

FATF Assessment Results



FATF
GAFI

IS THE CIVIL SOCIETY PROTECTED IN VENEZUELA?

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INTRODUCTION

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,¹ as repeatedly reported by civil society organizations² and human rights protection institutions such as the Inter-American Commission on Human Rights.³

Therefore, it is of particular interest to analyze the results of the FATF's evaluation made by its Caribbean chapter, the CFATF (Caribbean Financial Action Task Force), on the anti-money laundering and combating the financing of terrorism policies by Venezuela, one of its members.

It is even more relevant if one takes into account that concerning non-profit organizations (NPOs) - a term that includes non-governmental organizations (NGOs) - the FATF expressly declares in its Recommendation No. 8 (R.8) that States are committed to "establish targeted and proportionate measures, aligned with the risk-based approach" aimed at NPOs **"to protect them from abuse for terrorism financing"** (emphasis added).⁴ In this context, it is not a leap of faith to point out that the civil society does not perceive that such protection exists; On the contrary, the FATF imperatives are used against the organizations. In fact, it would be a surprise for several organizations in the country to find out that FATF standards are designed to protect them.

Concerning the case of Venezuela and based on these considerations, it is of vital importance to know, analyze and spread the results of the fourth round of mutual evaluations. Conclusions drawn from them expose a reality far from the FATF goals resulting in a lack of protection for NPOs in the country.

- 1 *New providence prequalifies NGOs as terrorists.* Vid. <https://accesoalajusticia.org/nueva-providencia-precalifica-como-terroristas-a-las-ong/>; *NGOs in Venezuela are still under threat with the new ruling 002-2021.* Vid. <https://accesoalajusticia.org/siguen-bajo-amenaza-las-ong-en-venezuela-con-la-providencia-002-2021/>.
- 2 *Joint Communiqué: Civil Society Organizations demand the revocation of Administrative Ruling 002 and any other measure aimed at criminalizing and closing civic space in Venezuela.* Vid. <https://www.civilisac.org/alertas/comunicado-conjunto-organizaciones-de-la-sociedad-civil-exigen-revocar-la-providencia-administrativa-002-y-cualquier-otra-medida-dirigida-a-criminalizar-y-cerrar-el-espacio-civico-en-venezuela>.
- 3 *The IACHR and its RELE reject the registration of non-profit organizations before the National Office Against Organized Crime and Financing of Terrorism of Venezuela.* Vid. <https://www.oas.org/es/CIDH/jsForm?File=/es/cidh/prensa/comunicados/2021/108.asp>.
- 4 *Recommendation No. 8. Non-profit organizations.* Vid. <https://www.cfatf-gafic.org/es/documentos/gafi40-recomendaciones/414-recomendacion-8-organizaciones-sin-fines-de-lucro>.

1. WHAT ARE MUTUAL EVALUATIONS?

Since the establishment of the 40 recommendations of the Financial Action Task Force (FATF) in 1990, this organization has been establishing an evaluation procedure for its members to determine the level of compliance with these recommendations. Thus, although the methodology for examining each country member has evolved, the basis for such evaluation has always been the same. Each country is not evaluated by the FATF directly but by its peer members through a team of experts in the area.

Although this evaluation process (see Chart No. 1) seems simple, it is pretty laborious and complex insofar as it involves the determination of many technical variables that shall be considered and implemented by public and private sector stakeholders, since it is evident that money laundering and terrorism financing can occur in both scenarios and, on several occasions, be developed in parallel, making necessary to have public policies that involve them.

The methodology for the evaluation process can be found in several documents, including the *Methodology for Assessing Technical Compliance with the FATF Recommendations and Effectiveness in Combating Money Laundering and Terrorist Financing*⁵; the *Consolidated Processes and Procedures for Mutual Evaluations and Universal Follow-up Procedures*⁶ and the *Procedures for the Fourth Round of FATF Mutual Evaluations*.⁷

Once the evaluation team submits its report, it must be addressed to the FATF plenary for approval. In this way, the report is made public, including a diagnosis of compliance with the 40 Recommendations, and the steps to be implemented when the evaluated country fails to comply with the commitments.

Currently, the FATF is completing its fourth round of mutual evaluations. This process has gone hand in hand with the changes that have occurred in the 40 Recommendations to update them in addition to the changes that the financial system has undergone in recent years, among which we can mention the introduction of cryptocurrencies and new technologies.

5 FATF Methodology for assessing compliance with the FATF Recommendations and the effectiveness of AML/CFT systems. Vid: <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Fatf-methodology.html>;

6 Consolidated Processes and Procedures for Mutual Evaluations and Follow-Up Universal Procedures. Vid: <https://www.fatf-gafi.org/en/publications/Fatfgeneral/Universal-procedures.html>.

7 Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations. Vid: <https://www.fatf-gafi.org/en/publications/Mutualevaluations/4th-round-procedures.html>.

2. WHAT IS EVALUATED?

The simple answer to this question is compliance with the 40 Financial Action Task Force (FATF) Recommendations. Still, such simplicity is lost when one understands how complex a financial system is, its full scope, and the variety of public and private stakeholders involved.

Hence, mutual evaluations are divided into two main parts, namely technical and efficiency.

The **technical** one focuses on the legal framework regulating the financial system and the country's institutions. The first thing is to determine whether the legal regime of an evaluated country has incorporated the principles established in the 40 Recommendations. Therefore, if this does not occur, there is no sense in assessing the rest; if the recommendations are not incorporated into the national regulations, neither public nor private institutions or individuals can be required to comply with them.

Thus, analyzing the legal framework to assess the commitment level to implement the recommendations is essential. Once this has been considered, the second element of the technical assessment 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.

In the case of non-profit organizations (NPOs), it should be noted that Recommendation No. 8 (R.8) is the one that concerns them in the first place, as it gauges the commitments of the States towards them and how to rule the relationship between NPOs and the State in the implementation of these principles.

Thus, for example, R.8⁸ sets the following commitments:

1. They shall review the suitability of their rules for NPOs they have identified as vulnerable to the financing of terrorism.
2. This identification cannot be done lightly in any simple way. Still, countries shall take measures on NPOs that are targeted and proportionate under a risk-based approach, in order to protect them from abuse for terrorist financing activities.
3. Under the conditions outlined above, these measures shall prevent NPOs from being used by terrorist organizations that pretend to be legitimate entities.
4. Prevent legitimate organizations from being used as tools of terrorist financing or evading measures such as asset freezing.
5. Avoid being used as a cover-up to hide the diversion of funds intended for legitimate purposes to terrorist organizations.

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

Thus, it is not left to the discretion of the countries as to how they are to comply with R.8, but rather this, and its corresponding interpretative note, indicates the tools for compliance, the first of which is to have the protection of NPOs as a priority, and not their persecution or criminalization, as this would go directly against the purposes of the FATF and of the recommendation itself.

In this context, national legislation and the institutions in charge of applying it should evaluate NPOs based on risk; this implies mapping them, with their active participation, as well as⁹ and establishing categories among them to show which are the most vulnerable and which are not. Thus, for example, an NPO that receives its budget from the State has a minimal risk. In contrast, another that receives funds from a tax haven has a much higher risk, but this requires an evaluation to determine these situations.

Once the risk assessment has been made, targeted and proportional measures shall be taken per the reality and circumstances of each NPO and on the assumption that such measures do not imply an obstacle or impediment to the execution of the organizations' activities.

It means, for example, that those organizations that do not entail any or minimal risk do not have to provide information or comply with the requirements of the regulatory agencies. A concrete case of this can be found in Uruguay, where only those NPOs with revenues higher than US\$490,000 per year or assets higher than US\$300,000 become liable parties.¹⁰ If the same regulation were applied to the Venezuelan case, then it would mean that the vast majority of organizations would not be included in the supervision by the corresponding agencies.

Thus, it is neither a rule nor an obligation for all NPOs to be considered as parties under supervision. However, this has been the rule in the country, so it is important to emphasize that this is not an obligation imposed by the FATF, but on the contrary, it is considered a best practice to establish parameters that justify the supervision of only those NPOs that involve certain and determinable risks.

Having said the above, and without wishing to go into more detail on what the implementation of R.8 implies, the first thing is that the way to comply with it is not discretionary for the State, and, secondly, that it must do so based on the conditions imposed by the recommendation itself and its interpretative note.

9 "Countries should work with NPOs to develop and refine best practices aimed at addressing terrorist financing risks and vulnerabilities." Interpretative Note to R-8. Vid: <https://www.cfatf-gafic.org/es/documentos/gafi40-recomendaciones/414-recomendacion-8-organizaciones-sin-fines-de-lucro>.

10 National Secretariat for the fight against money laundering and terrorist financing (2019). *Best practices guide for the prevention of money laundering and terrorist financing in nonprofit organizations*. p. 3. Available at: <https://www.bcu.gub.uy/Servicios-Financieros-SSF/UIAF/SENA-CLAFI-Guia-Mejores-practicas-para-OSFL.pdf>.

Returning to the technical evaluation, it involves, as mentioned above, compliance with each of the 40 Recommendations according to the following scale:

1. Compliant (C). There is no deficiency.
2. Mostly compliant (MC). There are only minor deficiencies.
3. Partially compliant (PC). There are moderate deficiencies.
4. Not met (NC). There are significant deficiencies

For practical purposes, the first two are considered positive and the last two are considered harmful.

On the other hand, the second evaluation component is **efficiency**, which is nothing more than determining the degree of compliance with the recommendations and, more specifically, the immediate results of their implementation.

The efficiency component can be gauged through 11 immediate outcomes, where assorted recommendations are combined. Thus, R.8 is included within the elements to be evaluated in Immediate Outcomes 6 and 10. The content of Immediate Outcome 6 being is to determine whether the authorities properly used financial intelligence in money laundering and terrorist financing investigations. In contrast, Immediate Outcome 10 seeks to determine whether terrorists or their organizations are prevented from collecting, transferring or using funds and abusing NPOs.

The values to assess the level of compliance in the immediate outcomes are as follows:

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.

Peru, a Latin American Financial Action Task Force (GAFILAT) country member, renders a graphic example of the use of the two components of the evaluation in Spanish:

Chart No. 1

EFFECTIVENESS AND TECHNICAL COMPLIANCE RATINGS

Effectiveness ratings

RI. 1 Risk, policy and coordination	RI. 2 Cooperation international	RI. 3 Supervision	RI. 4 Measures preventive	RI. 5 People and structures legal	RI. 6 Intelligence financial
Moderate	Substantial	Moderate	Moderate	Under	Substantial
RI. 7 LA research and processing	RI. 8 Forfeiture	RI. 9 TF research and processing	RI. 10 TF preventive measures and financial penalties	RI. 11 FP financial sanctions	
Under	Moderate	Moderate	Substantial	Substantial	

TECHNICAL COMPLIANCE RATINGS

AML/CFT policies and coordination Money laundering and forfeiture

R. 1	R. 2	R. 3	R. 4
MC	C	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			

Encircled in red, the rating for this country,¹¹ on R.8 is partially achieved, resulting in a negative rating. In contrast, in the case of Immediate Results 6 and 10, which include R.8, the rating reveals a substantial level of effectiveness, indicating a positive rating.

It should be noted that the efficiency compliance indicators are placed first, followed by the technical indicators, showing their order of importance within the FATF.

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

3 HOW IS IT EVALUATED?

According to the Financial Action Task Force (FATF) website,¹² the procedure for mutual evaluation (ME) is as follows:

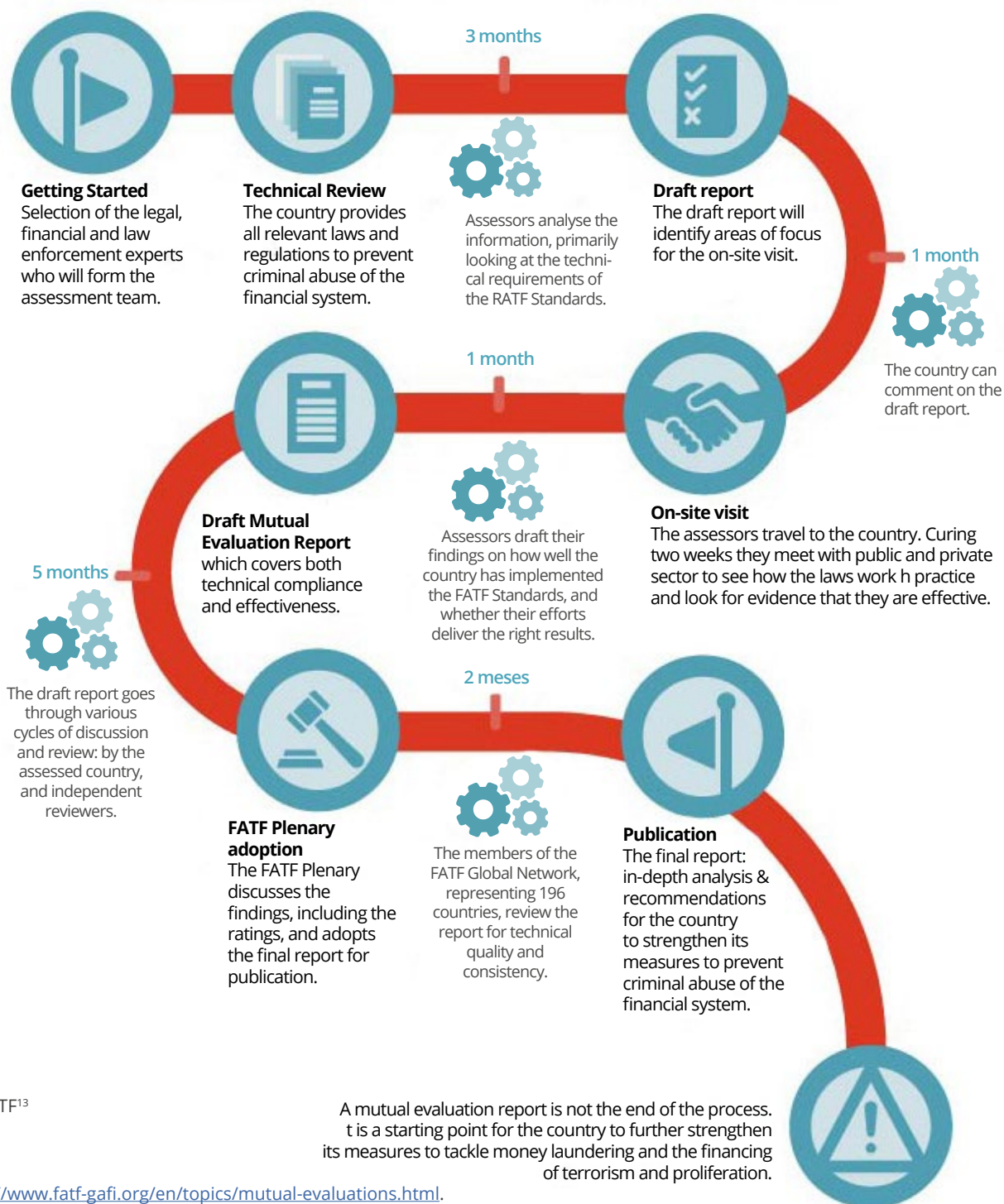
1. Legal, financial, and law enforcement experts are selected to constitute the evaluation team.
2. The country submits information on laws relevant to the FATF mandate, and regulations to prevent crimes and abuses against the financial system.
3. The experts analyze the information provided from the 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 ME report is made public.
12. This step 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 schedule. This process is shown in a flow chart below.

¹² <https://www.fatf-gafi.org/en/topics/mutual-evaluations.html>.

FLOW CHART NO. 1

The Mutual Evaluation Process



Source: FATF¹³

A mutual evaluation report is not the end of the process. It is a starting point for the country to further strengthen its measures to tackle money laundering and the financing of terrorism and proliferation.

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

However, it should be clarified that the approval of the report by the FATF Assembly is not the completion of the evaluation process, as the recommendations for improving the indicators in the subsequent evaluation will be followed up.

Regular monitoring, which shall be the default monitoring, involves the preparation of a report three years before the start of the following ME and results from considering that a rationally acceptable degree of compliance has been achieved in the previous evaluation.

Reinforced monitoring, on the other hand, implies, as its name suggest, more intense monitoring addressed "for countries with significant deficiencies or which are not making sufficient progress."¹⁵

The plenary gauges technical and efficiency indicators to consider whether the application or not of an enhanced follow-up. In the case of technical compliance, an enhanced follow-up shall be applied in the following circumstances: if the State receives a valuation of eight or more not compliant (NC) or partially compliant (PC) in technical compliance, or if it receives an NC/PC rating in the follow-up of Recommendations 3, 5, 10, 11 and 20.

In terms of efficiency assessment, a country would move to an enhanced follow-up if it has a low or moderate level of efficiency for seven or more of the eleven Immediate Outcomes, or if it has a low level of efficiency for four or more of the 11 Immediate Outcomes.

If the plenary considers this type of follow-up for a country, it means that the FATF will make at least three annual follow-up reports, which should start one year after the ME.¹⁶

Generally, enhanced monitoring implies the country's inclusion on the so-called "grey list," although this is not automatic and is at the organization's discretion.

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 extraordinary, as they involve the following:

- That the president of the FATF 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.

14 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.

15 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.

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

- That a formal FATF statement be issued, recommending the most appropriate action for the case and considering whether additional enforcement measures (countermeasures) are necessary.¹⁷
- Suspension of the affected country's membership in the FATF. Once this is decided, the member country will not be able to attend meetings or make contributions except to determine whether the deficiencies have been resolved.
- That the membership of the country is terminated.¹⁸

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.

These processes have been crucial to the efficiency of compliance with FATF regulations, and show that the term soft law, used to describe those international norms that do not have the status of international treaties, as is the case of recommendations, is insufficient to describe the nature of the FATF regulatory framework because if there is one thing this institution can boast of, it is that, despite the criticisms that can be made, the degree of compliance by members has been increasing, something challenging to affirm in other areas of international law, as would be the case, for example, of human rights.

Thus, as of February 2023, the FATF had examined 125 members and had identified 98 as non-compliant; of these, 72 had made the necessary reforms to remedy their deficiencies and had therefore been removed from the monitoring process, which speaks of a high degree of efficiency.

17 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

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

4. THE EVALUATION OF VENEZUELA: SPECIAL REFERENCE TO NON-PROFIT ORGANIZATIONS.

4.1. General aspects of evaluation

As mentioned In the Venezuelan case, the Financial Action Task Force (FATF) recommendations have been used as a tool to repress civil society. We will direct the primary attention of this analysis to what relates to non-profit organizations (NPOs) and its Recommendation No. 8 (R.8). However, first, we will make an overview of the assessment in general because elements of analysis derived from it can be used to understand better what is related to civil society.

The first thing to note is the evaluation team's composition which comprises representatives from Spain, El Salvador, the Russian Federation, the Turks and Caicos Islands and Nicaragua.¹⁹ However, it should be noted that the report of this evaluation team was reviewed by representatives of other countries, which is common in the FATF since, when dealing with technical-financial issues it is understood that the evaluation assumptions are objective. Thus, the Mutual Evaluation (ME) records the revision made by representatives of Saint Maarten, Curaçao, the Council of Europe (Moneyval)²⁰ and the United States.²¹

Among the most noteworthy general findings, we should begin by highlighting the values obtained:

- 19 Irene Sanchez, deputy assistant director general of Inspection and Control of Capital Movements of the Ministry of Economy and Digital Transformation of the Kingdom of Spain (financial expert); Mauro Ortega, general coordinator of the Financial Intelligence Unit of El Salvador (financial expert); Sergey Levoshin, representative of the Ministry of the Interior of the Russian Federation in the Republic of Peru and the Dominican Republic (law enforcement expert); William Lightbourne, inspector in charge of the National Criminal Intelligence Agency of the Royal Turks and Caicos Islands Police Force (UK) (law enforcement expert); and Bayardo Orozco, director of Control and Compliance of the Financial Analysis Unit of Nicaragua (legal expert).
- 20 The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval), is a permanent monitoring body of the Council of Europe responsible for evaluating compliance with the main international standards for combating money laundering and terrorist financing and the effectiveness of their implementation, as well as for making recommendations to national authorities on necessary improvements to their systems. Vid: <https://www.coe.int/en/web/moneyval>.
- 21 Ligia Stella, director of Saint Maarten's Financial Intelligence Unit; Solange Lopez, legal advisor to Curaçao's Financial Intelligence Unit; Arianne Schneider, Project Officer at the Moneyval Secretariat (Council of Europe); and Steven Inglis, senior advisor to the U.S. Treasury Department.

CHART NO. 2

EFFICIENCY AND TECHNICAL COMPLIANCE INDEX

EFFICIENCY

IO.1	IO.2	IO.3	IO.4	IO.5	IO.6	IO.7	IO.8	IO.9	IO.10	IO.11
Moderate	Low	Low	Low	Low	Low	Low	Low	Low	Low	Low

Note: efficiency ratings can be high, substantial, moderate, and low.

TECHNICAL COMPLIANCE

R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10
PC	PC	LC	PC	PC	NC	NC	NC	LC	PC
R.11	R.12	R.13	R.14	R.15	R.16	R.17	R.18	R.19	R.20
LC	PC	LC	PC	PC	PC	PC	PC	PC	PC
R.21	R.22	R.23	R.24	R.25	R.26	R.27	R.28	R.29	R.30
LC	PC	PC	NC	NC	PC	PC	PC	PC	LC
R.31	R.32	R.33	R.34	R.35	R.36	R.37	R.38	R.39	R.40
LC	PC	PC	PC	PC	LC	PC	PC	LC	PC

Note: technical compliance ratings can be C- compliant, LC- largely compliant, PC-partially compliant, NC- non compliant, and NA- not applicable.

Source: CFATF²²

We consider it very important to analyze these values, even if only briefly, because they reveal a picture of general non-compliance and, therefore, the lack of commitment of the country's government to the FATF recommendations, not only with respect to R.8.

Assuming the immediate results at the chart's beginning that gauge the efficiency component of compliance with the recommendations, let us start by mentioning that in 10 of the 11 indicators, the country obtained the worst possible rating. That is, a low level of efficiency and only one remaining No. 1. Therefore, the efficiency assessment resulted in a negative rating of moderate, just above the worst possible rating.

²² CFATF (2023). *Anti-Money Laundering and Counter-Terrorist Financing Measures - Bolivarian Republic of Venezuela, Mutual Evaluation Report*, p. 13. Available at: <https://www.cfatf-gafic.org/documents/4th-roundmeval-reports>.

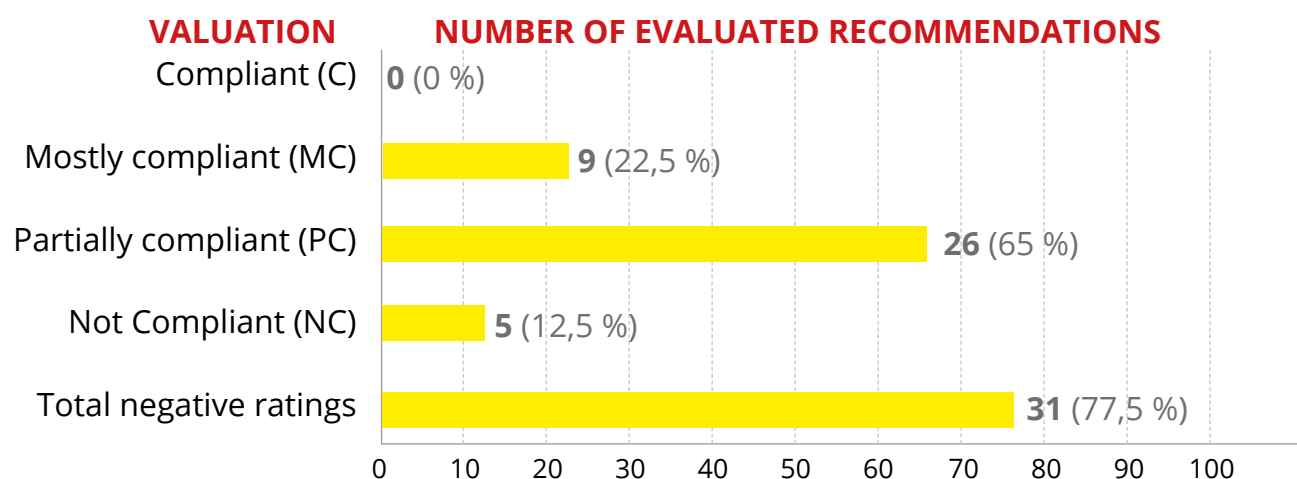
There is no positive rating for the country in any of the immediate results.

It implies that, in general, the 40 recommendations have the worst possible level of efficiency, and that among the ten rated as low level are Immediate Results 6 and 10, including R.8.

Then, when it comes to the second component of the evaluation of 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 considered not complied with, including R.8.

GRAPH NO. 2

MEASURING VENEZUELA'S COMPLIANCE WITH THE FATF 40 RECOMMENDATIONS



According to the FATF parameters described above, the country's non-compliance requires it be subject to enhanced monitoring, as it exceeds seven or more immediate results with low or moderate efficiency (it has 10, as mentioned above).

In the case of the recommendations individually considered, the threshold for a reinforced follow-up is when eight or more NC/PC ratings are obtained, which occurs in the Venezuelan case where the sum of both concepts is thirty one, or if it receives an NC/PC rating in the follow-up of Recommendations 3, 5, 10, 11 and 20, in which case the country's situation improves a little by having mostly fulfilled Recommendations 3 and 11, and partially fulfilled Recommendations 5, 10 and 20, so that most of the objective elements established for a reinforced evaluation are

verified and even to consider a possible inclusion in the "gray list" according to these same indicators, although, as already indicated, this is not automatic and is at the organization's discretion.

Likewise, we must refer to some statements of the mutual evaluation (ME), which point out severe deficiencies on the part of the State in the compliance of basic elements to be examined. Thus, it is indicated that, notwithstanding, the State's 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.**"²³ (emphasis by author)

This statement by the FATF is particularly relevant insofar as it implies a lack of action on the matter in global terms, which contrasts sharply with the excessive attention paid to NPOs and makes it precisely unjustified, insofar as, in the rest of society, as indicated by the FATF, there is no evidence of concrete actions by the State in the fight against ML/FT.

In this regard, we must draw attention to the following statements of the ME:

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.**

There have been some ML cases related to drug trafficking as one of the risks in the 2015-2020 NRA. However, **no cases have related to other underlying crimes and areas identified in the 2015-2020 NRA, such as corruption, have started.**²⁴ (emphasis by author).

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",²⁵ and although the TSJ has prosecuted ML cases, **"the time in which such cases are resolved is not efficient and has negative consequences for the State, the victims and the defendants."**²⁶ (emphasis by author)

23 CFATF (2023). Op. cit. p. 7.

24 CFATF (2023). Op. cit. pp. 7-8.

25 CFATF (2023). Op. cit. p. 8.

26 Idem.

It should be noted that autonomous ML is pursued separately from the illicit activity that gives rise to the funds,²⁷ at the same time, third-party ML involves the participation of persons or companies that generally operate outside the financial sector but provide goods or services for laundering.²⁸ Self-laundering, on the other hand, refers to the fact that the same person who carries out the illicit activity that produces the funds is the one who subsequently tries to legitimize them.²⁹

Thus, although the ME highlights the risk that the aforementioned types of MLs are occurring in the country, it is noted that only one kind of ML has been pursued, evidencing a lack of specific policies covering all typologies.

However, for Acceso a la Justicia, given its role as an observatory of the Venezuelan judiciary, as well as of the rule of law, what the ME indicates about delays in judicial proceedings is particularly significant, something that several human rights protection institutions have highlighted and that exposes how procedural delay is something structural that has no exceptions, except, of course, those of interest in the Executive Branch.³⁰

It is dire, as it not only a violation of the right to adequate judicial protection and due process but also affects the victims, as indicated by the ME, who are subjected to lengthy and interminable proceedings, with the burden that such a situation represents for them.

On the other hand, the ME also indicates the following:

Although the Bolivarian Republic of Venezuela **performs 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 in the same way.**³¹
(emphasis by author)

In addition, it is stated that "the **confiscation and forfeiture** of the instruments and proceeds of crime **are not goals of the policies of the Bolivarian Republic of Venezuela.**"³² (emphasis by author).

The above exposes the lack of an earnest, sustained effort based on a customized scale of the risks involved in drug trafficking activities, which, according to the FATF, are not representative of the real size of this illicit activity. It is dire to affirm that there is no monitoring at the borders, especially when it is public and notorious for the considerable number of checkpoints in those

27 <https://www.jerseyfsc.org/industry/guidance-and-policy/money-laundering/>.

28 <https://www.ice.gov/sites/default/files/documents/Report2017/CSReport-13-4.pdf>.

29 <https://www.abogacia.es/actualidad/opinion-y-analisis/el-autoblanqueo-regulacion-y-conductas-constitutivas/>.

30 <https://accesoalajusticia.org/justicia-expedita-pero-solo-pa-los-panas/>.

31 CFATF (2023). Op. cit. p. 8.

32 Idem.

border areas that do not seem to perform their tasks properly, according to the FATF. On the contrary, generate allegations of acts of corruption against citizens or less favored groups such as indigenous people.³³

We believe it is important to highlight the issue of seizures, since the information exposed by the ME, based on data provided by the authorities themselves, reveals that illicit activities that occur at the country's borders are of scarce importance:

CHART NO. 3
Number of activities conducted by the SENIAT during 2016-2021

Year	Entry	Exit	Declaration	Seizures or forfeitures	Proceedings Started	Proceedings Completed
LAND						
2018	41	211	252	0	252	-
2019	113	6	119	0	119	-
2020	74	2	76	20	76	-
2021	0	21	21	0	21	-

SEA						
2018	138	82	220	0	220	-
2019	208	2	210	3	210	-
2020	133	4	137	0	137	-
2021	110	11	121	0	121	-

AIR						
2018	1	0	1	0	1	-
2019	10	1	11	0	11	-
2020	0	0	0	0	0	-
2021	0	2	2	0	2	-

Source: FATF³⁴

33 <https://provea.org/actualidad/decenas-de-alcabalas-limitan-la-vida-de-indigenas-wayuu/>.

34 CFATF (2023). Op. cit. p. 73.

This board shows that, during the four-year period analyzed, only 20 seizures were made at the various land checkpoints, only 3 at marine checkpoints and none at airport checkpoints, these figures speak for themselves about the lack of application of FATF policies in this area and support the agency's statement regarding the low number of seizures concerning the country's risk.

About the risk assessment that the country should perform to determine the areas where attention shall focus and take steps accordingly to each level of risk, the ME notes the following: "the analysis of the country's threats and vulnerabilities is not sufficiently deep and is concentrated on shallow measures."³⁵ (emphasis by author) Once again, it reveals that the lack of risk assessment is not only with respect to NPOs, but a major significant problem.

Another element that we consider fundamental in the conclusions of the report is that it states that, although the FGR conducts investigations on ML, "the evaluation team was able to observe that the number of investigations on predicate crimes³⁶ exceeds the number of ML investigations, which reveals that ML is not an investigative priority."³⁷ In this context, we shall clarify that underlying crimes shall be understood as those that generate illicit revenues, for example, drug trafficking. It tells us that attention is focused on these crimes and not on others as important as ML and FT.

In the same context, the above shows that the country's non-compliance is generalized and goes far beyond R.8 and the NPOs.

On the other hand, a rather bleak description of the generalized non-compliance by the Venezuelan State can be found in the following statement:

Venezuelan supervisory authorities generally **do not have records of the deficiencies identified**. If they do, such records are related to non-compliance with obligations, such as submitting of risk self-assessments, procedures manuals, or annual operating plans.³⁸ (emphasis by author)

It does not only imply that formal activities are not 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 to the problems and is limited to recording the absence of formal duties as if that is what the 40 Recommendations were all about.

35 CFATF (2023). Op. cit. p. 4.

36 In English the expression is "*predicate offences*" or "*predicate crimes*", and refers to a crime that occurs or is executed within a larger crime, such as, for example, arms trafficking within a money laundering scheme. The expression is also used to indicate those crimes that originate illicit proceeds. Vid: https://en.wikipedia.org/wiki/Predicate_crime.

37 CFATF (2023). Op. cit. p. 4.

38 Idem.

Finally, as a general observation, we should note that the ME indicates that, although the Venezuelan State offers, within the framework of the Egmont Group, cooperation to other States, "the country does not frequently and proactively seek cooperation from its foreign counterparts through requests for information. Only SAREN and UNIF⁴⁰ reported exchanging beneficial ownership information with foreign authorities."⁴¹

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 worrisome that the country is singled out for not acting per the general mandate of cooperation against ML/FT.

As can be seen, these are not isolated or decontextualized statements but rather a reiteration of fundamental non-compliances that evidence a structural situation and, therefore, the non-existence of the public policies required by the 40 Recommendations.

4.2. Evaluation of Recommendation No. 8

a) General and relevant information on NPOs in the ME.

Since the issue with the NPOs is an extensive and complex topic, we do not want to limit ourselves to what the report says about R.8 but also refer to other aspects of interest that give context to the ME's analysis of civil society and the state's role concerning civil society.

Thus, the ME indicates that, according to information provided by the National Financial Intelligence Unit (UNIF), 9,960 NPOs were identified. Forty-four were classified under high risk (0.44%), and eighty-four under moderate risk (0.84%). It can be concluded that UNIF considers 98.72% of NPOs to be low-risk.⁴²

39 The Egmont Group of Financial Intelligence Units was created in 1995 in Brussels, Belgium, with the objective of stimulating international cooperation in the fight against money laundering and the financing of terrorism.

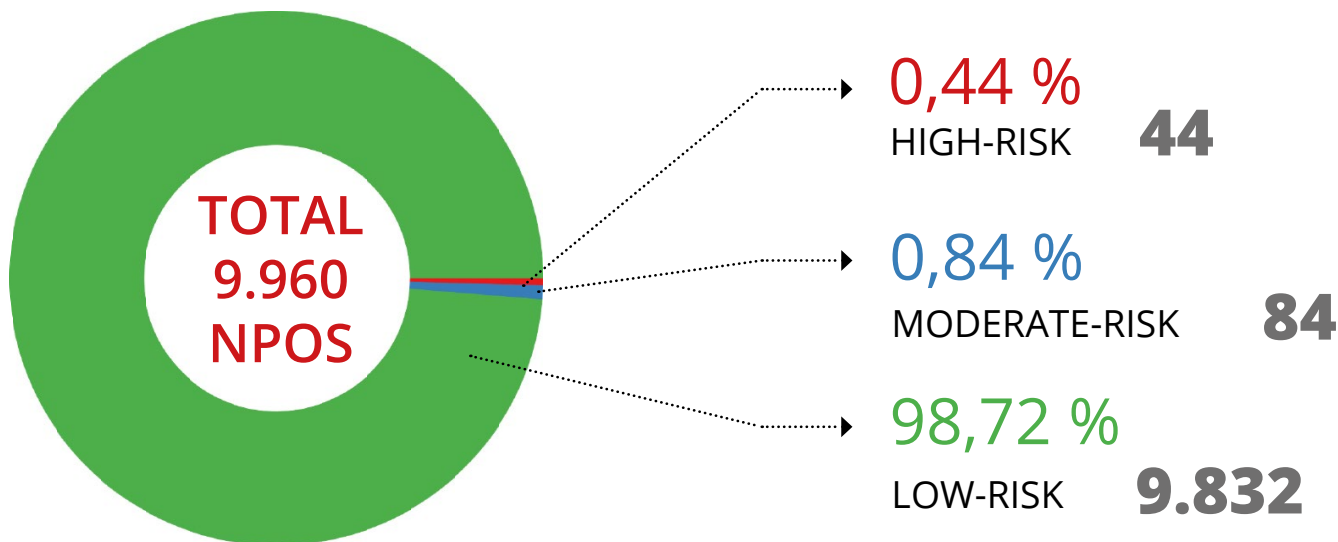
40 National Financial Intelligence Unit.

41 CFATF (2023). Op. cit. p. 12.

42 CFATF (2023). Op. cit. p. 84.

GRAPH NO. 3

NPOS AT HIGH, MODERATE OR LOW RISK



Source: compiled by Acceso a la Justicia

In this regard, the first thing to note is that the number of NPOs is limited to those that have bank accounts but does not include de facto organizations or those that, although registered, for various reasons, do not have bank accounts, such as, for example, those that rely exclusively on the volunteer work of their members.

Thus, the number indicated cannot be considered a parameter of the total number of organizations operating in the country.

The most important aspect of the information cited by the ME 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 that have some level of risk (adding those of high and moderate risk) is insignificant, not reaching 1.3% of the total number of NPOs with bank records, which discloses the lack of justification for the State policy of considering them all as high-risk.

Furthermore, this data reveals a contradiction within the State itself insofar as its data say the opposite of what it concludes concerning the risk of NPOs, and shows an intentionality that is alien to those that configure R.8 and, therefore, a failure to comply with it.

Likewise, the ME 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),⁴³ exposing the low effect that the financial movements of these organizations have in the country and, consequently, the low incidence of risk for the same reason.

On the other hand, 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 as high risk** by SUDEBAN, such as casinos, exchange houses, DNFBPs or **NPOs**"⁴⁴ (emphasis by author). It is the confirmation that the wrong application of the FATF norms 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 for owning a simple bank account.

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:

246. On the other hand, **the country has suffered several terrorist incidents committed by internal and external threats, such as the ELN, throughout the 2016-2019 period, which have targeted 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.**⁴⁵ (emphasis by author).

43 CFATF (2023). Op. cit. p. 30.

44 CFATF (2023). Op. cit. p. 98.

45 CFATF (2023). Op. cit. pp. 86-87.

Additionally, the ME notes:

211. The prosecution and conviction of terrorists are not aligned with the country's risk profile. The evaluation team considers that, although a significant number of TF proceedings are pending at the TSJ and special courts exist to resolve the cases, **most are awaiting trial, demonstrates a lack of prioritization or allocation of resources commensurate with the average level of TF risks.** In addition, most cases are not related to specific TF-related threats 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 ENR 2015-2020 and in the open sources of information.⁴⁶ (emphasis by author).

The above is so clear that there is little room for comment insofar as the situation described therein pays little or no attention to the actions of irregular groups, nor smuggling or illegal mining; as far as the fight against TF is concerned, it contrasts with the excessive and unjustified attention given to NPOs.

b) Information on NPOs and Recommendation No. 8

b.1) Lack of State communication with NPOs

An essential element when considering the FATF recommendations as protection mechanisms for NPOs is that they are based on the premise that the State, which must protect, keeps consistent and close communication with NPOs. Unfortunately, this is not the case in Venezuela, where stigmatization and criminalization are normalized.⁴⁷

The ME evidences the lack of communication in the following lines:

Apart from the creation of these registries and the meetings held between the authorities and the NPOs to resolve any doubts that the NPOs have regarding them. The evaluation team considers that both **the approach to NPOs** that allows them to identify their risks, and the provision of tools to prevent them from being misused, **are crucial elements for the prevention of FT. Still, the country does not consider carrying out any type of activity in this sense.**⁴⁸ (emphasis by author).

46 CFATF (2023). Op. cit. p. 80.

47 309 documented facts compromise and affect the rights of human rights defenders, and represent an increase of 44% compared to the same period in 2022, when 214 situations were recorded. Vid: <https://centrodefensores.org.ve/?p=543>.

48 CFATF (2023). Op. cit. pp. 85-86.

Thus, the disconnection between civil society and the State, something that organizations have been advocating for years, is now clearly described by an international institution that enshrines as an obligation of the State to protect NPOs. Unfortunately, several months after the publication of the ME, the disconnection continues since, even though work has begun on a new national risk assessment⁴⁹, no call to date for organizations to join it has been made.

b.2. It has not been determined which NPOs are or are not subject to control.

Another element to highlight from the ME is the emphasis given to the fact that the application of R.8, unlike the interpretation given by the Government, does not bind all NPOs, which we already saw when alluding to the best practices applied in Uruguay, which is ratified by the FATF when it states the following: "In 2016, the current R.8 was amended to clarify which subset of NPOs should be subject to supervision and monitoring and the scope of the duty to use an RBA when implementing the requirements of this Recommendation." (Emphasis by author) to clarify which subset of NPOs should be subject to supervision and monitoring and the scope of the duty to employ an RBA when implementing the requirements of this Recommendation."⁵⁰ (emphasis by author).

In other words, 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 subject to State control.

It is essential to take into account this statement of the FATF about NPOs insofar as it dismantles the official discourse of a State that was supposedly "forced" to control and supervise all NPOs because FATF said so.

Furthermore, it also renders the assertion that all NPOs, without any discrimination, shall be considered regulated entities baseless since this should only occur after the corresponding evaluation and the setting of objective criteria for these purposes.

The criteria to be applied in this evaluation are clearly stated by the ME in the following terms:

Authorities **shall conduct an adequate analysis of the risk** posed by NPOs in line with the work done by the UNIF and implement targeted measures to prevent the abuse of NPOs for terrorist financing in high-risk scenarios.⁵¹ (emphasis by author).

49 <https://twitter.com/MijpVzla/status/1670941988290527232?t=CovlBd0s-74dKCOMLIRBZg&s=19>.

50 CFATF (2023). Op. cit. p. 155.

51 CFATF (2023). Op. cit. p. 77.

In this context, the lack of information among State officials on this matter, which generates consequences for the NPOs, whose daily obstacles are the registries and notaries, is pointed out in this way by the ME:

291. In the case of supervised registrars and notaries, the risk assessment performed by SAREN has substantial flaws, so that, in practice, the risk knowledge of both the supervisor and the supervised entities is very limited.⁵² (emphasis by author).

For NPOs, this statement is very significant insofar as, precisely, registries and notaries have been a source of constant problems and obstacles, ranging from refraining from allowing the incorporations of new organizations to the fact that it takes long periods to do so, or that the entering into records of a simple minute meeting takes months, with the consequences that this entails for the continuation of the organization's operations.⁵³

Thus, it is grave that the excuse used to slow down or hinder the procedures in the registries and notary offices, that is, the rules against the ML and the FT, are not actually unknown by the officers who claim to apply them, exposing that these rules are nothing more than excuses to limit civic space in the country.

b.3. The national risk assessment did not comply with FATF standards.

Another important aspect of the ME is the National Risk Assessment (NRA), since according to R.8 and its interpretative note, any rating or action on NPOs shall be preceded by a risk assessment to determine which NPOs shall be supervised and which shall not. In this regard, the conclusions of the ME are evident to the contrary:

30. The NRA considers all NPOs high-risk; however, this conclusion is not based on an in-depth sectoral assessment. Consequently, NPOs are considered high-risk clients for all reporting entities. **The excessive attention given to the NPO sector and the measures the country seeks to implement are not justified under FATF standards.** (Emphasis by author).

51 CFATF (2023). Op. cit. p. 77.

52 CFATF (2023). Op. cit. p. 97.

53 *Communication from the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms of indigenous peoples to the United Nations*, fundamental freedoms while countering terrorism; of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression; of the special rapporteur on the rights to freedom of peaceful assembly and of association; and of the special rapporteur on the situation of human rights defenders, of November 19, 2021. Vid: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25212>.

We see then how the FATF states that the NRA did not adhere to the necessary minimum standards and that, consequently, the conclusion that excessive attention had to be paid to NPOs is neither well-founded nor linked to the requirements of the FATF standards.

Thus, the following is a natural aftermath of the above: "(ii) These measures, applied to all NPOs without distinction, do not demonstrate that the country uses risk-based standards for NPOs."⁵⁴

Finally, concerning this issue, we shall refer to the particular mention made of the 001-2021 ruling (and the registry established by it), strongly criticized at the time by civil society and even by protection bodies such as the Inter-American Commission on Human Rights, criticisms that the FATF also endorses when it says:

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), to contribute to supervising the NPO sector, of which only the latter is operational. **In any case, the country did not demonstrate that these registries are useful in preventing abuse of NPOs for FT.**⁵⁵ (emphasis by author).

In other words, the State failed to demonstrate how the application of the Ruling serves the purposes of R.8 and to determine, according to the risk-based assessment, which organizations should be subject to control and which should not.

b.4. Information on NPOs with respect to the financing of terrorism

On this issue, the lack of an adequate prior analysis of the requirements of R.8 is repeated; thus, it is indicated that the Venezuelan State **"It has not demonstrated that it applies proportionate and risk-based oversight measures to NPOs"** (emphasis by author).

In other words, what has already been stated in general terms about the NRA is now reiterated with respect to the fight against FT.

54 CFATF (2023). Op. cit. p. 156.

55 CFATF (2023). Op. cit. p. 76.

5. GENERAL CONCLUSIONS OF THE MUTUAL EVALUATION OF NPOS

The report concludes by making points that we consider essential regarding the role of the Venezuelan State concerning the NPOs and that reflect what is evident throughout the mutual evaluation (ME), the results of which are quite eloquent:

243. From the point of view of the evaluation team, **the excessive attention given to the NPO sector and the measures that the country intends to implement are not justified under FATF standards. Beyond the creation of various registries, which implies 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.**⁵⁶ (emphasis by author)

247. **Regarding the measures applicable to NPOs, the assessment team disagrees with the high level of risk assigned to the NPO sector according to the analysis provided in section 4.3.2 and, therefore, the measures are disproportionate and shall be reviewed through a risk assessment and improve their understanding of the scope of R.8.**⁵⁷ (emphasis by author).

Thus, the ME confirms what Venezuelan civil society has been saying for years:

- That it is not true that FATF regulations are correctly applied to NPOs.
- That the excessive attention given to NPOs does not correspond to the reality of the risk or objective analysis, and that, in addition, this attention is not given to other acts with a higher level of risk, such as those indicated by the FATF, which, moreover, are not from civil society.
- That the application of repressive measures by the Venezuelan State has had consequences in the lack of interest of the banking sector 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 the 40 recommendations.
- That a risk analysis of NPOs has not been carried out following FATF requirements and with the required depth.
- That the high-risk classification of NPOs, reported by the Venezuelan State, is not justified; on the contrary, it imposes undue burdens on organizations, which in reality present practically no risk whatsoever, thus affecting the human right to freedom of association.

⁵⁶ CFATF (2023). Op. cit. p. 86.

⁵⁷ Ibid. p. 87.

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