



What is FATF and what is it for?



FATF
GAFI

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INTRODUCTION

To speak of the FATF (Financial Action Task Force),¹ in the field of civil society, and in particular of non-profit organizations (NPOs) is to refer to a great unknown, although the influence of its actions on these is and has been fundamental, especially in autocratic countries, where its misuse has led to limitations on freedom of association, especially the restriction and even cancellation of NPOs.

The FATF is an international organization composed of the world's States dedicated to the fight against money laundering and the financing of terrorism; it is, therefore responsible for monitoring the financial system, not only internationally but also in each member country.

Although the areas of work of the different expressions of civil society are very diverse and address very different issues, such as human rights, the environment, humanitarian issues, culture, and education, among many others, a common element in most of these efforts is that the use of the financial system is necessary for each initiative to become a reality.

Therefore, for many NPOs that have ever heard of the FATF, it is a bitter memory insofar as it is generally associated with the application of restrictive and repressive policies by the State against organizations with the excuse of "complying with the FATF" in a blame game in which the latter has nothing to say.

Unfortunately, this is not the exclusive case of one country. Still at the global level, the use of FATF policies in the fight against money laundering and terrorist financing has generated all kinds of reactions against organized civil society by States with an autocratic vocation, using its premises to persecute, stigmatize and criminalize it. Thus, it is essential to understand the true scope of NPOs and, in this context, to determine what the role of organizations should be in defense of their legitimate rights and interests, which in the end are much broader than themselves since they are also those of the citizens who benefit from the actions of these organizations.

Consequently, understanding the FATF is a necessity for NPOs in order to understand that its presence is not circumstantial and that it has a specific mandate unrelated to the repression of the independent voices of organized civil society, thus requiring the involvement of these groups to establish advocacy strategies in favor of the beneficiaries of their activities, i.e., the *raison d'être* of NPOs.

¹ Financial Action Task Force.

1. WHAT IS FATF?

1.1 Background

In the 1980s, the issue of organized crime began to emerge as a global phenomenon, especially concerning illicit drug trafficking. It was urging action to overcome the limitations of national borders,² it started discussions within the United Nations (UN) on various initiatives, including the adoption in 1988 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter referred to as the Convention). Its preamble recognized that this form of illicit trafficking "is an international criminal activity whose suppression requires urgent attention and the highest priority" and that "the eradication of illicit traffic is the collective responsibility of all States" so that, to achieve this end, "coordinated action within the framework of international cooperation is necessary."³

The most worrying expression of international crime is money laundering, which is precisely the fundamental reason why this activity transcends national boundaries since the aim is to prevent the action of the authorities of one country from causing those involved in this activity to send the illicitly obtained capital to another country, which is why joint effort by the international community is necessary to combat this phenomenon.

Money laundering is included in the Convention and is understood to be

The concealment or disguise of the nature, source, location, destination, movement, or ownership of property or rights relating to such property, knowing that it derives from one or more of the offenses established in accordance with subsection (a) (Art. 3.1.b).

It is also established that any action that pretends to pass off as legitimate the capital generated by illicit drug trafficking should be considered a crime.

Thus, the components of what is known as money laundering are that the funds or assets come from a crime and that the money or assets are made to appear to have a legitimate origin, maintaining the true owner in some way with control over them directly or indirectly.

It is what money laundering is limited to, and civil society must understand this to the extent that the denaturalization of this crime is the origin of the repressive actions of governments that give it interpretations unrelated to what money laundering really is, in order to restrict freedom of association and persecute organized civil society.

2 Graciano Suxberger, Antonio Henrique and Dalbertom Caselato Júnior (2019). O papel do GAFI/FATF: natureza jurídica de suas recomendações e formas de coerção aos países membros pela sua inobservância, in *Cadernos de Direito Actual*, n.º 11. Núm. ordinario (2019), pp. 173-185, p. 176. Available at : <https://www.cadernosdedereitoactual.es/ojs/index.php/cadernos/article/view/393/228>.

3 https://www.unodc.org/pdf/convention_1988_es.pdf.

Thus, laundering intends to give an appearance of legitimacy to money or goods obtained illicitly, which implies that this capital is always kept within the estate of the person who carries out this work of concealment, either directly through assets or accounts in his name, or the name of front men or legal persons.

This figure, therefore, is generally not applicable to NPOs that receive contributions from the private sector or the State, which are earmarked for the different projects they carry out so that these contributions are not kept within the assets or structure of the NPO, its representatives or donors, since the bulk of the capital is used for the projects carried out and is earmarked for the fulfillment of the corresponding tasks or direct beneficiaries of the same.

Thus, an example that would explain how an NPO can be used for money laundering purposes would be as follows: a criminal organization transfers funds to an NPO the proceeds of the illicit activities it commits, and the latter, in turn, passes them on to false beneficiaries, who in reality would be front men for the donor organization, so that the latter can then channel them to licit activities.

In this case, all the required assumptions would be met: the illicit origin of the funds, use of the NPO and transfer of the funds to intermediaries, who act on behalf of the false donor to make the funds remitted to them appear legitimate.

This describes the vicious circle of laundering, in which a criminal organization uses an NPO to give legitimacy to the funds it wishes to launder and then receives them back through frontmen so that they, in turn, can carry out legitimate operations with them. As can be seen, the ultimate goal is for the money to return to the originator of the entire operation with the appearance of legitimacy.

The FATF was created in response to the international community's acknowledgment that organized crime is a phenomenon that crosses borders and must therefore be confronted on a common basis by combating one of its most pernicious effects: money laundering.

1.2 Creation of the FATF

As explained above, in its beginnings, the policy to fight organized crime was within the international institutional framework, that is, within the framework of the UN. Still, then, there was a turnaround with the 15th G7 Summit⁴ in 1989, where a different path was chosen since it was deemed necessary to create a working group (Taskforce), without the need for a prior international treaty, whose mandate would be:

⁴ At that time, the G7 was made up of: Canada, France, Germany, Italy, Japan, the United Kingdom, the United States, the United Kingdom and the European Union, so it can be said that from the outset there were not seven members

evaluate the results of the cooperation already undertaken to prevent the use of the banking system and financial institutions for money laundering purposes, and consider additional preventive efforts in this field, including the adaptation of legal and regulatory systems. In order to improve multilateral legal assistance.⁵

This decision gave rise to the Financial Action Task Force. As a result, the "40 recommendations" were presented on the date assigned by the G7 less than a year later.⁶

This initiative, as we have indicated, departs from the institutional framework of the UN or other international organizations of the same nature, both because the FATF was not created through an international treaty but by the agreement of a group of countries and, in addition, because it was initially of a temporary and merely advisory nature in the fight against money laundering.

However, the initial mandate to formulate recommendations has been broadened and, after the attacks of September 11, 2001 (just one month after the attacks),⁷ added the fight against the financing of terrorism and, in 2012, the fight against the financing of the proliferation of weapons of mass destruction.⁸

Regarding its duration, it has been extended until an open mandate was established on the 30th anniversary of the FATF in April 2019.⁹

The FATF defines itself as "an independent intergovernmental organization that develops and promotes policies to protect the global financial system against money laundering, terrorist financing, and the financing of the proliferation of weapons of mass destruction."¹⁰

However, as we shall see, this description falls short because, in addition to establishing policies, the FATF also evaluates and rates the members' actions or lack thereof concerning the areas of its mandate, and sets sanctions, although it does not call them that, in cases of non-compliance.

The latter is of particular interest because, although the measures adopted by the FATF are mere recommendations, which in international law is known as *soft law*, they have achieved a high degree of compliance in some cases much higher than what is known as *hard law*, i.e., the obligations derived from international treaties.¹¹

5 <http://www.g8.utoronto.ca/summit/1989paris/communique/index.html>.

6 https://www.unodc.org/pdf/convention_1988_es.pdf.

7 Chohan, Usman (2019). The FATF in the Global Financial Architecture: Challenges and Implications (March 14). *CASS Working Papers on Economics & National Affairs*, EC001UC. p. 5. Available at: <https://ssrn.com/abstract=3362167> <https://ssrn.com/abstract=3362167> o en <http://dx.doi.org/10.2139/ssrn.3362167>.

8 Ibid. p. 6.

9 Pavlidis, G. (2020). The financial action task force (FATF) thirty years on: the future of the international fight against money laundering and terrorist financing. *Estudios Jurídicos Journal*. Segunda Época, 1(20), 434-447. p. 435. Available at: <https://revistaselectronicas.ujaen.es/index.php/rej/article/view/5924/5255>.

10 FATF (2022). *Annual Report 2021-2022*. p.2 Available at: <https://www.fatf-gafi.org/en/publications/Fatfgeneral/Annual-Report-2021-2022.html>.

11 Graciano Suxberger, Antonio Henrique and Dalbertom Caselato Júnior (2019). Op. cit. p. 176.

However, we consider that this distinction, within the framework of current international law, in which, unfortunately, non-compliance with international treaties is quite common, especially in the areas of international human rights law and international humanitarian law, points more to an academic consideration than to reality; at the same time, it may serve as a wake-up call to seek more effective compliance mechanisms than the mere subscription of a convention. In the end, what is at stake with an international norm is that it be complied with, regardless of its nature.

A sign of its success is the number of FATF memberships, with more than 200 governments and "jurisdictions."¹² The latter term refers to the fact that not only independent nations are members, but also autonomous regions (such as the Turks and Caicos Islands) and other countries whose recognition is under discussion in the international community, such as Taiwan¹³ or Palestine.¹⁴ In its latest annual report, a total of 210 members are counted.¹⁵

Additionally, a concrete fact about compliance with FATF recommendations is that according to its 2021-2022 Annual Report, members had an average technical effectiveness of 73%.¹⁶ However, as we shall see, this is different with respect to standards linked to NPOs.

12 <https://www.fatf-gafi.org/en/the-fatf.html>.

13 <https://www.fatf-gafi.org/en/countries/detail/Chinese-Taipei.html>.

14 <https://www.fatf-gafi.org/en/countries/detail/Palestinian-Authority.html>.

15 FATF (2022). Op. cit. pp. 57 and following.

16 FATF (2022). Op. cit. p.9.

2. FATF STRUCTURE

The Financial Action Task Force (FATF) has its headquarters in Paris and is composed of 39 member countries,¹⁷ one of which, the Russian Federation, is currently suspended,¹⁸ and 9 associate members including regional groupings of the FATF itself, such as GAFILAT (Financial Action Task Force of Latin America, with 17 members) and the CFATF (Financial Action Task Force of the Caribbean, with 24 members, including Venezuela).

Some countries are members of FATF and other regional groupings, such as Argentina and Brazil, which are members of FATF and GAFILAT, or China, which belongs to FATF, the Asia-Pacific Group, and the Eurasian Group. This structure is confusing.

In addition, there are 31 international and regional organizations that are associate members or observers, such as Interpol, the International Monetary Fund, the Inter-American Committee against Terrorism of the Organization of American States (OAS), the World Bank, and up to six instances of the United Nations (UN), among others.¹⁹ Despite the presence of the UN in the FATF, none of the representatives involved has an express mandate to protect human rights, which points to a pending demand to be satisfied, given the transversality of the latter in the activities of that organization.

Therefore, we consider that at least the Office of the United Nations High Commissioner for Human Rights (UNHCHR), as well as the Human Rights Committee, should have observer status, given the direct link between the recommendations and human rights in general, and the right of association in particular.

As regards its internal structure, the FATF is composed as follows: the plenary; the president (assisted by a vice-president), the steering group; and the secretariat. This structure is replicated in regional organizations such as the CFATF, to which Venezuela belongs, as mentioned above.

The plenary is the highest body of the FATF and is composed of the members and organizations that are part of the FATF network. In the plenary, decisions shall be taken by consensus, so there are no formal votes but relatively constant negotiations and dialogues for final decision making.

The plenary determines the organization's agenda, budget, and organizational chart, accepts new members, and appoints its president and vice-president. It also approves the organization's standards, guidelines, reports, and work programs.²²

17 <https://www.fatf-gafi.org/en/the-fatf.html>.

18 As of February 24, 2023. Vid. <https://www.fatf-gafi.org/en/countries/fatf.html>.

19 These include the United Nations Office on Drugs and Crime (UNODC), the Counter-Terrorism Committee Executive Directorate (CTED) and the Al-Qaida Sanctions Committee (1267/1989 Committee).

20 Vid. FATF (2019). MANDATE. Approved by the Ministers and Representatives of the Financial Action Task Force. Disponible en: <https://www.fatf-gafi.org/en/the-fatf/mandate-of-the-fatf.html>.

21 <https://www.cfatf-gafic.org/es/como-estamos-organizados>.

22 Idem.

The president, who serves a two-year term, convenes and chairs the plenary and steering group sessions and supervises the FATF secretariat. The president is the main spokesperson for the organization, represents it internationally and is empowered to make all decisions to achieve its objectives, but always following the mandates of the plenary.

The president must regularly inform the plenary and the corresponding ministries of the activities carried out by the organization, and the general public through the annual report.²³

The steering group is the consulting body of the organization. The plenary decides its composition upon the president's proposal. Its configuration shall consider "a balanced representation in terms of geographical regions."²⁴

The steering group will provide advice in the period between plenary sessions to support the chairman in complying with FATF instructions. It must convene at least three meetings with the group during each year. Other duties include:

- a) Monitor and guiding the progress of the FATF's work;
- b) Promoting coordination among the working groups;
- c) Ensuring the adequate flow of information among all Members; and
- d) Carrying out any other work necessary for the FATF to fulfill its mandate after consultation with the Plenary.²⁵

The composition of the steering group is reviewed every two years.²⁶

Finally, the secretariat is headed by the executive secretary, appointed by the plenary on the proposal of the president, as well as by the secretariat staff, whose primary function is to support the work of the organization's board of directors in accordance with its purposes and the instructions to be given to that effect by the president through the executive secretary.²⁷

The steering group is the most striking of the bodies mentioned due to the lack of information since the official FATF documentation does not indicate the number of its members or who makes it up. A search for this group on the official FATF website yields only seven documents that barely mention it, without providing any information on how its composition is determined, or who its current members are.

23 Idem.

24 FATF (2019). Op. cit. p. 9

25 Ibid. pp. 9-10.

26 Ibid. p. 10.

27 Idem.

The situation is not new as in a 2012 investigation, Ben Hayes points out that, at that time, the steering group consisted of seven members, three of whom were the president at the time, his predecessor, and the person who was to succeed him (which shows a peculiar dynamic in this regard that should not be ignored), while the other four were unidentified.²⁸

To this effect, this author points out that he sent a communication to the FATF secretariat requesting this information and was denied, indicating that his decision could not be challenged by any means, which evidences secrecy on this matter that seems to persist to this day,²⁹ since from the search carried out, as indicated, the most significant piece of information is that the current president, who is from Singapore, was previously a member of the steering group for four years representing his country,³⁰ and that Russia³¹, Mexico³², and Portugal³³ were at some point part of it.

It suggests that the steering group has a formal advisory role, and a substantial weight in the organization's direction.

In addition, regarding the FATF structure, we should add that the FATF and the regional organizations have a working group for sectoral issues to develop or improve existing standards, or to make the evaluation work more efficient. For example, the CFATF has five working groups: the International Cooperation Review Group (ICRG); the CFATF Working Group on FATF Issues to liaise with the FATF; the Risk, Trends, and Methods Working Group (RTMG); the Heads of Financial Intelligence Units Forum (HoFIU); and the Accreditation Council (AC): with a mandate to design a curriculum for the training and accreditation of financial researchers and analysts.³⁴

28 Hayes, Ben (2012). Op. Cit. p. 18.

29 Vid: Idem:

The author of this report asked the FATF Secretariat for more information on the composition and functioning of the Steering Group, but the request was denied. In the absence of a formal framework governing FATF activities and transparency, there is no formal mechanism to challenge this type of secrecy.

30 <https://www.fatf-gafi.org/content/fatf-gafi/en/the-fatf/fatf-presidency/Raja-Kumar.html>.

31 <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfgeneral/Speech-international-financial-congress-july-2016.html>.

32 <https://www.fatf-gafi.org/content/fatf-gafi/en/the-fatf/fatf-presidency/Elisa-De-Anda.html>.

33 <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfgeneral/Workshop-judges-prosecutors-february-2018html.html>.

34 <https://www.cfatf-gafic.org/how-are-we-organized>.

FATF REGULATIONS

As mentioned above, the main standards of the organization are the so-called 40 recommendations, which since their creation in 1990, have undergone numerous modifications and extensions. Their last general revision dates back to February 2012,³⁵ although there have been occasional changes since that date, the most recent being November 2022.³⁶

However, given the broad mandate of the Financial Action Task Force (FATF), its body of standards is much more extensive; in fact, it has guides and documents that include best practices for the implementation of the recommendations (a total of 32 to date),³⁷ as well as thematic guides for risk analysis in specific sectors such as real estate, finance, virtual services, accountants, dealers in precious metals and stones, and casinos, among others.³⁸

Since the purpose of this paper is to explain the effects of the FATF on nonprofit organizations (NPOs), it is important to know the definition it provides of NPOs: "a person or legal structure or organization primarily engaged in the raising or disbursement of funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or the performance of other types of "good works."³⁹

We will now refer to the recommendation that directly concerns us.

a) Recommendation No. 8

The text of this recommendation is as follows:

Non-profit organizations

Countries should review the adequacy of laws and regulations relating to non-profit entities **that the country has identified as vulnerable** to terrorist financing abuse. Countries **should establish targeted and proportionate measures**, in line with the **risk-based approach**, to such non-profit organizations to protect them from abuse for terrorist financing, including:

35 GAFILAT (2022). *International Standards on Combating Money Laundering, Terrorist Financing, and the Financing of the Proliferation of Weapons of Mass Destruction*. p. 147, available at: <https://www.gafilat.org/index.php/es/biblioteca-virtual/gafilat/documentos-de-interes-17/publicaciones-web/4329-recomendaciones-metodologia-actjul2022/file>.

36 This change concerned Recommendation No. 24 and its interpretative note. Vid: GAFILAT (2022). *International Standards on Combating Money Laundering, Terrorist Financing, and Financing of the Proliferation of Weapons of Mass Destruction*. p. 154, available at: <https://www.gafilat.org/index.php/es/biblioteca-virtual/gafilat/documentos-de-interes-17/publicaciones-web/4329-recomendaciones-metodologia-actjul2022/file>.

37 See: GAFILAT (2022). Op. cit. p. 143 and ff.

38 Ibid. p. 146.

39 Ibid. p. 136.

- (a) by terrorist organizations presenting themselves as legitimate entities;
- (b) to exploit legitimate entities as conduits for the financing of terrorism, including for the purpose of escaping asset-freezing measures; and
- (c) to hide or conceal the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.⁴⁰ (emphasis added).

Thus, we must highlight three fundamental aspects of this recommendation:

- 1) **Not all NPOs are vulnerable** to being used or exploited to finance terrorism. Hence the requirement is that the State must identify those that are, so that any generic qualification in that sense and involving all organizations is contrary to recommendation No. 8.
- 2) **The identification of those NPOs that are vulnerable is not left to the discretion of the State** since this should occur after a risk-based analysis. To this end, the State must map civil society and study the different sectors and activities in which NPOs are involved in order to determine, based on objective criteria, which ones are indeed high-risk. Thus, for example, an NPO that receives only public funds, whose risk is practically non-existent, is not the same as one that receives its budget from an anonymous account in a tax haven. Clearly, there is a significant difference between the former and the latter, for this reason the State must first determine these risk scenarios before adopting any measures.
- 3) **Once the risk analysis objectively imposes the need for a measure, both the determination of what it should be and its imposition, it is not subject to the free will of the State.** Still, according to recommendation No. 8, it is conditioned to be targeted and proportionate. The focus confirms that measures of a generic and indistinct nature are alien to the spirit and reason for recommendation no. 8, which then requires that they refer to a specific type of subject and specific circumstances that justify their application. For its part, proportionality is also a consequence of the risk analysis since a lack of diligence in which no wrongdoing has occurred is not the same as one in which an activity contrary to the recommendation has been carried out.

This difference means that the measure to be imposed must be adjusted to the risk detected, leaving the most serious measures for those cases that justify it. Therefore, it is necessary for the State to be rational and, consequently, to explain the reasons that justify the proportionality of the measure according to the risk detected.

40 <https://www.cfatf-gafic.org/es/documentos/gafi40-recomendaciones/414-recomendacion-8-organizaciones-sin-fines-de-lucro>.

b) Interpretative note

So that there are no doubts about the interpretation of each recommendation, the FATF has been incorporating interpretative notes to clearly indicate the scope of these recommendations and how they the States or Governments should implement them, as the case may be.

Thus, the interpretative note to recommendation no. 8,⁴¹ which we will not quote due to its length, essentially states the following:

b.1 Not all NPOs are subject to the recommendation.

It clarifies that the recommendation does not apply to all NPOs, since it clearly states that the determining factor is not that the organization is not for profit since the latter is not fundamental for the purposes of the recommendation, but rather that it is "a person or legal structure or organization that is primarily engaged in **the collection or exercise of funds** for charitable purposes, (emphasis added), which makes it clear that NPOs that do not use funds for their activities because, for example, they depend exclusively on volunteer activities or have no financial activity whatsoever, do not fall within the scope of recommendation no. 8. This is another element that obliges the State, in applying this recommendation, to also start from this distinction.

Hence, it is confirmed by the following statement in the interpretive note: "Given that not all NPOs are inherently high risk (and some represent low or no risk), countries should identify which subset of organizations fall within the FATF definition of NPOs."

The crystal-like clarity of this FATF conclusion shows how contrary to Recommendation No. 8, any determination by the authorities to consider all NPOs as having the same level of risk is, given the material impossibility of this being the case, as indicated by the governing body itself on the matter.

b.2 It is essential to start with the high importance of nonprofit organizations in today's society.

The note emphasizes the importance of NPOs, as they "play a vital role in the world economy and many national economies and social systems" since the actions of NPOs "complement" the public and business sectors "in the provision of essential services." This premise should be part of government discourse, as this is precisely contrary to the

41 See the full text of the note here: <https://www.cfatf-gafic.org/es/documentos/gafi40-recomendaciones/414-recomendacion-8-organizaciones-sin-fines-de-lucro>.

stigmatization and criminalization often accompanying official speech on NPOs. Thus, any consideration of these organizations should be based on a positive view of the role they play in society, but this is not the rule but the exception, as can be seen from what is expressed by the FATF itself.

b.3 Measures on NPOs should respect human rights and international humanitarian law.

Although the interpretative note recognizes that there have been cases of NPOs being used to serve the purposes of terrorism, measures to combat this possibility "should be targeted and in line with the risk-based approach," as stated in Recommendation No. 8, and adds, notably,, "that such measures should be established in a manner that respects the obligations of countries under the Charter of the United Nations and international humanitarian law."

Thus, given that the mandate to respect human rights is a cross-cutting axis of the UN (Article 1.3 of the Charter), compliance with this obligation must be included in the measures taken by the FATF on NPOs. To this end, human rights such as the presumption of innocence, due process, the right to defense, and freedom of association shall be considered insurmountable limits to the activity of any FATF member state.

It means that the State should not make accusations or accusations without complying with the rigor required by the presumption of innocence and that any investigation should respect all the rights derived from the right to due process (right to defense, to be judged by the natural judge, to have legal assistance, among others), and that before all this, the environment for the exercise of freedom of association should be compatible with international standards on the matter, that is, that any limitation to it should be per democratic principles and legal reserve, among other considerations.

It is important to note that this was said by the FATF president at the time, Marcus Pleyer, when several rapporteurs questioned him about regulations issued against NPOs by Serbia that could be considered to violate both Recommendation No. 8 and human rights. In his response to the rapporteurs' letter, he stated the following:

The Standards were drafted to **ensure their conformity with international human rights principles and fundamental freedoms**. It is in **direct contradiction with FATF standards**, and it is categorically **unacceptable** that its measures are exploited and used to oppress

human rights **under the pretext of the fight against terrorism.** Actions are influenced and used to crush human rights under the guise of the fight against terrorism.⁴² (own emphasis and translation).

As can be seen, the obligations of the State in accordance with these statements, which in turn derive from the interpretative note, imply conditions for exercising public powers and, therefore, limits to them.

Likewise, the aforementioned communication shows an avenue for advocacy before human rights protection mechanisms and before the FATF itself.

No less important is the mention of international humanitarian law, which implies not only respect for treaties related to armed conflicts (Geneva Conventions and others) but also other norms such as the Code of Conduct for Disaster Relief,⁴³ whose article 1 states that "The right to receive and provide humanitarian assistance is a fundamental humanitarian principle that applies to every citizen in every country"; therefore, any measure in the execution of recommendation no. 8 shall respect this principle and, consequently, avoid affecting in any way the humanitarian aid provided by any NPO, not only out of respect for the rights of the latter but above all for the right to receive and provide humanitarian assistance, which is a fundamental principle that applies to every citizen in every country. Therefore, any measure implementing recommendation no. 8 must respect this principle and, consequently, avoid affecting in any way the humanitarian aid provided by any NPO, not only out of respect for the rights of the latter but, above all, for the right to humanitarian assistance that every person has.

We can see the application of this principle in the case of Myanmar, a country that, even though it is on the so-called "black list", the FATF has expressly stated that it should not impede access to humanitarian aid.⁴⁴

The latter also implies assuming that action against NPOs is not something that affects only them but also all their beneficiaries, something that the authorities should always consider when taking action within the framework of recommendation No. 8.

42 <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=35813>,

43 Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief, available at: <https://www.icrc.org/es/doc/assets/files/publications/codigo-de-conducta.pdf>.

44 "In implementing enhanced due diligence measures, countries should ensure that flows of funds for humanitarian aid, legitimate NPO activity and remittances are not disrupted." Vid: <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Call-for-action-February-2023.html>.

b.4. Objectives and general principles of Recommendation No. 8

The interpretative note indicates that three goals should be pursued in the implementation of Recommendation No. 8, namely: 1) to prevent NPOs from being used by terrorist organizations to present themselves as legitimate entities; 2) to prevent legitimate entities from being exploited as a means of terrorist financing and circumventing measures such as asset freezing; and 3) to prevent NPOs from being used to hide or disguise the remittance of legitimate funds to divert them for terrorist purposes.

These goals, as can be seen, follow the logical direction of a money laundering operation, i.e., it involves the creation or use of an apparently legitimate entity to then instrumentalize it for financing illicit purposes and, finally, to use the funds or assets to finance the achievement of those purposes.

In order to achieve these goals, the following principles are set:

- That **the measures to be taken concerning NPOs be applied on a risk-based approach**, taking into account "the diversity within each national sector" as well as "the different degrees to which parts of each sector may be vulnerable" to abuse to finance terrorism.
- That there be **flexibility in response** to avoid abuse, given the changing nature of the threat to NPOs.
- That **the measures are proportional to the risks identified**, which implies their prior determination and evaluation.
- That targeted measures "**should not disrupt or discourage legitimate charitable activities**. Rather, these measures should promote transparency and foster greater trust among NPOs" (emphasis added), a fundamental element when assessing the relevance and adherence of any measure on NPOs to Recommendation No. 8, since any obstacle on the part of the authorities that impedes the actions of NPOs is, in principle, contrary to the FATF's recommendations.
- That NPOs that are exploited for terrorist purposes should be identified "**taking into consideration the specificities of the case**," i.e. avoiding generic measures that affect the collective rather than those that are clearly determined to be linked to this type of illicit activity. Likewise, the actions taken must "**avoid negative impacts on the innocent and legitimate beneficiaries of the charitable activity**," which leads once again to the importance for the FATF to underline the impact of the measures since it consistently exceeds the NPOs and, therefore, the measures must be carefully applied in order to protect the beneficiaries of the NPOs' assistance.

- That **there should be a cooperative relationship between the public and private sectors, and of course, with NPOs.** To "raise awareness, increase effectiveness and build capacity to combat terrorist financing abuse within NPOs." Hence, the imposition of measures without dialogue with the private sector and NPOs contradicts Recommendation No. 8, evidenced by the interpretative note stating that there should be "constant outreach to the sector." It should involve a constructive dialogue with the organizations based on recognizing the importance of their contribution to society and considering their comments and input on risk assessment.

4. MUTUAL EVALUATIONS

The peer review of each of its member is just as important as the determination of compliance standards to achieve the mandate of the Financial Action Task Force (FATF).. The findings of this so-called mutual evaluation are then presented to the plenary for final approval. Although it is not so clearly stated in official speeches, the interest in achieving the best possible rating lies in avoiding the consequences of a negative evaluation which, although not called sanctions, actually are, as we shall see below.

4.1 What is evaluated?

The FATF is currently undergoing its fourth round of mutual evaluations. Just as the 40 recommendations have been evolving, the FATF has been adapting the evaluation process to these changes, including those demanded by the introduction of new elements in the international financial system, such as new technologies or new financial products such as cryptocurrencies.

To this end, mutual evaluations have two major elements: the technical component and effectiveness. Each will be explained and analyzed below.

The technical compliance evaluation assesses the country's legal and institutional framework as it is relevant to the FATF's specific mandate, i.e., banking, financial, and more specifically,, money laundering. Thus, for example, there is no evaluation of the governance system or compliance with international human rights standards. However, this is surprising because human rights issues are not alien to the FATF mandate. Although they are excluded from the general evaluation of the country, they cannot be ignored concerning specific compliance with the 40 recommendations. To put it more clearly: the compliance review with the 40 recommendations implies an assessment of respect for human rights. To deny this is as much as to deny the purpose of the recommendations and what is established in the interpretative notes that refer to norms linked to human rights.

Thus, any assertion that the FATF evaluation is technical, implying that it only addresses banking or financial issues as a way to evade compliance with human rights standards, ignores the fact that the FATF's technical requirements include compliance with them.

The alleged incompatibility between technical aspects and human rights is nothing more than a fallacy, given the express reference made by the FATF itself to the United Nations Charter and international humanitarian law, as previously indicated.

Each of the 40 recommendations is evaluated to determine compliance in this first component by applying the following scale:

1. Compliant (C). There is not a single deficiency.
2. Mostly Compliant (MC). There are only minor deficiencies.
3. Partially Compliant (PC). There are moderate deficiencies. It is a **negative assessment**.
4. Not Compliant (NC) Significant deficiencies exist.
5. Not Applicable (NA) A requirement is not applicable due to a country's structural, legal, or institutional characteristics.

The second component is the so-called **effectiveness evaluation**, which is the assessment of the implementation of the recommendations and, in particular, the determination of the degree of compliance with the immediate results of their application.

As can be seen, these components follow a logical framework: first, to determine whether an adequate regulatory and institutional framework exists, and then whether this framework is effective in practice.

In order to establish the degree of effectiveness, the objectives of the FATF mandate are grouped into *immediate outcomes*, which are intertwined with the different recommendations. For example, recommendation #8 is included in immediate results #6 and #10. Immediate result #6 is defined as follows: "Financial intelligence and all other relevant information are appropriately used by competent authorities in money laundering and terrorist financing investigations," including the NPO. Immediate Outcome No. 10 refers to "Terrorists, terrorist organizations and terrorist financiers (being) prevented from collecting, moving and using funds, and from abusing NPOs" (parentheses ours).

The evaluation of compliance with the immediate results is made according to these categories:

1. High level of effectiveness: This means that the immediate result has been achieved to a large extent. Few improvements are needed.
2. Substantial level of effectiveness: the immediate result has been achieved. Moderate improvements are required.
3. Moderate level of effectiveness: immediate results are achieved to some degree. Considerable improvements are required.
4. Low level of effectiveness: the immediate result is not achieved or is achieved to a negligible degree. Fundamental improvements are required.

To appreciate how the two components mentioned above, technical and effectiveness, are applied, the following is an example taken from a mutual evaluation published earlier this year on a Latin American Financial Action Task Force (GAFILAT) country, chosen because it was in Spanish.⁴⁵

⁴⁵ Those of the Caribbean Financial Action Task Force (CFATF), including that of Venezuela, are in English.

It should be noted that the effective compliance indicators are placed first, followed by the technical indicators, which shows the order of importance of these indicators within the FATF.

TABLE NO. 1

TECHNICAL COMPLIANCE RATINGS

AML/CFT policies and coordination Money laundering and forfeiture

R. 1	R. 2
MC	C

R. 3	R. 4
C	C

Financing of terrorism and financing of proliferation

R. 5	R. 6	R. 7	R. 8
C	MC	MC	PC

Preventive measures

R. 9	R. 10	R. 11	R. 12	R. 13	R. 14
MC	MC	MC	MC	C	C

R. 15	R. 16	R. 17	R. 18	R. 19	R. 20
C	MC	PC	C	PC	C

R. 21	R. 22	R. 23
C	MC	MC

Source: FATF⁴⁶

46 <https://www.cfatf-gafic.org/documents/4th-round-meal-reports>.

The red circle shows that the rating for this country (Peru),⁴⁷ on recommendation no. 8, is partially complied with, which corresponding to a negative evaluation.

It should be noted that the effective compliance indicators are placed first, followed by the technical indicators, which shows the order of importance of these indicators within the FATF.

4.2 What is the procedure for mutual evaluation?

According to the FATF website,⁴⁸ the procedure for mutual evaluation is as follows:

1. Legal, financial, and law enforcement experts are selected to constitute the evaluation team.
2. The country submits information on laws relevant to the FATF mandate, and regulations to prevent crimes and abuses against the financial system.
3. The experts analyze the information provided from the point of view of the first component of the assessment, i.e., from the technical (normative-institutional) point of view.
4. The assessment team drafts a report to identify areas of interest for the on-site visit and submits it to the State.
5. The State or FATF member may comment on the draft.
6. According to the FATF, the *on-site* visit is conducted, which may take two weeks.
7. The evaluators draft their findings on the State's implementation of the FATF standards.
8. A draft report includes both the technical and effectiveness evaluation.
9. The draft initiates a cycle of consultations with the country under review and the independent experts.
10. At the end of this cycle, the report is presented to the FATF plenary for approval.
11. Once approved, the mutual evaluation report is made public.
12. This does not end the process but instead initiates the follow-up of the evaluation recommendations, which vary according to the outcome of each country.

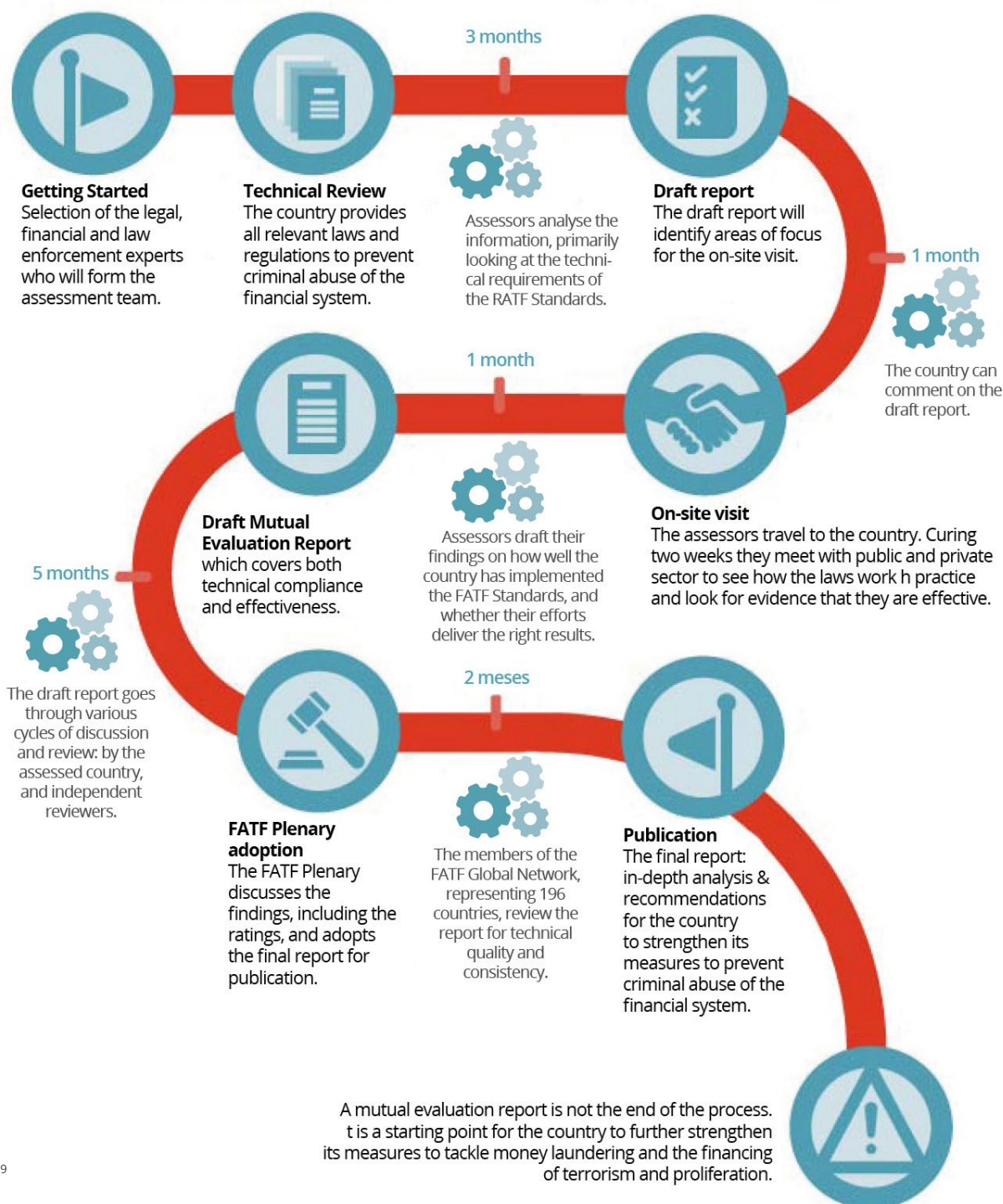
In theory, this procedure should take one year, but this is not always the case, as can be seen in the different reports that are made public, as they do not always comply with the established timetable. This process is shown in a flow chart below.

47 <https://www.gafilat.org/index.php/es/biblioteca-virtual/miembros/peru/evaluaciones-mutuas-14/3284-informe-de-evaluacion-mutua-del-peru/file>.

48 <https://www.fatf-gafi.org/en/topics/mutual-evaluations.html>.

FLOWCHART NO. 1

The Mutual Evaluation Process



Source: FATF⁴⁹

49 <https://www.fatf-gafi.org/en/topics/mutual-evaluations.html>.

4.3 Follow-up process after the evaluation mutual evaluation

Depending on the degree of compliance with the recommendations, there are two types of follow-up: regular and reinforced.⁵⁰

Regular monitoring, which should be the default monitoring, involves the completion of a report three years before the start of the subsequent mutual evaluation, and results from considering that there is a rationally acceptable degree of compliance in the previous assessment.

Reinforced monitoring, as the name implies, involves more intense monitoring "for countries with significant deficiencies or which are not making sufficient progress".⁵¹

For considering the application of enhanced monitoring, the plenary takes into account both technical compliance and effectiveness indicators. In the case of technical compliance, it will move to enhanced follow-up in the following cases: if the State receives an NC or PC rating, if it has 8 or more NC/PC ratings in technical compliance, or if it gets an NC/PC rating in the follow-up of recommendations 3, 5, 10, 11 and 20.

In terms of effectiveness assessment, a country would move to enhanced follow-up if it has a low or moderate level of effectiveness for 7 or more of the 11 immediate results, or if it has a low level of effectiveness for 4 or more of the 11 immediate results..

If the plenary considers this type of follow-up for a country, the FATF will make at least three annual follow-up reports, which should start one year after the mutual evaluation.⁵²

Generally, enhanced monitoring implies the country's inclusion on the so-called "grey list."

In addition to these reports, the plenary has the power to apply other mechanisms, which are called "reinforced measures" and which, by their nature, are understood to be of an extraordinary nature, as they involve the following:

- That the FATF president sends a communication to the relevant minister, drawing attention to the non-compliance with FATF standards.
- That a high-level mission be sent to the country in question to reinforce the message of the above-mentioned communication and transmit it to the highest competent authorities.
- That a formal FATF statement be issued recommending the most appropriate action for the case and that consideration shall be given to whether additional enforcement measures (countermeasures) are necessary⁵³.

50 FATF (2023), *Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations, updated February 2023*, FATF, Paris, France. Pp. 21 et seq. Available at: www.fatf-gafi.org/publications/mutualevaluations/documents/4a-round-procedures.html.

51 FATF (2022), *Consolidated Processes and Procedures for Mutual Evaluations and Follow-Up: "Universal Procedures"*, September 2022, FATF, Paris, France. p. 13. Available at: www.fatf-gafi.org/publications/mutualevaluations/documents/universal-procedures.html.

52 FATF (2023), *Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations*. p. 22.

53 In English *counter-measures*, which in many texts is translated as "counter-measures", although this term is not in the dictionary, so it has been preferred to use the expression "coercive enforcement measure". Vid: https://es.wikipedia.org/wiki/Medida_de_aplicaci%C3%B3n_coactiva_del_Derecho_internacional.

- Suspension of the affected country's membership in the FATF. From the moment this is decided, the member country will not be able to attend FATF meetings or make contributions except to determine whether the deficiencies have been resolved.
- That membership be terminated⁵⁴.

4.4 The gray list and the black list

The FATF points out to members that establish weak mechanisms for compliance with the recommendations, and to this end, makes this generally known in documents published three times a year.

These processes have been crucial to the effectiveness of compliance with FATF standards and show how the term *soft law* is insufficient to qualify the nature of the FATF's regulatory framework. As of February 2023, the FATF had reviewed 125 members and flagged 98 for non-compliance; of these, 72 had made the necessary reforms to address their deficiencies and thus had been removed from the monitoring process, which speaks to a high degree of effectiveness.

4.4.1 High-risk jurisdictions subject to a Call to Action (blacklist)

This rating, which used to be called "public declaration," identifies those members with gross deficiencies in the application of FATF principles and are therefore considered to be high-risk countries; thus, the organization asks its members to take enhanced due diligence measures and, in the most severe cases, coercive measures to protect the financial system once a member has been included in this rating. It implies excluding the member from the financial system or under measures of such severity that its participation in the financial system becomes very difficult or practically impossible.⁵⁵ As of February 2023, North Korea, Iran, and Myanmar were on this list.

However, it should be noted that each case is different. The same measures are not applied to all the countries on the list since, in the case of North Korea, the FATF requested its members to take coercive measures (the so-called countermeasures), as well as financial sanctions against it,⁵⁶ as would be the case of

54 FATF (2022). Op. cit. p. 23 and ff.

55 <https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html>.

56 Vid: <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Call-for-action-February-2023.html>.

the FATF further calls on its members and urges all jurisdictions to apply effective counter-measures, and targeted financial sanctions in accordance with applicable United Nations Security Council Resolutions, to protect their financial sectors from money laundering, financing of terrorism and WMD proliferation financing (ML/TF/PF) risks emanating from the DPRK. Jurisdictions should take necessary measures to close existing branches, subsidiaries and representative offices of DPRK banks within their territories and terminate correspondent relationships with DPRK banks, where required by relevant UNSC resolutions.

close branches, subsidiaries and representative offices of DPRK banks in their territories and terminate correspondent relationships with DPRK banks, where required by relevant UN Security Council resolutions.

In contrast, in the case of Myanmar, they did not request the application of coercive measures, but rather "to apply enhanced due diligence measures proportionate to the risk," which implies an additional effort in documenting transactions, which slows them down and makes them more complex, but does not necessarily prevent them.

However, the latter has the associated cost that most financial institutions would refrain from intervening in this type of transaction,, both because of the time and effort involved and the reputational effect that would come with it, thus making it more difficult to obtain an entity with which the transactions could be verified, thus generating an increase in their cost.

The FATF also notes that, in this case, enhanced due diligence measures should allow for "flows of funds destined for humanitarian aid, legitimate NPO activity and remittances," thus showing a significant difference in treatment from one situation to the other.

The FATF International Cooperation Review Group (ICRG) oversees this special monitoring. This type of process was initiated in 2007 and has had updates in 2009 and 2015.

Among the indicators considered to include a country as high risk are the following:

- Failure to participate in a FATF-style regional body (FSRB) or to allow timely publication of mutual evaluation results.
- Be nominated as such by a FATF member based on specific risks or threats to the organization's main objectives.
- Having poor results in the mutual evaluation, namely: in technical compliance, having 20 or more NC or PC ratings; having an NC/PC rating in 3 or more of the following recommendations: 3, 5, 6, 10, 11, and 20; having a low or moderate level of effectiveness in 9 or more of the 11 immediate results, with a minimum of two low levels; or having a low level of effectiveness in 6 or more of the 11 immediate results.⁵⁷

The ICRG analyzes high-risk jurisdictions and recommends specific measures to be taken to address the risk. In coordination with the affected member country, the group must establish an action plan to follow up and verify whether the commitments made are being carried out as agreed.⁵⁸

57 <https://www.fatf-gafi.org/en/topics/high-risk-and-other-monitored-jurisdictions.html>.

58 <https://www.coe.int/en/web/moneyval/high-risk-and-non-cooperative-jurisdictions>.

4.4.2 Jurisdictions under enhanced surveillance (gray list)

This statement identifies countries that, despite having significant non-compliances to be considered for the enhanced monitoring described above, express their interest in correcting the deficiencies and coordinate with the FATF the strategy to do so, so that, although belonging to the gray list is negative, it is not nearly as serious as being part of the black list, which corresponds to members of high-risk jurisdictions.

The FATF expressly states that enhanced due diligence measures should not be applied to these members. Still, it is significant to consider them in their risk analysis, which in practice implies measures that would slow down, but not prevent, certain types of transactions in the international financial system according to each country's determination.

However, this affects countries, as it creates obstacles to trade and exchange by affecting their competitiveness and raising their costs by generating more information to support operations.

As of February 2023, there were 23 countries in this situation.⁵⁹

59 Albania, Barbados, Burkina Faso, Cayman Islands, Democratic Republic of Congo, Gibraltar, Haiti, Jamaica, Jordan, Mali, Mozambique, Nigeria, Panama, Philippines, Senegal, South Africa, South Sudan, Syria, Tanzania, Turkey, Uganda, United Arab Emirates and Yemen. See: <https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html>.

5. EVALUATION OF COMPLIANCE WITH RECOMMENDATION NO. 8

5.1 How serious is the threat of NPOs in money laundering and terrorist financing?

This question is essential insofar as it places us on the real risks faced by nonprofit organizations (NPOs) in the face of the grave evils of money laundering (ML) and terrorist financing.

Several studies have been done on the subject, and Hayes cites several, the first in 2008, commissioned by the European Commission, which concluded that there was "limited abuse of foundations" and that the UK Charities Commission had reported that "actual cases of abuse have been very rare."⁶⁰

The author goes on to note that, in 2009, the UN Counter-Terrorism Implementation Task Force's Working Group on Combating the Financing of Terrorism recommended that "States should avoid rhetoric linking NPOs to terrorist financing in general terms because it exaggerates the threat and unduly harms the NPO sector as a whole."⁶¹

It then analyzes a 2010 U.S. Treasury report, acknowledging that most of the 1.8 million U.S. charities "face little or no risk of terrorist financing."⁶²

Thus, it is clear that studies by reputable organizations and governmental entities indicate that there have indeed been cases in which NPOs have been instrumentalized for the financing of terrorism, but this is far from being the norm.

5.2 What is the degree of compliance with recommendation no. 8?

5.2.1 2011 study

Following Hayes himself, there is a 2011 study by the Center on Global Counterterrorism Cooperation on the compliance of FATF member countries, which indicated that only 5 of the 159 member countries evaluated were rated as having complied with Recommendation No. 8 (R8) and that these were Belgium, Egypt, Italy, Tunisia, and the United States, while 17 others were rated as mostly compliant;⁶³ the vast majority (85%)⁶⁴ received ratings of partially compliant or non-compliant. The latter category represented 69 countries (43% of the total)⁶⁵, which describes a dire security situation for NPOs.

60 Hayes (2012). Op. cit. p. 27.

61 Idem.

62 Idem.

63 Ibid. p. 29.

64 Idem.

65 Ibid. p. 30.

For Latin America, the situation was even worse. Hansen indicates that the 21 members of what was then GAFISUD (now the Latin American Financial Action Task Force [GAFILAT]) were considered partially compliant or non-compliant with R8, and, in the case of the Caribbean Financial Action Task Force (CFATF), this was true of 26 of the 28 member states or jurisdictions.⁶⁶

So the situation, which was already serious globally, was particularly difficult for Latin America.

5.2.2 Current status

With the completion of the fourth round of mutual evaluations, whose cycle began in 2014 and continues in the present,⁶⁷ has fairly updated information on compliance with the 40 recommendations. Although some countries are still in the evaluation of the third round, most have already gone through the new requirements of the fourth round, and therefore it is possible to analyze how the degree of compliance has varied with respect to R8.

Thus, with information updated up to June 6, 2023,⁶⁸ the FATF reports that, globally, of the total of 147 countries that have undergone the fourth round of mutual evaluations, 7 (5%) have complied (C) with R8, 53 (36%) have mostly complied (MC), 57 (39%) have had partial compliance (PC) and 30 (20%) have not complied (NC) with it (see Graph No. 1).

66 Idem.

67 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Communique-start-4a-round-mer.html>.

68 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-ratings.html>.

GRAPH NO. 1

Overall degree of compliance with R8

Las clasificaciones de conformidad técnica pueden ser:

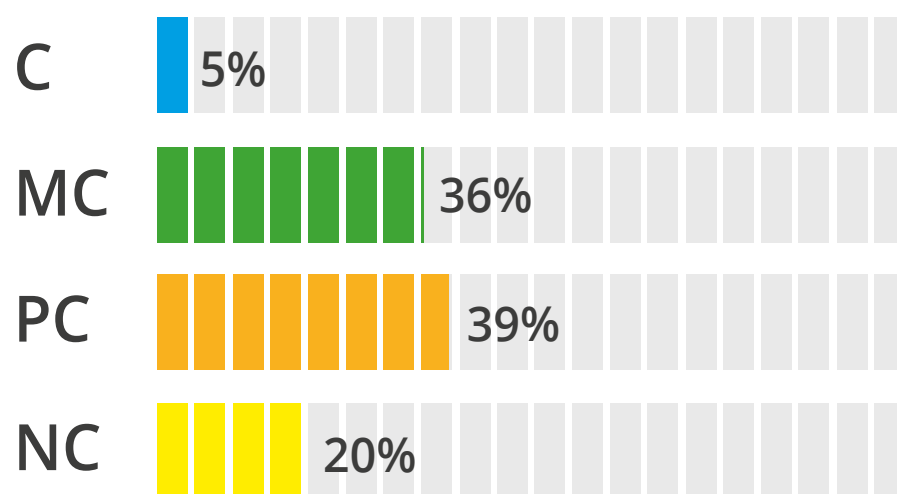
C = COMPLIANT

LC = LARGELY COMPLIANT

PC = PARTIALLY COMPLIANT

NC = NON COMPLIANT

NA = NOT APPLICABLE



Source: Author's own work.

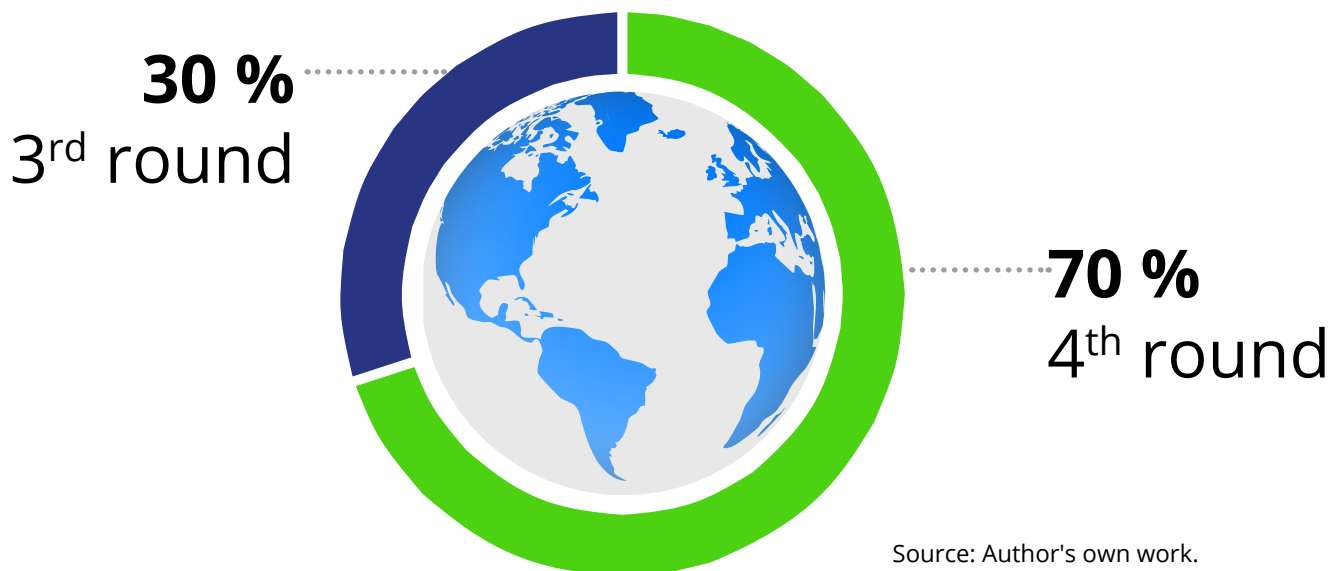
Hence, although there is an improvement compared to the situation in 2011, when 85% had partial or no compliance, a figure that now stands at 59%, this still indicates that this group of countries and jurisdictions continues to be the majority, so that, although efforts have been made, they should be continued and strengthened.

In the case of the Americas, although there are still 13 countries to complete the fourth round (see Graph 2), there have also been variations, since of the 44 countries and jurisdictions that are members of the FATF network, only 3 (7 %) have obtained a C grade, 10 (23 %) a LC grade, 16 (36 %) a PC grade and 15 (34 %) an NC grade (see Graph 4).

69 In order to provide these results, given that not all the countries of the Americas have completed the mutual evaluation of the fourth round (13 members are still pending to date), we have had to include the rating given in the previous round.

GRAPH NO. 2

Countries evaluated per round of Mutual Evaluations



GRAPH NO. 3

Degree of compliance R8 in the Americas



Although the panorama had improved significantly with respect to the terrible situation in 2011, when almost all members failed to comply with recommendation R8, the fact is that 70% are between non-compliance and partial compliance, which should continue to generate much concern, and even more so if we consider that globally these concepts correspond to 59%, i.e., 11 points less, which obliges the region to make an even greater effort to catch up with compliance with this recommendation.

In order to facilitate the understanding of the region, the following table shows the individual situation of each country in the continent.

Degree of compliance or noncompliance: COMPLETED		
COUNTRY	YEAR OF EVALUATION	ROUND
Uruguay	January 2020	4 th
Bermuda	January 2020	4 th
Bahamas	December 2022	4 th

Degree of compliance or noncompliance: MOSTLY COMPLETED		
COUNTRY	YEAR OF EVALUATION	ROUND
Ecuador	January 2023	4 th
Guatemala	October 2018	4 th
Mexico	May 2023	4 th
Nicaragua	January 2021	4 th
Panama	August 2019	4 th
Paraguay	November 2022	4 th
Turks and Caicos Islands	December 2022	4 th
Cayman Islands	February 2021	4 th
Saint Vincent and the Grenadines	June 2010	3 rd
United States	March 2020	4 th

Degree of compliance or noncompliance: PARTIALLY COMPLETED		
COUNTRY	YEAR OF EVALUATION	ROUND
Colombia	January 2023	4 th
Costa Rica	January 2023	4 th
Cuba	January 2022	4 th
Peru	January 2020	4 th

Dominican Republic	September 2019	4 th
Grenada	July 2022	4 th
Aruba	July 2022	4 th
St. Kitts and Nevis	January 2022	4 th
Barbados	February 2021	4 th
Jamaica	December 2022	4 th
Trinidad and Tobago	June 2019	4 th
El Salvador	September 2010	3 rd
British Virgin Islands	November 2008	3 rd
Canada	September 2021	4 th
Chile	September 2021	4 th
Montserrat	July 2011	3 rd

Degree of compliance or noncompliance: **NOT MET**

COUNTRY	YEAR OF EVALUATION	ROUND
Venezuela	March 2023	4 th
Bolivia	June 2011	3 rd
Brazil	July 2010	3 rd
Argentina	December 2010	3 rd
Honduras	January 2020	4 th
Suriname	January 2023	4 th
St. Lucia	January 2021	4 th
Haiti	July 2019	4 th
Antigua and Barbuda	November 2021	4 th
Eel	July 2010	3 rd
Belize	July 2011	3 rd
Curaçao	June 2012	3 rd
Dominica	July 2009	3 rd
St. Maarten	January 2013	3 rd
Guyana	July 2011	3 rd

Source: Author's own work.

6. CONCLUSIONS

After the preceding, it is clear that the 40 recommendations have specific purposes, as well as an implementation methodology in which no arbitrariness can be allowed on the part of the member states and jurisdictions of the Financial Action Task Force (FATF); on the contrary, obligations are imposed on them that must be complied with within the international standards for the protection of the human person, that is, both human rights law and international humanitarian law.

Thus, the evolution of the 40 recommendations speaks for itself on the incorporation of these standards, and although there is still much to be done, the fact is that the margin of what a State must do in the fight against money laundering and financing of terrorism is clearly indicated and, consequently, it must be free from the arbitrariness of power.

Thus, the idea is that both in the countries that have already complied with their mutual evaluation obligations and in those that have pending mutual evaluations, the non-profit organizations (NPOs) should actively participate in the corresponding advocacy and ensure, first, that the risk evaluation is carried out based on the corresponding technical requirements, which fairly reflect the reality of each sector of these organizations and allow the accurate levels of risk corresponding to each country to be determined objectively. In addition, it is important that the national authorities (which are obliged to do so in accordance with the interpretative note mentioned above) and the FATF evaluation teams shall be heard along the way.

It should be noted that not all the countries evaluated by the FATF are democratic; therefore, it is necessary to include them in the daily dynamics of the evaluation. In this sense, NPOs have a decisive role in applying and observing of international human rights standards, so that they are reflected in the mechanisms to be implemented in each country to avoid distorted interpretations of recommendation no. 8, and their actions are repressed and limited.

Finally, it should be noted that, despite improvements at the global and regional levels, the task remains immense insofar as non-compliance values stay in the majority. That fact alone is a threat to organizations that see at risk the legitimate exercise of freedom of association through the improper application of FATF standards, which should be used to protect them and not to persecute them, as is often the case.

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