

FATF Assessment Results



IS THE CIVIL SOCIETY PROTECTED IN VENEZUELA?

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AUGUST 2023

1. In the Venezuelan context, when FATF (Financial Action Task Force) standards are brought up, it has been to impose sub-legal instruments that limit civic space and violate freedom of association, as repeatedly reported by civil society organizations and human rights protection organizations such as the Inter-American Commission on Human Rights and several United Nations rapporteur's, as well as the Office of the High Commissioner for Human Rights of the United Nations.
2. There is a particular interest in analyzing the results of the FATF evaluation, made by its Caribbean chapter, the CFATF (Caribbean Financial Action Task Force), to which Venezuela belongs, of the country's anti-money laundering and combating the financing of terrorism policies, in order to know if there is a real commitment to these objectives.
3. It is even more relevant if one takes into account that in the area of non-profit organizations (NPOs) - a term that includes non-governmental organizations (NGOs) - the FATF enshrines that States must "set targeted and proportionate measures aligned with the risk-based approach" aimed at NPOs "to protect them from abuse for terrorist financing."
4. However, civil society, especially in the region, generally does not perceive that such protection exists; on the contrary, FATF imperatives are used against organizations. In fact, many organizations would be surprised to learn that FATF standards are designed to protect them.
5. Therefore, it is of vital importance to know, analyze and spread the results of the fourth round of mutual evaluations concerning the case of Venezuela. Conclusions drawn from them expose a reality far from the FATF goals resulting in a lack of protection for NPOs in the country.
6. Since the establishment of the 40 recommendations by the Financial Action Task Force (FATF) in 1990, a procedure for evaluating its members to determine their level of compliance was set. Although the methodology for examining each member has evolved, the basis for this evaluation has always been the same, each country is not evaluated by the FATF directly but by its peer FATF members through a team of experts in the area.
7. Once the evaluation team submits its report, it is addressed to the FATF plenary for approval. Subsequently, the report is made public, including a diagnosis of compliance with the 40 Recommendations, and the improvements to be implemented in the event of non-compliance with the obligations of the State evaluated.
8. Mutual evaluations are divided into two main parts: technical and efficiency.
9. The technical one focuses on the legal framework regulating the financial system, and the country's institutions linked to it. The first thing is to determine whether the legal regime of an evaluated country has incorporated the principles outlined in the 40 recommendations. The focus is on analyzing the legal framework to gauge the level of engagement in

implementing the recommendations. Once this has been verified, the second element of the technical evaluation is to analyze the institutional framework, i.e., the one in charge of implementing those national norms that are to reflect in reality the principles of the 40 recommendations.

10. Recommendation No. 8 (R.8) refers to the state's commitments to NPOs and how the relationship should be regulated. These obligations are as follows: review the suitability of their regulations for NPOs that they have identified as vulnerable to terrorist financing. This identification cannot be done in any simple way. Still, countries must take measures on NPOs that are targeted and proportionate, with a risk-based approach to NPOs, to protect them from terrorist financing abuse. That is, to prevent legitimate organizations from being used as tools for financing terrorism or evading measures such as asset freezing and to avoid being used to conceal the diversion of funds intended for legitimate purposes to terrorist organizations.
11. It is neither a rule nor an obligation that all NPOs be considered subjects of supervision, although this has been the rule in Venezuela. It is also important to emphasize that it is not an obligation imposed by the FATF. Still, on the contrary, it is considered best practice to establish parameters that justify the supervision of only those NPOs that imply certain determinable risks.
12. The technical evaluation involves the fulfillment of each of the 40 recommendations according to the following scale:
 - Compliant (C). There is no deficiency.
 - Mostly compliant (MC). There are only minor deficiencies.
 - Partially compliant (PC). There are moderate deficiencies.
 - Not met (NC). There are significant deficiencies
13. The second component of the evaluation is efficiency, which is nothing more than determining the degree of compliance with the recommendations, and more specifically, the immediate results of their implementation. It is determined through what are called immediate results, which total 11 and which combine assorted recommendations.
14. The ratings to determine the degree of compliance in the immediate results are as follows:
 - High level of effectiveness: This means that the immediate result has been achieved to a large extent. Few improvements are needed.
 - Substantial level of effectiveness: The immediate result has been achieved. Moderate improvements are required.

- Moderate level of effectiveness: Immediate results are achieved to some degree. Considerable improvements are required.
 - Low level of effectiveness: The immediate result is not achieved or is achieved to a negligible degree. Fundamental improvements are required.
15. This evaluation procedure should last one year, but it 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 schedule.
 16. The approval of the report by the FATF Assembly does not complete the evaluation process, as it continues with a follow-up of the recommendations to improve the indicators in the subsequent evaluation.
 17. Such follow-up will vary according to the outcome of the evaluation and may be regular or reinforced:
 - Regular monitoring involves the preparation of a report three years before the beginning of the subsequent mutual evaluation (ME). It is based on the consideration that the degree of compliance with the previous evaluation is rationally acceptable.
 - Enhanced monitoring involves more intensive monitoring "for countries with significant deficiencies or insufficient progress."
 18. To consider the application of enhanced monitoring, the plenary considers technical compliance and efficiency indicators. If the plenary thinks this kind of monitoring for a country, it means that the FATF will make at least three annual monitoring reports, which should start one year after the ME.
 19. The FATF points out to members that they establish weak mechanisms for compliance with the recommendations, and to this end, makes this generally known in documents published three times a year.
 20. By February 2023, the FATF had reviewed 125 members and had identified 98 as non-compliant; of these, 72 had made the necessary reforms to address their shortcomings and had therefore been removed from the monitoring process, which speaks to a high degree of efficiency.
 21. The FATF recommendations have been used as a tool to repress of civil society in the Venezuelan case. We will direct the main focus of this analysis to the FATF's recommendations regarding NPOs and its R.8
 22. The evaluation team comprises representatives from Spain, El Salvador, the Russian Federation, the Turks and Caicos Islands, and Nicaragua. However, the report of this evaluation team was reviewed by representatives of other countries, which is common

in the FATF because when dealing with technical-financial issues, it is understood that the evaluation assumptions are objective. Thus, the ME records the review made by representatives of Sint Maarten, Curaçao, the Council of Europe (Moneyval), and the United States.

23. Among the most salient general findings of the analysis of these ratings is a broad outlook of non-compliance and, therefore, the lack of commitment of the country's government to the FATF recommendations, not only with respect to R.8.
24. When evaluating the efficiency of compliance with the recommendations, we find that of the 11 indicators, 10 of them have the worst possible rating, i.e., low level of efficiency, while in the remaining one, No. 1, efficiency is rated as negative to moderate, i.e., just above the worst possible rating.
25. **Therefore, the Venezuelan State has no positive ratings in any of the immediate results.**
26. **This implies that, in general, the 40 recommendations have the worst possible degree of efficiency, and that among the ten that are rated as low level are Immediate Results 6 and 10, including R.8.**
27. In the second component of the evaluation related to each of the recommendations considered individually, none of the 40 recommendations are fully complied with, nine are mostly complied with, twenty-six are partially complied with and five are deemed not complied with, and among the latter is R.8.
28. The degree of non-compliance of the country requires, per the FATF parameters described above, that it be subject to enhanced follow-up, as it exceeds seven or more immediate results with low or moderate efficiency.
29. In the case of the recommendations individually considered, the threshold for a reinforced follow-up is when eight or more NC/PC ratings outcome, which occurs in the Venezuelan case where the sum of both concepts is 31, or if an NC/PC rating is received in the follow-up of Recommendations 3, 5, 10, 11 and 20, In this case, the country's situation improves a little by mainly having complied with Recommendations 3 and 11, and partially adhered to Recommendations 5, 10 and 20, so that most of the objective elements established for a reinforced evaluation are verified, and even for considering a possible inclusion in the "gray list" according to these same indicators. However, as explained above, this is not automatic and is at the discretion of the FATF.
30. Some statements in the mutual evaluation point to serious deficiencies on the part of the Venezuelan State in complying with the basic elements to be examined. Thus, it is indicated that, notwithstanding, its strategy against money laundering (ML) and financing of terrorism (FT) is within the framework of the Plan de la Patria 2019-2025 and in the

Gran Misión Cuadrantes de Paz, "However, the scope of these policies against ML/FT is general and not based on the identified risks. **The country has not been able to demonstrate that these major objectives are reflected in concrete actions.**" (emphasis by author).

31. The Bolivarian Republic of Venezuela has demonstrated that it investigates and prosecutes ML. However, these investigations are not consistent with the risk and context of the country, as there are a small number of ML prosecutions.
32. There have been some ML cases related to drug trafficking, which was identified as one of the risks in the 2015-2020 NRA. However, no cases related to other underlying crimes and areas identified in the 2015-2020 NRA, such as corruption have started.
33. Similarly, the ME notes that although the Prosecutor General's Office (FGR) and the Supreme Court of Justice (TSJ) investigate, prosecute, and sanction autonomous money laundering, "There is no evidence that third-party ML or self-laundering is prosecuted", and although the TSJ has prosecuted ML cases, **"the time in which such cases are resolved is not effective and has negative consequences for the State, the victims and the defendants"** (emphasis by author).
34. However, for Acceso a la Justicia, given its mandate as an observatory of the Venezuelan judiciary, as well as of the rule of law, it is especially important what the ME indicates about delays in judicial proceedings, something that has been highlighted by various human rights protection organizations and which shows how procedural delay is something structural that has no exceptions, except, of course, those of interest to the Executive Branch.
35. This is particularly serious, as it not only implies a violation of the right to adequate judicial protection and due process but also affects the victims, as indicated by the ME, who fall into lengthy and drawn-out proceedings, with the burden that such a situation represents for them.
36. The ME also indicates that although the Bolivarian Republic of Venezuela makes seizures, the number is low. Most seizures are related to drug trafficking, consistent with one of the risks identified in the National Risk Assessment. However, other crimes and cross-border transactions are not monitored and prosecuted similarly.
37. Additionally, it is stated that "The confiscation and forfeiture of the instruments and proceeds of crime are not considered goals of the policies of the Bolivarian Republic of Venezuela."
38. The above highlights the lack of a consistent, sustained effort on the scale required to address the risks involved in drug trafficking, which, according to the FATF, are not representative of the real size of this illicit activity.

39. During the four-year period analyzed, only twenty seizures were made at the different land control points, three at sea and none at aerial control points, figures that speak for themselves about the lack of application of FATF policies in this area and support the agency's assertion regarding the low number of seizures concerning the country's risk.
40. Regarding the risk assessment to be carried out by the State to determine which areas should be focused on and take measures according to each level of risk, the ME notes the following: "The analysis of the country's threats and vulnerabilities **is not deep enough and is mainly focused on palliative measures,**" (emphasis by author) which, once again, shows that the lack of risk assessment is not only concerning NPOs but a major significant problem.
41. Another element that we consider fundamental to the report's findings is that it notes that, although the FGR conducts ML investigations, "the evaluation team was able to observe that the number of predicate crimes investigations exceeds the number of ML investigations, revealing that MLD is not an investigative priority."
42. In the same context, the above shows that the country's non-compliance is generalized and goes far beyond R.8 and the NPOs.
43. This not only implies that formal activities are sought, but also that there are no policies of practical application to correct the deficiencies that exist. Therefore, the above transcription exposes a lack of interest in the real solution of the problems and is limited to recording the absence of formal duties as if that is what the 40 recommendations were all about.
44. This is worrisome because ML/FT are global problems that require coordinated and proactive action among the different States. This situation is precisely the reason for the creation of the FATF at the end of the last century, so it is dire that the country is singled out for refraining from acting following the general standards of cooperation against ML/FT.
45. Since the issue of NPOs is an extensive and complex topic, we do not want to limit ourselves to what the report says about R.8 but also to other aspects of interest that give context to the MA's analysis of Venezuelan civil society and the role of the State concerning it.
46. Thus, the ME indicates that, according to information provided by the National Financial Intelligence Unit (UNIF), 9,960 NPOs were identified, of which 44 were classified as high risk (0.44%) and 84 as moderate risk (0.84%). From this, the UNIF concludes that 98.72% of the NPOs are low risk.
47. It is important to note that the number of non-profit organizations evaluated is limited to those that have bank accounts but does not include de facto organizations or those that, although registered for several reasons, do not have bank accounts, for example, those that

rely exclusively on the volunteer work of their members. Therefore, the number indicated cannot be considered a parameter of the total number of organizations operating in the country.

48. Having said this, the most important aspect of the information cited by the MS is, firstly, that it is official information provided by a state entity, and secondly, that it is significant insofar as this entity recognizes that the number of NPOs with some kind of risk (adding those with high and moderate risk) is insignificant, not reaching 1.3% of the total number of NPOs with bank records, which shows the lack of justification for the State policy of considering all of them as high risk.
49. Likewise, the MS reports that there are 2,654 foundations in the country and that these, together with the cooperatives, barely represent 0.22% of the gross domestic product (GDP, BCV), which shows the low effect that the financial movements of these organizations have in the country and, consequently, the low incidence in risk for the same reason.
50. Another significant fact is that the ME states that "some institutions of the banking sector **showed a low interest in taking risk and avoided establishing commercial relations with sectors considered high risk by SUDEBAN**, such as casinos, exchange houses, DNFBPs or NPOs." (emphasis by author). It is the confirmation that the wrong application of FATF standards by the Venezuelan State has brought real negative consequences for the NPOs, up to the point of being confessed by the banks themselves, which have the burden of registering the long list of requirements that NPOs have to present to owning a simple bank account.
51. Even more explicit is the ME's statement concerning the risks to the State of terrorist incidents committed by irregular groups in the country that are not weighed in the assessment as the report points out:

The country has suffered several terrorist incidents committed by internal and external threats, such as the ELN, throughout the period 2016-2019 period, which have the government, security forces, citizens, and the press, according to information obtained through open sources of information. These incidents should have required funding or material support for the perpetrators to perform them; however, the assessment team notes that the country has not designated individuals and entities at the national level or put in place mechanisms to freeze their funds or other assets or those of their financiers without delay (Emphasis by author).

52. Additionally, the ME notes:

The evaluation team considers that although a significant number of FT proceedings are pending before the TSJ and special courts exist to resolve the cases, most are awaiting trial, demonstrating a lack of prioritization or allocation of resources commensurate with the average level of FT risks. In addition, most cases are not related to specific FT-related threats that would be relevant in the Venezuelan context (e.g., FARC or ELN). It should also be highlighted that most of the processes were not related to crimes that generate assets in favor of terrorist organizations, such as smuggling or illegal mining, as they are in the National Risk Assessment (ENR) 2015-2020 and in the open sources of information. (Emphasis by author).

53. An essential element when considering the FATF recommendations as protection mechanisms for NPOs is that they are based on the premise that the State has an obligation to protect, and hence, it must have constant and close communication with the subjects with respect to which it has this obligation, and this is unfortunately not the case in Venezuela, where the stigmatization and criminalization of NPOs are normalized.
54. The ME evidences this lack of communication in the following lines: The disconnection between civil society and the State, something that from the organizations has been touted for years, is now clearly described by an international institution such as the FATF that enshrines as an obligation of the State the protection of NPOs. Unfortunately, several months after the publication of the ME, the disconnection continues since, even though work began several years ago to carry out a new national risk assessment, organizations have not been called to participate in it.
55. According to the FATF evaluation team's statement, it is not true that all NPOs should be subject to supervision, but only those that, after a risk-based evaluation, meet the objective requirements to be considered as subject to State control.
56. Henceforth, it is essential to take into account from now on this statement of the FATF about NPOs insofar as it dismantles the official discourse of a State that was supposedly "obliged" to control and supervise all NPOs because of the "fault" of the FATF, since it is the same institution that says that this is not the case.
57. Another important aspect of the ME is regarding the National Risk Assessment (NRA), since according to R8 and its interpretative note, any rating or action on NPOs must be preceded by a risk assessment that determines which NPOs should be supervised and which should not.

58. The FATF notes that the NRA did not adhere to the necessary minimum standards. Consequently, the conclusion that excessive attention should be paid to NPOs is unfounded and not linked to the requirements of the FATF standards.
59. The Bolivarian Republic of Venezuela has not demonstrated that it applies proportionate and risk-based oversight measures to NPOs. In particular, the country created two registries: the Single Registry of Reporting Entities (RUSO) and the Registry of Non-Domiciled NGOs (REGONG), both with the purpose of contributing to the supervision of the NPO sector, of which only the latter is operational. In any case, the country did not demonstrate that these registries help prevent the abuse of NPOs for FT.
60. For the evaluation team,
- the excessive attention paid to the NPO sector and the measures the country tries to implement are not justified under FATF standards. Beyond the creation of various registries, which imply an additional burden for NPOs, particularly for those that do not present any risk, the excessive emphasis placed by the authorities on this issue is not justified by the risk involved and is detrimental to other activities. (Emphasis by author).**
61. The MS confirms what Venezuelan civil society has been saying for years:
- That it is not true that FATF regulations are being correctly applied to NPOs.
 - That the excessive attention given to NPOs does not correspond to the reality of risk, nor is it the product of an objective analysis, and that, in addition, this attention is not given to other acts and actors with a significant level of risk, such as those indicated by the FATF, which are not from civil society.
 - That the application of repressive measures by the Venezuelan State has resulted in a lack of interest on the part of banks in having relations with NPOs, thus affecting their operations.
 - That the registries implemented by the State do not comply with FATF standards and, therefore, are entirely unnecessary and without basis in its 40 recommendations.
 - That a risk analysis of NPOs has not been carried out following the FATF requirements and with the required depth.
 - That the high-risk classification of NPOs, denounced by the Venezuelan State, is not justified; on the contrary, it imposes undue burdens on organizations, which present practically no risk whatsoever, thus affecting the human right to freedom of association.

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