Open Government Partnership

Lobby Law in Chile: Democratizing Access to Public Authorities

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The Influence of Lobbying in Chilean Politics

In recent years, Chile has been facing political and financial scandals that have affected public trust and highlighted the need for stronger regulatory frameworks for relationships between government and businesses.

In September 2014, political scandals were discovered by the press involving various high-profile corporations in banking, retail, and mining sectors, including one with a financial group and members of Congress involved with falsifying receipts for services not provided.[1] The investigations, some still ongoing, and indictments that followed implicated several members of Congress and former and current cabinet ministers. The scandals revealed a system in which meetings between corporate executives and politicians were frequent and allowed the exchange of influence and campaign resources outside of public view.

This was no isolated incident. Because several sectors that have considerable impact on the Chilean economy are heavily regulated by the state – including energy, environment, and capital markets – there is a long history of private-public sector collusion. In the absence of regulations on lobbying, public officials had little accountability for the meetings they held with these groups or their outcomes.

Since 2004, succeeding governments in Chile have launched legal initiatives to improve transparency, probity and principles of good government, including the Transparency Act, Government Procurement Act, Declaration of Assets and Interest Act, and the Civil Service Reform Act. Recently, President Michelle Bachelet created the Anti-Corruption Council in order to propose initiatives to reduce scandals in public campaign financing. The Lobbying Act of 2014, a reform 10 years in the making, and the commitments of the Chilean government in its Open Government Partnership (OGP) National Action Plan (NAP) to adopt and implement the legislation, must be situated in this wider context of reforms.

A 10-Year Campaign Bears Fruit

The government of Chile sent its letter of intent to join OGP in September 2011. The Ministry of Secretary General for the Presidency, in collaboration with nongovernmental organizations (NGOs), the comptroller general, and the Council for Transparency, crafted a proposal for the NAP. Sebastián Piñera, president from 2010-2014, presented the plan on March 30, 2012,[2] after public consultation that allowed civil society to express its main concerns.

The 11th commitment of Chile's first NAP pertained to the adoption of the Lobbying Act, a key issue for transparency, accountability, and citizen engagement in public affairs. The Lobbying Act was designed to address two critical issues: first, reducing influence peddling by creating a system of comprehensive transparency of authorities' and elected officials' agendas, travel, and donations; second, providing mechanisms and opportunities to improve citizen's access to authorities. This case study is aimed at evaluating results of Chile's OGP commitments regarding the Lobbying Act, based on field interviews, analysis of publicly available data and secondary desk research.

There were several earlier attempts to regulate lobbying, with a lobbying law in discussion for almost a decade prior to the commitment being made in Chile's OGP action plan. The 10-year struggle to pass this bill was given a boost by the explicit commitment to move on the agenda in Chile's NAP. The government of Sebastian Piñera introduced the bill in 2012, in a process led by his Minister of the Presidency, Cristián Larroulet.

1 https://www.opensocietyfoundations.org/voices/following-money-through-chilean-politics.
2 http://www.opengovpartnership.org/country/chile.

A coalition of diverse civil society organizations of more than 40 NGOs and dozens of public intellectuals played a key role in advocating for the law to be passed.[3] Key players included organizations such as Transparente Chile and the Fundacion Cuidadano Inteligente. The campaign combined social media campaigns and web-based advocacy, setting up the portal leydelobby.cl, with traditional advocacy, including working with the Secretary General of the Presidency, the State Modernization Unit, and the Citizens' Defense and Transparency Unit of the Ministry of the Presidency, which has played a key role in the design and implementation of the Lobby Act.

The coalition took a pragmatic stand in its advocacy. Rather than aiming for a perfect piece of legislation, they pushed for the passage of the bill, which although imperfect, would become an important first step. This pragmatism also helped them develop a strong working relationship with the politicians and officials on the other side of the table.[4]

Although the law had many detractors within Congress, there were a few leading senators and representatives from across the political spectrum that also helped push for the legislation within Congress, and helped achieve the broad consensus needed for its approval. One of the key advocates was Senator Hernan Larraín from the Democratic Independent Union Party, who also serves as the co-anchor of the Legislative Openness Working Group of OGP.

Senator Larrain was a leading voice and contributed to reducing opposition to the Lobby Act by many of his party and coalition colleagues. The former comptroller general, Ramiro Mendoza, was also an active advocate in the Congress's approval of lobbying regulation. The Committee against Conflicts of Interest, Influence Peddling, and Corruption, led by Eduardo Engel, which has the mission of proposing new norms to make government-business relations more transparent, has also been an influential actor.

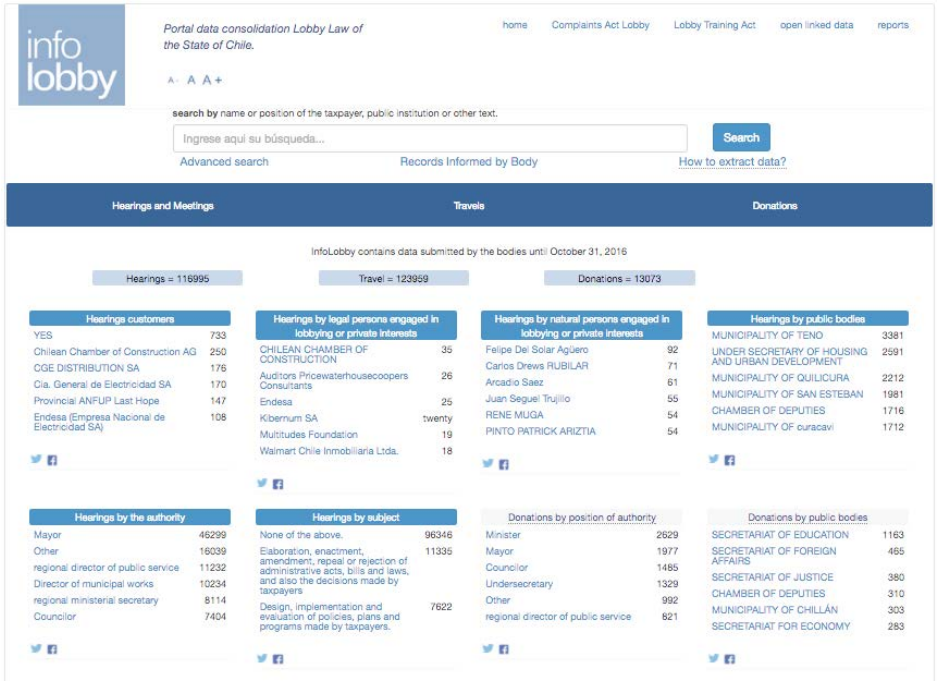
When the Lobby Act was approved on March 8, 2014, days before President Piñera's mandate ended, Chile became the first country in Latin America with legislation on lobbying disclosure.

The main provisions of the act include[5]:

- Establishing legal definitions for lobbying, active (paid lobbyists and unpaid interest managers) and passive subjects (ministers, vice ministers, heads of departments, regional directors of public services, mayors and governors, regional ministerial secretaries and ambassadors, and other public individuals and entities).
- Creation of public registers where authorities must disclose information on meetings and individuals/lobbyists who attended those meetings.
- Sanctions and fines.
- A mandate for the Council for Transparency to consolidate data on lobbying activities and make it public via a website. The InfoLobby platform was established to periodically publish the number of meeting, travels and donations to the authorities covered by the law, both in aggregate and by public agency. The platform also contains the registration of all lobbyists.

3 http://leydelobby.cl/historia-del-proyecto.html
4 https://sunlightfoundation.com/blog/2014/03/06/chile-passes-lobbying-law-a-first-in-latin-america/.
5 https://www.leychile.cl/Navegar?idNorma=1060115.

THE INFOLOBBY PLATFORM:
http://www.infolobby.cl/



Assessing Progress

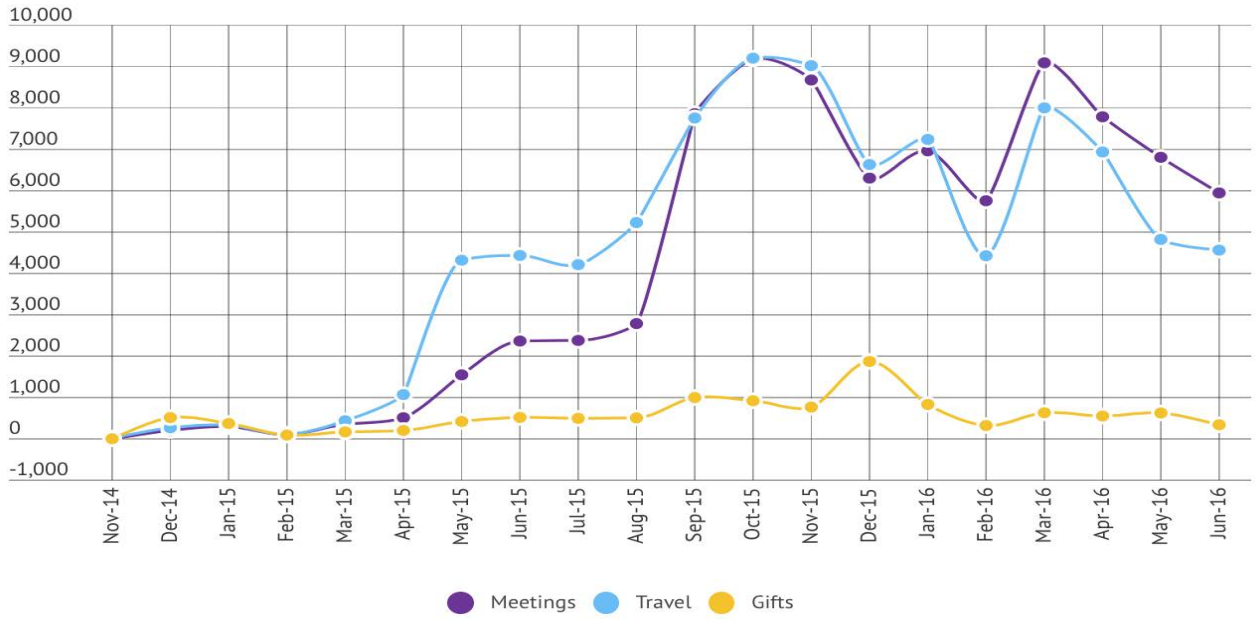
With the enactment of the Lobby Act, Chile fulfilled the commitment made in its first NAP. The second NAP, for 2014-2016,[6] included commitments pertaining to the implementation of the act, organized in six milestones under the responsibility of the Citizen's Defense and Transparency Unit of the Ministry of the Presidency. Four of the six milestones have been achieved, including the enactment of complementary regulation of the Lobby Act; the training of active and passive lobbying subjects; and the implementation of technological support to address inquiries during the implementation stage.[7]

The information available through the InfoLobby platform allows the development of a general perspective on the implementation process of the Lobby Act and how different active and passive subjects are adjusting their work to fulfill the requirements of the law. Although at an initial stage, a positive trend towards the formalization of the activities of authorities may be identified. However, implementation has been uneven among authorities and relies heavily on the political will of authorities or elected officials. That said, both the data that is published – and that which isn't – can become powerful tools for public accountability of authorities.

At the time of completion of the 2014-2015 Independent Reporting Mechanism Progress Report reviewing Chile's OGP commitments, the Lobby Act had been in force for nine months. As of July 2015, the total meetings registered on the InfoLobby platform was 7,768; the total travel registry amounted to 15,215 trips; and the total registry of donations reached 2,799.[8]

6 http://www.cdc.gob.cl/wp-content/uploads/2015/07/Plan-de-Accion-2014-16-CHILE-OFICIAL.pdf.
7 2014-2015 IRM Mid-term Progress Report: http://www.opengovpartnership.org/sites/default/files/Chile_IRM_2014-15_0.pdf.
8 All data is retrieved from the official consolidation platform of the Lobby Act at http://www.infolobby.cl.

EVOLUTION OF LOBBY REGISTRY:



Source: infolobby.Cl

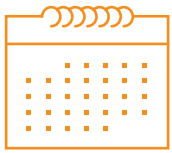
The latest information available for this report (June 2016), indicates that the total meetings registered in the Lobby platform since November 2014, is 87,195; total travel of 93,043 trips; and the total registry of donations reached 11,366, with an average registry of 9,258 and a more recent average (in the last 6 months) of approximately 13,000 (7% of the total registries). However, there is no registry of the rejected meetings or the meetings that take place without being reported on the InfoLobby Platform.

EVOLUTION OF LOBBY REGISTRY Data as on June 2016

NUMBER OF TRIPS
93,054

NUMBER OF MEETINGS HELD
87,195

NUMBER OF DONATIONS AND GIFTS
11,366

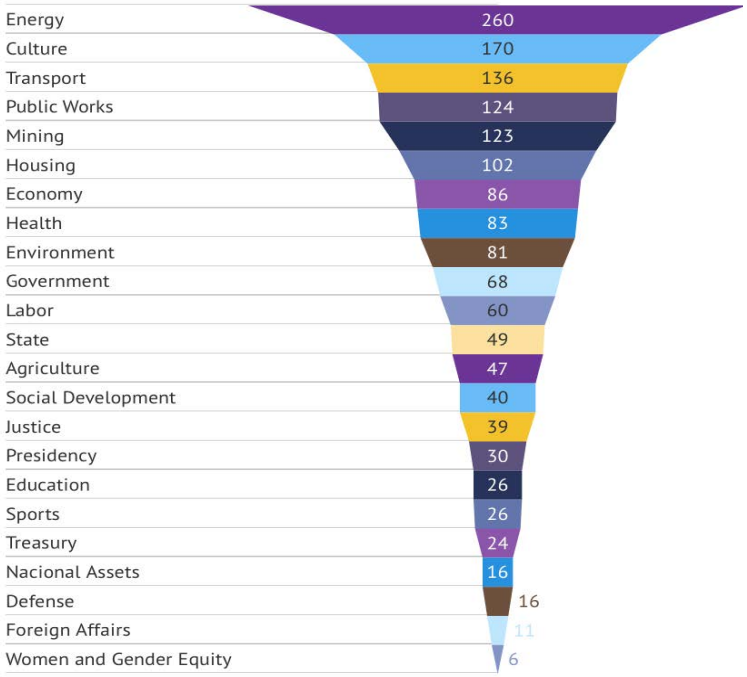


AVERAGE REGISTRIES PER MONTH
9,258

The Council for Transparency recently reported that 60 mayors have not registered meetings in the Lobby platform.[9] On a similar note, by analyzing the data provided by InfoLobby, we find significant differences in the number of meetings reported by ministers and congressman.

9 http://www.consejotransparencia.cl/60-alcaldes-no-han-reportado-audiencias-de-lobby-o-gestion-de-intereses-tras-10-meses-de-vigencia-de-la-ley/consejo/2016-06-22/113721.html.

MEETINGS IN MINISTRIES



Source: infolobby.Cl

In the case of the ministries, 1,623 meetings have been reported on the platform. The average number of meetings per ministry is 70 in the almost 20 months since implementation of the Lobby Act. However, only nine ministries report 70 or more meetings, and 14 ministries report less. For example, the Ministry of Women and Gender Equity, which has been active in the recent year with the discussion of the new the Abortion Act and other critical legislative issues, has only reported six meetings in the past 20 months. Many of the interviewees raised this issue and questioned whether all authorities are obeying the law.

In a similar vein, Congress data shows significant differences between representatives. There are three congressmen that in the last 20 months have not reported any meetings. The total meetings reported through the platform sum up to 1,716. The average of sessions per representative is 14 in almost 20 months of implementation of the Lobby Act. However, only 50 representatives report 14 or more meetings, and 70 representatives report fewer.

Observance of the Lobbying Act has been greater in central government than local governments. However, given the law is at an early stage, there is some resistance to fulfilling its obligations fully. According to the Council for Transparency, among 44,649 officials obliged to register their meetings, only 15% have reported meetings to the public.10 It's clear from the data that implementation of the law is providing more information than available before, but there is still a long way to go before the information becomes comprehensive.

Democratizing Effect of the Lobby Law

The majority of the actors interviewed for this case study indicate that – in addition to the formalization of the relationships between public and private actors – there is also a democratizing effect in the implementation of the Lobby Act. As María Jaraquemada, from the NGO Espacio Publico, recalls: "Before the Lobby Act, you needed a contact, an email, or the telephone of somebody to get near an undersecretary, a minister, a mayor, or a congressman. Nowadays, any person can enter the web platform or fill out a form to ask for a meeting."[11]

The data confirms this phenomenon and suggests that the scope of the relationships between private and public interests has broadened as an effect of the implementation of the Lobby Act. More organizations, big, medium and small corporations, and neighborhood councils, among others, have been able to ask for meetings and meet with authorities. Before the enactment of the law, usually only big corporations and influential interest groups had the means and contacts to access authorities. As of June 2016, more than 16,000 people, entities, and organizations, have been represented in meetings under the Lobby Act. They include corporations, universities, neighborhood councils, professional and commercial societies, labor unions, NGOs, foundations, and schools.

10 Assessment of the Lobbying Act, Council for Transparency. June 2016.
11 Maria Jaraquemada, incidence director, Espacio Publico. June 16, 2016.

Even though many of these organizations may have been granted meetings before the law, they now have the right to request a meeting, and in many cases they are granted, formalizing access and in many cases broadening it as well. Before the law, to approach a public authority, citizens needed a personal contact. The challenge now is how small groups, grassroots organizations, and advocates can harness the opportunity Lobbying Act provides. While access has certainly opened up, personal contacts still facilitate access to public servants. As Alberto Precht, from Transparent Chile notes, "These laws are not going to resolve the issues of access to authorities. What the Lobbying Act allows is to make this access more transparent. I do not imagine a normal citizen waking up in the morning to check transparency or lobby data."[12]

More broadly, the law has contributed to shaping a new standard in public-private relations, setting rules and a framework to promote interests before public authorities. Its main long-term impact will be seen in how it manages to further democratize access to authorities by citizens.

Increased Accountability and Oversight

Prior to the Lobbying Act, since there was no data on how many meetings authorities held – except for that voluntarily registered by public officials or representatives – there was no evidence allowing citizens to demand compliance from authorities' on commitments agreed in meetings. Since the law establishes the obligation to report meetings, travels, and donations, along with a registry for lobbying companies, today the activities, arrangements and communications between public and private sector are available for public and media scrutiny.[13] According to the Transparency Council, the platform lists an average of 8,000 visits per month.[14]

Before the enactment of the Lobbying Act, there was no information about countless activities, communications, and meetings between authorities with various groups. José Miguel Wilson, a journalist from the newspaper La Segunda, says: "The main effect of the Lobbying Act is to allow the disclosure of a series of occupations and activities that were done in the name of lobby."[15] In that sense, Raul Ferrada, executive director of the Council for Transparency, affirms that "in Chile today, there are more than 4,017 registered lobbyists – people that declare they do lobby (...) Before the law came into effect this data was not available, providing an outstanding tool for public oversight."[16]

There have been a number of news articles denouncing noncompliance with the lobbying rules. La Segunda has published several articles using the information available from InfoLobby naming and shaming legislators and government officials.[17] Finally, greater levels of transparency and accountability have set more limits about what groups can do and what not. As Gonzalo Cordero, a founding partner the lobbying agency Azerta, says: "The Lobbying Act has allowed more public debate over the relationships between the public and the private sector. There is more transparency, public meetings, and issues being discussed."[18]

The Lobbying Act has also served to bring more transparency and information about preliminary negotiations into government procurement. The law allows companies interested in making their products known or positioning their brands to set up meetings with potential public sector clients, making those preliminary contacts more transparent.[19] New companies may offer their products through ChileCompra, the public platform for government procurement.

A Tool for Performance Management

The InfoLobby platform and the information stored is being used by some authorities as a performance-management tool – for example, to check the frequency of meetings and what kind of constituents have been received, to address the issues discussed with constituents, and to create statistics. Since the act provides information to authorities through the public registries, officials and representatives may make data-driven decisions, as the Segunda journalist Wilson confirms: "Some authorities think that lobbying activities are negative. Others, like the minister of health, Carmen Castillo, have proven that the use of this law can be a great tool for public management. They register all the meetings and the details of the issues discussed, and provide follow up on the results."[20]

12 Interview with Alberto Precht, executive director, Chilean Chapter of Transparency international. June 24, 2016.
13 Interview with Jose Miguel Wilson, journalist , La Segunda. June 24, 2016.
14 Raúl Ferrada, executive director of the Transparency Council.
15 Interview with Jose Miguel Willson, journalist of la Segunda. June 24, 2016.
16 Interview with Raul Ferrada, executive director, Council for transparency. June 25, 2016.
17 For example: http://impresa.lasegunda.com/2015/11/27/A.
http://impresa.lasegunda.com/2016/02/17/A/P42SHRQ0/O12SHVRU.
18 Interview with Gonzalo Cordero and and Ian Mackinnon, lobbyists, Azerta Consultores, June 17, 2016
19 Interview with Rodrigo Mora, chief of division, Citizen's Defense Unit and Transparency, Ministry of the Presidency. June 17, 2016.
20 Interview with Jose Miguel Wilson, journalist, La Segunda. June 24, 2016.

Some central and local authorities have also had the political will to use the Lobbying Act as a baseline for better practices and policies. That is the case of the Mayor Juan Pablo Barros of Curacaví, who says: "The definition of lobby in the law is not clearly established. We decided to extend the application of the subjects of the law to all the people that come to our offices. Probably that is not necessary, but we did not want to take any chances."[21] This means that they have expanded the scope of the law, imposing transparency and accountability standards to more officials exposed to interest groups.

The Beginnings of Cultural Change

The introduction of the law has gradually changed the rules of the game for interest groups approaching authorities, and it is changing the public perception of lobbying, leading companies to design strategies and take their relationship with decision-makers (for e.g., health-care companies, insurance corporations, pension funds, energy corporations) more seriously. They are thus adjusting their strategies for approaching authorities, and providing transparency and information regarding activities that were opaque in the past.

According to Cordero and Ian McKinnon of Azerta: "Before the enactment of the law, there was no clear assessment by businesses of the costs and benefits of meetings with authorities. They were used to asking for meetings and using them as relationship-building with authorities. After the law, there is a thoughtful decision on whether you require or not to contact the authority. This is a direct effect of transparency, as you have to acknowledge that your meeting will be public and known by other actors and the market. In summary, the Lobbying Act causes a change in the strategy of businesses with the state and regulators."[22] To the extent that lobbying is done transparently, the activity will be progressively legitimated and thus will shift the paradigm, professionalizing politics.

For instance, the Housing Committee now uses the Lobbying Act to inform applicants and beneficiaries of subsidies. This is critical for Sebastian Soto, former head of the Legal Division of the Ministry of the Presidency. "In first place," he says, "there has been a formalization of the relationship between the state and businesses. By formalizing, I mean the incorporation of transparency and a formal process of contact between them. Secondly, there is a higher standard of what can and what cannot be done, that is clearer than before."[23]

Challenges to Reaching Full Potential

The differences in the implementation of the law by various public authorities is no doubt an impediment in realizing the full potential of the benefits that the Lobbying Act could bring to society. Some of the ministries that work in some of the most regulated activities are ones that report low numbers of meetings.[24]

The ignorance among certain local governments, members Congress and public servants about the way the law works and how to manage it have led to the law being seen as an administrative burden rather than an opportunity to improve the quality of services to citizens. Grassroots organizations still do not understand the advantages the law offers for enhancing their access to authorities and formulating their concerns. As Senator Felipe Harboe says: "The essence of government is to listen to all the sectors. Some sectors are wrong if they believe they are exempt from the Lobbying Act – for example, the unions. The role of the legislator is to listen to the unions but also to other sectors that oppose them. Then, after considering all the facts, he makes a decision."[25] Finally, there are few activities intended to disseminate the law, and more training programs are required.

Because of the negative perception of lobbying activities, especially after decades without a legal framework, public opinion tends to associate lobbying with influence peddling and other behaviors against the law. As a result, many authorities and organizations have tried to avoid registration. An important issue is the refusal of some civil society organizations to use the law, arguing that they engage in advocacy activities, not lobbying. For example, ANEF, the public employees union, argued that it was not subject to the Lobbying Act since it promoted collective, not private interests. The general comptroller stated that any activity intended to influence in the design, implementation, or evaluation of policies, projects, or programs are subject to the Lobbing Act, without regard to the nature of the organization.[26]
Finally, there has been limited interest from citizens in monitoring and evaluating effective compliance of the law. According to Wilson: "The law is less known than other transparency regulations, by citizens, media and

21 Interview with Mayor Juan Pablo Barros of Curacavi. July 7, 2016.
22 Interview with Gonzalo Cordero and Ian Mackinnon, Lobbyists, Azerta Consultores, June 17, 2016.
23 Interview with Sebastian Soto, Senior Advisor, Libertad y Desarrollo Institute. June 17, 2016.
24 For instance, the Ministry of Justice.
25 Interview with Senator Felipe Harboe. July 4, 2016.
26 See: http://www.contraloria.cl/appinf/LegisJuri/DictamenesGeneralesMunicipales.nsf/DetalleDictamen?OpenForm&UNID=0B173E5CF01CE40703257F7300651359

some NGOs. More active promotion by authorities of the opportunities and benefits of the law is essential."[27] The media and the NGOs are gradually increasing their use of the platforms and information provided, although the impact is not significant yet.

Toward Greater Compliance

Although the law has passed and implementation has begun, it will be important to consolidate the early gains and ensure progress remains on track for full implementation of the law. It is fundamental that the Ministry of the Presidency promotes the law and requires agencies to implement it. At early stages, this kind of law requires strong commitment from authorities.

"The success of these laws rely on the political will of the actors obliged to follow them," says Alberto Precht of Transparente Chile. "For example, the Minister of Health has one of the most detailed agendas in government and has registered hundreds of meetings. On the other hand, some ministers or congressman appear to have no meetings. That is a breach of the obligations of the law, because that is clearly not possible."[28] In this light, it is necessary to give more visibility to the Lobbying Act. The law represents an opportunity for NGOs, grassroots movements, and other groups to get formal access to authorities. Lobbying is not only a matter of big companies. It is fundamental to change the negative perception from some public agencies and authorities, moving from the fear of being exposed as carrying out lobbying activities (a legal activity) to seeing the law as an opportunity to promote equal treatment among citizens, to democratize access and as a performance management tool.

There is also general consensus among stakeholders that the Lobbying Act requires stronger enforcement.[29] To date, the level of compliance with the law by many public agencies and authorities is low, with a tendency to under-report the number of meetings with interest groups. It is desirable a comprehensive audit plan led by the Comptroller General to ensure the compliance of the regulation and penalize law violations. There is no sanction at this point, only recommendations. The penalties established by the law are low in comparison with other transparency and integrity laws such the Transparency Act. Regarding the Congress, the fact that both Senate and Deputy Chamber's Ethic Committees are in charge of the enforcement of the Lobbying Act has resulted in a week monitoring and control. Furthermore, there are some elements of the law itself that need further strengthening. The quality of information reported, reporting of meetings rejected, the threshold amount of donations necessary to declare, and some communications with constituents during field work should be addressed in future amendments to the regulation.

There is also an opportunity to strengthen the role of the Transparency Council as the agency in charge of the InfoLobby platform. OGP's IRM report identified two kinds of oversight. First, oversight of implementation, related to the creation of auxiliary tools to enhance the use of the platform and the website modules. Second, oversight of performance, to evaluate the accessibility to the lobbying platform, forms, and the creation of a registry of active subjects. The InfoLobby platform could also be further improved, for example, by making the information more accessible, open and searchable.

New training programs for public officials, especially those working for local governments and Congress, need to be developed. According to the data available and interviews with experts, there is still a lack of training and capacity building in subnational governments and in Congress for implementation of the law. In other words, the lack of enforcement is not only a matter of willingness of authorities, but also a matter of skills and training of public officials. It is important to close the gaps between central and local governments. The efforts made by the Ministry of Presidency to fund the platform for local governments are a remarkable example. This ministry made the platform available not only for the central government, but also for subnational governments to ensure equal access to the same platform. Otherwise, it would have been quite difficult for some local governments to fund and implement their own platforms to allow citizens to request meetings.

Increasing commitment of NGOs, unions, and civil society organizations in adopting and subjecting themselves to the law will improve its standing. As more organizations that advocate for collective or private interests are willing to act under the law, the Lobbying Act will gain legitimacy. At the same, civil society organizations can play a crucial role as data intermediaries in helping citizens understand the significance of the information being released (or not) and using it in their advocacy activities. Similarly, the media can play a crucial role in influencing public opinion on the decision-making process and the factors that influence authorities by showing how the regulation of lobbying activities is working out. Reports on enforcement, rankings of authorities for best implementation, the number of meetings, and other news about the law will contribute to creating more awareness among citizens.

27 Interview with Jose Miguel Wilson, journalist, La Segunda. June 24, 2016.
28 Interview with Alberto Precht, executive director, Chilean Chapter of Transparency international. June 24, 2016.
29 All interviewees agreed that enforcement of the Lobbying Act was lacking.

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