

The Law for the Control, Regularization, Performance, and Financing of Non-Governmental, and Non-Profit Social Organizations.

SCOPE AND ANALYSIS OF A WILFULL MISFEASANCE

Research: Alí Daniels



EXECUTIVE OVERVIEW



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1. The Law of Fiscalization, Regularization, Performance and Financing of Non-Governmental Organizations and Non-Profit Social Organizations (LFRAFONG), passed by the National Assembly (AN) on August 15, 2024, has a formal but unconfessable target. From the formal point of view, its purpose is to "establish the regime of incorporation, registration, operation and financing of non-governmental organizations and non-profit social organizations, as associative forms oriented to the co-responsible participation of society." However, the concealed target is to cover with legality the progressive and unstoppable curtailment of the civic space in Venezuela. The Act was passed in the context of intensifying repression against any expression of dissent against the Government after the presidential elections held on July 28, 2024, just when Venezuelan citizens exercised their right to participation par excellence: the right to vote.
2. With the law that regulates non-governmental organizations and non-profit social organizations, the ruling party that dominates the NA imposes new obligations that, in practice, threaten their existence due to the risk of losing their legal capacity. In addition, the regulation establishes a specific type of internal order of the organizations, independently of the will of their associates, which violates the free exercise of citizen participation in public affairs. Thus, the first two purposes of the Act are of no value. The new rules do not facilitate the exercise of the Right of Association nor generate legal accuracy on the procedures that run therein applicable to the organizations.
3. LFRAFONG modifies the legal incorporation regime of non-governmental and non-profit social organizations. The Civil Code establishes a notification regime, but now, with the new regulation, it becomes an authorization regime and includes a list of sanctions that did not exist before. Additionally, the new regime is subject to an annual review. All this weakens the stability and sustainability of the organizations.
4. The increase in the requirements for the incorporation and maintenance of organizations hinders the exercise of Freedom Of Association. LFRAFONG is regressive and, therefore, in violation of Section 19 of the Constitution, which enshrines the principle of progressiveness in Human Rights. Any regressive norm that impacts the exercise of human rights is, de jure, contrary to the Constitution and is, therefore, voided from the outset.
5. It is not true that organizations were free from regulations and sanctions before this new law was passed. The labor and tax regulations of the Venezuelan legal framework apply to all non-governmental organizations and non-profit social organizations.

6. The organizations governed by LFRAFONG did not have the opportunity to participate in the bill's discussion, which needed to be published through the NA's regular communication channels. It sets a flaw from the outset that detracts from the legitimacy of the new law.
7. LFRAFONG is not a law of guarantees, as all laws should be. Throughout the normative text, human rights are repeatedly invoked, but without specifying the guarantees for the exercise of the Right To Association, nor to ensure that the application of the law does not degenerate into misfeasances. In practical terms, LFRAFONG leaves organizations in a state of defenselessness.
8. The new law re-addresses its founding principles to one main purpose: to hinder and nullify the creation and operation of organizations.
9. Establishing a national registry of non-governmental organizations and non-profit social organizations is stated as a procedure "under the responsibility of the ministry to which the competence is assigned." Section 18 is unclear about the mission of such a registry or what information will be helpful or used against the organizations. It is also not clear whether this registry includes additional data or information provided by the organizations to the Autonomous Service of Registries and Notaries (Saren) and whether it implies the imposition of new obligations.
10. Through LFRAFONG, judicial control is weakened because the supervision of completing duties and obligations transfers into the hands of the Executive Branch, according to Section 27 of the new normative instrument. It is a significant change because the Civil Code, in its Section 21, grants the supervision of foundations to the judges of first instance without a legal development of such functions; now, this norm of the Civil Code has been repealed.
11. The imposition of new requirements for the incorporation of organizations and the obligation to update those already registered constitutes a cumbersome burden that threatens their stability and sustainability. Under Section 19 of the Civil Code, for the setting up of an association, corporation, or foundation, it was required that the articles of incorporation indicate the name, domicile, purpose, and the form in which it will be administered and managed. Now, to these requirements are added those listed in Section 13 of the new Act:
 - a) The duration of the organization.
 - b) The territorial scope of its activities.

- c) The identification of the founding and/or associate members.
 - d) The regime of membership and exclusion of members and/or their rights and obligations.
 - e) The organization, internal structure, and attributions.
 - f) The balance sheet and regime of administration of resources.
 - g) The inventory of assets at the time of incorporation.
 - h) The disciplinary regime.
 - i) The regime for the modification of the statutory charter.
 - j) The regime for extinction, dissolution and liquidation.
 - k) The details of the allocation of assets in the case of foundations.
 - l) Whether its financing is or will be carried out totally or partially through foreign natural or juridical persons.
12. The burden of new incorporation requirements should have been limited to new organizations and not existing ones. Redoing the bylaws of an organization implies devoting enormous resources, effort, and time, which only the most consolidated ones will be able to deal with successfully. The worst thing is that, as indicated in the new law's second transitory provision, existing organizations' failure to update their bylaws will result in the avoidance of their registration. In other words, the existence of organizations with a proven track record in the service of citizens, some of them for decades, is at risk.
13. The imposition of a disciplinary regime violates organizations' normative autonomy since its members must decide whether it is necessary, pertinent, and corresponds to the organization's nature, structure, and purposes.
14. Reducing the term for appealing to the refusal to enter the registration of organizations will cause harm to the organizations. According to Section 42 of the Law of Registries and Notaries, organizations have a 6-month term counted from the date of notification to appeal against the refusal of registration. From now on, according to Section 17 of LFRAFONG, organizations only have a 30-day term. This shortening of the period is another indicator of the regressive nature of the law that violates the exercise of freedom of association. It would be necessary for legal professionals specialized in the matter to dedicate time, effort, and economic resources to the filing of such appeals. Furthermore, the shortening of the period for filing appeals impacts the right to adequate judicial protection by severely limiting the right to appeal before jurisdictional bodies.

15. LFRAFONG mandates that the organizations register fiscally and keep and maintain updated books and records, as required by the tax, labor, and civil laws to which they are subject. The ministry supervising compliance may intend to apply sanctions corresponding to assumptions established and sanctioned in other regulatory instruments. It violates the *non bis in idem* principle, i.e., the possibility of the same act being sanctioned twice.

16. As stated in Section 22.1 of LFRAFONG, the requirement of compliance with the norms against money laundering, terrorism, and organized crime constitutes a reaffirmation of the Providence n.º 002-2021, published in the Official Gazette n.º 42.118 of May 3, 2021. Such a ruling, which obliges organizations to enter registration before the National Office Against Organized Crime and Financing of Terrorism, was denounced in due time as a violation of the Right to Association in Venezuela by national and international organizations. However, far from repealing the ruling No. 002-2021, the Venezuelan State has deepened its scope through the Act against organizations.

Compliance with the Regulations for the Unified Registry of Obligated Parties before the National Office Against Organized Crime and Financing of Terrorism is essential for issuing a certificate that shall be renewed yearly, without which the organizations cannot operate legally.

17. The Unified Registry of Obligated Parties before the National Office Against Organized Crime and Financing of Terrorism was one of the elements to be considered by the Financial Action Task Force (FATF) in the last opportunity in which it evaluated the situation of Venezuela. The FATF determined that

"The Bolivarian Republic of Venezuela has not demonstrated that it applies proportionate and risk-based oversight measures to NPOs - non-profit organizations. In particular, the country created two registries: the Single Registry of Reporting Entities (RUSO) and the Registry of Non-Domiciled NGOs (REGONG), both to contribute supervising the NPO sector, of which only the latter is operational. **In any case, the country did not demonstrate that these registries are useful to prevent the abuse of NPOs for TF [financing of terrorism].**" (Emphasis added).

The maintenance of this type of regulation does not comply with FATF provisions and, therefore, implies an additional violation of the Venezuelan State's obligations to protect non-profit organizations.

18. The obligation to notify the State about financing or donations, set in Section 22.3 of the new Act, opens room for doubts that cause legal uncertainty. In the context of lawmaking, in the way the law is drafted, it would be a simple notification that would not require an action or response from the administration in order for the organization to use the resources; that is, we would not be in the presence of the initiation of a prior authorization procedure for the use of the resources. However, the Section indicates that the notification shall be made "to ensure the legality of the funds," which could imply the possibility of the oversight body undertaking a procedure without clear rules. For example, in the case of international cooperation, the State might accept funding from some countries and not from others based on political and ideological considerations. It is not even out of the question that, in the end, there may be an attempt to charge offenses and apply sanctions related to the origin of the organizations' resources.
19. Section 25 of LFRAFONG's provisions on the compatibility of organizations' income with their nature are an additional limitation that violates financial autonomy and may lead to arbitrary interpretations and abuse of power. All organizations have the right to obtain income as long as it is by lawful means.
20. Section 22.6 of LFRAFONG imposes on the boards of directors of organizations the obligation to report to their members once a year. This provision is based on the presumption that all organizations manage economic resources and, consequently, accountability for their use must be generated. However, many organizations do not need financial resources to achieve their purposes (as in the case of volunteer organizations), so this requirement is meaningless in such cases.
21. LFRAFONG sets a 90-day term after it comes into effect to report: a) inventory of its assets with the determination of their sources or origin, b) balance sheets, c) financial statements, d) identification of donors, and e) identification of all its associates. It is unclear whether such requirements are limited to the last fiscal year or all fiscal years since the founding of each organization. In the case of organizations with ten or more years of operation, this second assumption would be complicated to meet due to the amount of work involved in collecting and organizing the information.

22. As for the prohibitions established in LFRAFONG, it does not allow "the incorporation of fascist associations or those that promote intolerance or hatred or any other form of incitement to discrimination and violence." Such terms are related to the official rhetoric and, more specifically, to two other legal instruments:

- a) The Constitutional Law against Hate, for Peaceful Coexistence and Tolerance, emanating from the National Constituent Assembly in 2017.
- b) The draft Law against Fascism, Neo-Fascism and Similar Expressions. Both instruments include vague and imprecise definitions of punishable facts and conduct that allow their arbitrary application and extra-legal motivations.

The new Act prohibits receiving economic resources for political parties or giving contributions to them, receiving contributions for terrorist purposes (Section 23.1) and carrying out political party activities (Section 23.2).

The generic mention of the commission of "any other act prohibited or sanctioned in the legal system" in Section 23.4 of the new Act is a matter of concern, as it violates the principle of typicity, which is indispensable in any sanctioning regime.

23. LFRAFONG's punitive nature is evident from the sanctions it establishes: fines, cancellation of registration, preventive measures of suspension, dissolution, prohibition of registration, cancellation of registration of non-domiciled organizations, and expulsion from the country of foreign persons who are members of a non-domiciled organization. It is significant that not even the tax regulations have such a wide range of sanctions.

24. There are many, and therefore excessive, cases involving sanctions for the organizations. Six are penalized with fines and six with the organization's dissolution.

The cases punishable by fines are

- a) Failure to timely register the acts and facts provided for in the Act (Section 35.1).
- b) Failure to comply with the obligation to notify of a donation or financing (Section 35.2).
- c) Failure to keep books, apparently all types of books, including those of an accounting and tax nature (Section 35.3).
- d) Failure to comply with the obligations to assist the State in its auditing tasks (Section 35.4).

e) Failure to comply with the obligation to submit the documentation required in the first transitory provision within 90 days.

In the latter case, in addition to the fine, the avoidance of the organization's registration is foreseen (Section 35.5).

The assumptions sanctioned with the dissolution of the organization are

a) Receiving economic contributions intended for political parties (Section 23).

b) Making economic contributions to political parties (Section 23).

c) Receiving contributions for the financing of terrorist acts or committing terrorist acts (Section 23).

d) Carrying out activities proper to political parties or organizations for political purposes (Section 23).

e) Promoting fascism, intolerance or hatred or of any other nature that constitutes incitement to discrimination and violence, in which cases the registration of the organization is prohibited (Section 23).

f) Failure to pay fines (Section 28.4).

25. Recidivism in a formal offense implies the application of increased fines (Section 36). Non-compliance with the law by a non-domiciled legal person entails the avoidance of its incorporation by the Ministry of Foreign Affairs (Section 37). The sanctioning of a non-domiciled legal person may entail the expulsion from the country of the foreign natural persons working in the organization in question (Section 37).

26. One of the most serious provisions of LFRAFONG is the "preventive" dissolution set in Section 30. The new Act states that the preventive dissolution will remain in effect until a court decides on its legality, which may imply years of waiting.

Furthermore, the preventive dissolution established in Section 30 of LFRAFONG violates the principle of Adequate Judicial Protection since it states that the administration may notify a court within 15 days.

At least within that term, such an administrative act is beyond any judicial control, as can be read from Section 30.1.

27. LFRAFONG includes fines for non-compliance with "formal offenses." For a first offense, fines range from US\$100 to US\$1,000, and for a repeat offense, from US\$500 to US\$10,000. No statute of limitations is established for these offenses, which would imply the imposition of continuous fines. Under the terms of Section 36, this could be confiscatory.

Suppose the offense is failure to notify a contribution or donation. In that case, the fine shall be double the amount received, and the corresponding civil and criminal liabilities are pending (article 36, part in fine).

In addition to the fine for not registering or not registering the acts-of-incorporations of the organizations, the "avoidance of the registration," established in the second transitory provision, is added, which violates the *non bis in idem* principle, i.e., the prohibition of sanctioning the same thing twice.

28. LFRAFONG provides in Article 28 that organizations may be dissolved "for incurring in the prohibitions outlined in the law" whenever declared by a court or for the "failure to pay fines." The judicial dissolution will be processed through the brief procedure, as indicated in Section 29. At the same time, the appeals attempted by the organizations to claim their rights will be carried out through the ordinary procedure. The asymmetrical disparity between the two procedures is further evidence of the importance of the punitive nature of the regulations against organizations and the weakening of due process in their application.
29. The possibility of the State dissolving an organization for failure to pay a fine is disproportionate and conflicts with labor regulations prohibiting closing a work source, except by express authorization of the competent labor bodies and through a prior procedure. Even in the very punitive tax area, the Venezuelan legal system does not establish dissolution as a sanction; at most, a temporary closing is applied.
30. LFRAFONG is reiterative regarding the sanctioning procedure. According to Section 38, the imposition of sanctions shall be made by the brief procedure established in the Organic Law of Administrative Procedures. It sharply contrasts with the ordinary procedure listed in the new Act against organizations in case of the Right of Association violations. It is evident that the sanction exceeds the exercise of the right mentioned above. The same happens with the refusal to register an organization: the organizations have only 30 days to lodge the corresponding appeal against the sanction, even though the term set in Section 32 of the Organic Law of the Contentious Administrative Jurisdiction is 180 days. Again, this irregular situation will cause damage to organizations due to the resources, efforts, and time required to defend themselves against disproportionate sanctions.

