5th floor, office i. Providencia, Santiago, Chile.

 *Fundación Terram*  *@TerramChile*  *@fundacion_terra*  *Terram Foundation*