

FATF and Mexico: how anti-money-laundering legislation has weakened the human rights response to the war on drugs

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In September last year 43 students training to be teachers from Ayotzinapa, Mexico ‘disappeared’ on their way to protest an event held by the wife of the mayor in the neighbouring town of Iguala. During the journey, the students were intercepted by the local police and a confrontation ensued. Details of what happened during and after the clash remain unclear, but the official investigation by the Mexican government concluded that once the students were in custody, they were handed over to a local organised crime syndicate, and presumably killed. The Ayotzinapa disappearances exposed the complicity of politicians, police and organised crime that allows the drugs trade to flourish in Mexico. It has also highlighted the vulnerability of activists working at the heart of Mexico’s war on drugs. The recent murder of community activist, Miguel Angel Jimenez Blanco, who was involved in the search for the 43 students, is not the first case of a human rights defender being killed in Mexico. Blanco’s story is just one of the many cases of human rights defenders who face harassment, threats, disappearance and sometimes death in their efforts to hold corrupt politicians, brutal security forces and drug cartels to justice.

The launch of a war on drugs by the former President Felipe Calderon in 2006 has, like the ‘war on terror’ globally, created endless new pretexts for government repression. According to civil society organisations, the deployment of the military in the security response to drugs and organised crime has led to at least 26,000 disappearances and 100,000 killings to date. In 2014, the UN Special Rapporteur on Torture revealed that torture was common and widespread amongst all levels of authority in Mexico, from the military to local and state police. In the meantime the Mexican drug cartels, which control approximately 70 per cent of the foreign narcotics flow into the US, have flourished due to the kinds of complicity exposed in Ayotzinapa. As a result activists and journalists have had a critical, and often lonely role to play in exposing the nexus of corruption and impunity that underpins the drugs trade in Mexico, and documenting the human rights violations perpetrated on all sides.

Given the failure of successive governments to tackle the drug trade, it is not surprising that Mexico has come under considerable pressure from the international community, and particularly the US, to tighten all money laundering routes used by those involved in the drugs trade. Since 2000, the Financial Action Taskforce (FATF is the global body responsible for setting international standards to combat anti-money laundering and terrorist financing) has repeatedly called upon the Mexican state to tighten up its anti-money laundering laws. In response Mexico introduced the *Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita* (Federal Law to Prevent and Identify Transactions using Resources Derived from Illegal Sources henceforth AML) in October 2012.

On paper the AML appears to put in place a rigorous system to combat money laundering through every possible channel; it introduces checks and reporting requirements for any individual or legal entity, including human rights organisations, receiving donations and transfers over \$7,500. It also imposes stiff financial penalties for partial and total noncompliance. However a closer look shows that the AML fails to distinguish between organisations vulnerable to being used for money laundering and those with no links to organised crime. According to Ana Paula Hernandez, program officer for Latin America at the Fund for Global Human Rights, the AML presented a ‘a one size fits all approach to all legal entities’ and ‘places civil society groups on par with casinos and pawnshops without any evidence that they had ever

been involved in money laundering'. As such the law breaches the requirement of FATF's Recommendation 1 which requires governments to:

'identify, assess, and understand the money laundering and terrorist financing risks for the country' and 'based on that assessment...apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This approach should be an essential foundation to efficient allocation of resources across the anti-money laundering and countering the financing of terrorism (AML/CFT) regime.'

A group of international human rights funders had tried to request a risk-based approach from the Mexican Financial Intelligence Unit (UIF), responsible for implementation of the AML, and also offered examples of less restrictive but effective anti-money laundering legislation from other countries. Guadalupe Mendoza Trejo, a philanthropy consultant working with the group of international donors who met with the UIF officials found they had no understanding of the diversity of civil society when drafting the law and no clue as to how challenging compliance would be for smaller groups 'who have no access to experts and good accountants and lawyers', unlike the Mexico City not-for-profits they were familiar with. The UIF also placed no value on the benefits of civil society for rule of law and democracy. Instead, as Mendoza Trejo puts it, their focus was solely on compliance with FATF standards, and 'getting good grades', rather than evidence, effectiveness or impact.

A survey this year, conducted by the group of international human rights funders of 98 human rights groups highlights the challenges organisations are facing to reach full compliance. Almost a third of respondents wrongly thought that only certain kinds of not-for-profits were subject to the law, and over half of respondents felt they did not have knowledge to be able to comply. 79 per cent of respondents were struggling to obtain the documentation they needed from their donors, as civil society organisations are required to obtain the personal ID of the legal representative of each of their funders.

Both compliance and non-compliance carry negative consequences for activists, particularly smaller grassroots organisations. The complexity and technical nature of compliance is requiring activists to divert considerable human and financial resources from their core work on human rights. Groups at risk of non-compliance could face fines between \$10,000 and \$250,000 USD. To put this in context, this figure is the equivalent of the total budget of some of the groups the Fund for Global Human Rights funds in Mexico; a fine for even partial compliance could lead to complete bankruptcy. Although international funders are providing guidance to funders and activists to support compliance efforts, funders are concerned it is only a matter of time before cases emerge of human rights groups facing penalties for breaching the AML. During trainings provided by international funders to their grantees, Mendoza Trejo has already come across several examples of human rights groups who were shocked to discover that the external accounting professionals they had entrusted and paid to help them with compliance had breached technical requirements.

Although the AML was not introduced by the government with the intention of harassing civil society, the tool lends itself to being used as an effective, and legal, form of repression against human rights groups seeking to hold the government and other powerful actors to account. Human rights activists are deeply concerned about the impact AML is already having on civil society. Laura Garcia, director of Mexican foundation Semillas, feels that the AML and the complexity of compliance has made many organisations including her own feel very exposed. According to Garcia, 'In a country where we also see

how social protests are being put down authoritatively, this kind of situation is stressful, because you are vulnerable to legal repercussions.’ Garcia is also saddened by the failure of the authorities to tackle the genuine transparency issue that is affecting civil society in Mexico, which is the lack of adequate regulation that often allows fake NGOs to access government funds meant to support the development of civil society. Garcia says that civil society has led requests for strict transparency requirements that could help the sector to flourish; her problem is not that civil society is being regulated, but that the AML is not adequate for the job while at the same time being punitive.

Despite the impact of the AML on civil society, there is currently little recourse for activists to seek repeal of, or exemptions to, a law that should never have targeted them. While the AML is a setback for an already vulnerable human rights sector, its introduction has been a triumph for the Mexican government. Mexico has finally been removed from the list of countries that need annual rigorous checks by FATF evaluators, and no longer faces the risk of being placed on a credit black list. The introduction of the AML has also been a political success that signals that Mexico is taking its role in the global fight against organised crime seriously. In reality the AML does not only hurt civil society but will also place the Government at risk of squandering already limited resources on policing thousands of civil society organisations when it should be targeting those funds to monitor genuinely vulnerable entities. By targeting civil society, the Government also stands to weaken the efforts of human rights activists to demand effective action to end the violations arising out of the drugs trade and the war on drugs.

Challenging the AML

While there is limited scope to challenge the AML within Mexico, direct advocacy with FATF may offer a glimmer of hope. Following a two-year dialogue with the FATF civil society coalition about its countering terrorist financing standards, FATF recently acknowledged that governments are introducing laws to restrict funds to civil society without conducting a proper risk assessment or looking at the actual evidence of the risk of civil society groups being used to channel funds to terrorist groups. As a result it recently revised its guidance to governments on the implementation of Recommendation 8 which governs civil society and countering terrorist financing. The revised guidance and a decision by FATF to formalise its dialogue with civil society provides an opportunity for activists in Mexico to request FATF to apply the same principles to its standards on money laundering.

However before such a strategy can be explored much more needs to be done to raise awareness about FATF with activists, and collate evidence of the impact of the AML on civil society to persuade the FATF to consider the impact of anti-money-laundering laws. Mendoza Trejo has found that ‘civil society viewed the law as one more problematic piece of legislation, but very few realised it was in response to the standards set by an international taskforce. There is not much awareness that advocacy might be an option, and that there is a good opportunity to connect directly with FATF and bypass the Mexican government.’ Referring to the next time Mexico will be evaluated by FATF, Mendoza Trejo concludes, ‘There is a window in which something can be done, before the law is used to target NGOs. Mexico will be reviewed again in 2017 and we could use this to our advantage.’

For more on the Financial Action Task Force and the impact of its policies on civil society space, see <http://fatfplatform.org>