

Cryptocurrencies

A FINANCIAL CRIME RISK WITHIN
LATIN AMERICA AND THE CARIBBEAN

Claudia Helms



Cryptocurrencies: A Financial Crime Risk within Latin America and the Caribbean

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GLOBAL FINANCIAL INTEGRITY

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Glossary of Terms, Abbreviations, and Acronyms

Abbreviation	Term
Anonymity-enhanced cryptocurrency (AEC)	Anonymity-enhanced cryptocurrency, also referred to as “private coin”, uses various technologies to prevent users from being identified
AML/CFT	Anti-money laundering/Countering financing of terrorism
Anonymizer (anonymizing tool)	Refers to tools and services, such as darknets and mixers, designed to obscure the source of a cryptocurrency transaction and facilitate anonymity*
Bancarization	The process of acquiring formal financial services, particularly banking
Banxico	<i>Banco de México</i> (Bank of Mexico)
BCB	<i>Banco Central do Brasil</i> (Brazilian Central Bank)
Bitcoin	Decentralized convertible virtual currency launched in 2009. It was the first decentralized convertible virtual currency, and the first cryptocurrency. Bitcoins are digitally traded between users with a high degree of anonymity and can be exchanged (purchased or cashed out) into US dollars, Euros, and other fiat or virtual currencies.*
Blockchain	Immutable and shared ledger, where transactions are recorded
Central bank digital currency (CBDC)	Digital form of central bank money that is different from balances in traditional reserve or settlement accounts**
Convertible (or open) virtual currency	Virtual currency that has an equivalent value in real currency and can be exchanged back-and-forth for real currency*
Cryptocurrency	Math-based, decentralized convertible virtual currency that is protected by cryptography. Cryptocurrency relies on public keys (needed to make and verify transactions) and private keys (which proves ownership) to transfer value from one person (individual or entity) to another, and must be cryptographically signed each time it is transferred.*
Decentralized finance (DeFi)	Primarily for Ethereum; available on public blockchains***
Digital currency	Digital representation of either virtual currency (non-fiat) or e-money (fiat)*
Exchanger	Person or entity engaged as a business in the exchange of virtual currency for real currency, funds, or other forms of virtual currency and also precious metals, and vice versa, for a fee (commission)*
FATF (or GAFI)	Financial Action Task Force (or <i>Grupo de Acción Financiera</i>)

Fiat currency	National currency; paper money designated as legal tender in a country and is customarily used and accepted as a medium of exchange in the issuing country*
Fintech	Financial technology
FIU	Financial Intelligence Unit
GFI	Global Financial Integrity
IMF	International Monetary Fund
LAC	Latin America and the Caribbean
Mixer (laundry service, tumbler)	A type of anonymizer that obscures the chain of transactions on the blockchain by linking all transactions in the same bitcoin address and sending them together in a way that makes them look as if they were sent from another address*
ML	Money laundering
Non-convertible (or closed) virtual currency	Centralized virtual currency specific to a particular virtual domain or world*
PTP	Peer-to-peer transactions or VA transfers conducted without the use or involvement of a VASP or other obliged entity*
Ransomware	A type of malware that prevents users from accessing their information and system until a ransom is paid
Regulatory sandbox	Sandbox provided by the regulator to test innovations in a live and fully functional environment, under its oversight and during a period of time
Stablecoin	Cryptocurrency backed by an outside asset such as a fiat currency, metals, among others
Travel rule	The travel rule refers to the threshold of USD 1000 for VAs transfers and the obligation of VASPs to conduct due diligence (FATF Recommendation 10) and to obtain, hold, and transmit required originator and beneficiary information, immediately and securely, when conducting VA transfers (FATF Recommendation 16).* In this sense, VASPs are required to notify information of crypto transactions and their beneficiaries/senders that exceed the threshold.
Virtual Asset (VA)	Digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations.*

Virtual Asset Service Provider (VASP)	Natural or legal person who, as a business, conducts one or more of the following activities or operations for or on behalf of another natural or legal person: exchange between virtual assets and fiat currencies; exchange between one or more forms of virtual assets; transfer of virtual assets; safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset*
Virtual currency wallet	Software application or other mechanism/medium) for holding, storing and transferring bitcoins or other virtual currency*
Virtual currency	Digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status in any jurisdiction*
Wallet provider	Entity that provides a virtual currency wallet*

* Definition provided by the FATF

** Definition provided by the Committee on Payments and Market Infrastructures

*** Definition provided by Business Insider

Introduction

The use of cryptocurrencies around the world is creating a rapid financial revolution that is not always aligned with global anti-money laundering/countering the financing of terrorism (AML/CFT) standards or government regulations. The Latin American and Caribbean (LAC) region is turning to digital and virtual currencies for many different reasons that include low transaction fees as well as the ability to make micro-payments, send remittances, invest, and save (especially in countries that have unstable governments or high rates of inflation).

It should be noted that cryptocurrencies per se are not illegal or banned, unless declared as such by a particular government. Issues with cryptocurrency transactions arise when there is not a clear legal framework on the subject, or if there is, when it is not appropriate for the national and international context. Like other types of financial assets, cryptocurrencies can be a means for financial crimes to be perpetrated, especially when there is opacity in the transaction or when there are inadequate AML/CFT controls. Moreover, cryptocurrencies and transactions in the blockchain rely on a pseudonym¹ that can make it easier to hide the origins of transfers. Also, by their very nature, decentralized systems do not have a central authority that could potentially oversee and/or monitor suspicious activity, making supervision more challenging.

Not regulating or clarifying the rules of crypto in the region, such as those related to user identification or transaction reporting, can increase the risks of financial crimes. Countries need to address cryptocurrencies and their use, identifying key elements that might create a context for financial crimes. Furthermore, law enforcement in the LAC region is already struggling to address “traditional” financial crime risks due to lack of political will, resources, capacity, inter-institutional coordination, and technology. In this context, addressing complex technological crimes becomes even more difficult. A passive approach by governments allows criminals to remain anonymous and use cryptocurrencies and other technological tools to commit crimes with impunity.

In this report, Global Financial Integrity (GFI) analyzes the benefits and risks of crypto, the changing crypto environment in the region, and the responses from governments, the private sector, academia and civil society. As part of our analysis, interviews have been conducted with experts from all over the region, including government officials, lawyers, civil society leaders, exchangers, and crypto users, among others. The interviews shed light on how crypto is developing in LAC and the risks of not appropriately regulating its use.

This report is not focused on the technical aspects of cryptocurrencies, but rather on the financial crime risks. In addition, while the report primarily analyzes cryptocurrencies, it also mentions initiatives related to digital currencies. While cryptocurrency and digital currency are different, some countries are attempting to address them simultaneously.

Specific, regional characteristics have created a very distinctive crypto ecosystem in LAC compared to other parts of the world. The report focuses on five countries – Argentina, Brazil, Colombia, El Salvador, and Mexico— selected because of rising crypto usage as well as unique regulatory aspects and domestic contexts. Finally, conclusions and recommendations are provided to better address these issues and mitigate financial crime risks.

¹ Transactions rely on a pseudonym that identifies a holder but does not necessarily disclose the individual’s name.

Regional Analysis: Risks of Financial Crimes and Other Challenges

The LAC region is home to a fast-paced, emerging market for cryptocurrencies, including El Salvador, the first country to adopt Bitcoin as a legal tender. The region includes examples of different government approaches to addressing cryptocurrencies. For example, nations like Mexico have a well defined legal framework, countries like Bolivia have prohibited crypto, and countries have recently passed bills to regulate digital and virtual currencies such as Antigua and Barbuda, and the Bahamas. Moreover, countries like Paraguay, Panama, and Brazil have started developing studies and bills. On the other hand, and what GFI has found concerning, is that some countries are not tackling the changing dynamic of cryptocurrencies in the region and are taking insufficient action to address financial risk.

BACKGROUND

Before analyzing the crypto landscape, it is important to take into consideration the regional context and the current social, economic and political elements that drive crypto adoption and generate specific risk. Issues such as poverty, unemployment, financial inclusion and technology access may present barriers to crypto adoption; where crypto adoption occurs in spite of these barriers, consumers and governments may be unprepared to manage the financial risks that accompany it.

According to the most recent estimates by the United Nations Economic Commission for Latin America and the Caribbean,² in 2021 the poverty rate and extreme poverty rate reached 32.1 percent and 13.8 percent, respectively. In spite of the economic recovery in 2021, the levels of poverty (including extreme poverty) are above those from 2019.

Another important component to consider is that in 2020 around 30 million jobs in the region were lost,³ which affected mostly vulnerable populations and the informal sector. According to the International Labor Organization, during the pandemic there were around 158 million informal workers, which represents 54 percent of the total labor force in the LAC region.⁴ In fact in 2021, according to the same agency, informal employment was a leading source of new jobs.⁵

With regards to financial education and inclusion, in LAC only 55 percent of the population is bancarized.⁶ Moreover, according to the Development Bank of Latin America, lack of information and

2 N.U. Economic Commission for Latin America and the Caribbean, *Claves de la CEPAL para el desarrollo* (Santiago de Chile: CEPAL, 2022), Pg. 2 https://repositorio.cepal.org/bitstream/handle/11362/47752/1/S2200089_es.pdf.

3 Ibid.

4 “Masiva pérdida de ingresos impacta a 90% de los trabajadores informales en América Latina y el Caribe,” International Labor Organization, May 8, 2022, https://www.ilo.org/americas/sala-de-prensa/WCMS_744298/lang--es/index.htm.

5 U.N. International Labor Organization, *Empleo e informalidad en América Latina y el Caribe: una recuperación insuficiente y desigual* (Lima:2021), Pg. 1 https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_819022.pdf.

6 “La aceleración de la bancarización en América Latina y el camino por recorrer,” *Convergencia*, October 26, 2020, <https://convergencia.io/es-pe/blog/connectivity/la-aceleracion-de-la-bancarizacion-en-america-latina-y-el-camino-por-recorrer/#:~:text=Seg%C3%BAn%20datos%20de%20la%20alianza,tiene%20acceso%20al%20sistema%20bancario>.

awareness may prevent some citizens from making informed financial decisions.⁷ Citizens may also be discouraged from using the financial system due to lack of knowledge, limited access to financial institutions, and high costs of transactions. It should be noted that it is not necessary to have a bank account to use cryptocurrency.

Technological inclusion is also important to consider. According to the World Bank, less than 50 percent of the population in LAC has broadband connectivity.⁸ Even though 87 percent of the population lives near a 4G area, there is only 37 percent usage.⁹ Besides the issue of connectivity, there are also direct costs such as the data plan and the smartphone itself. Access to technology is an important determinant when considering the likelihood of digital and virtual currency adoption, as well as when designing policies on the matter.

A large percentage of informal economic activities are not bancarized.¹⁰ This in turn poses questions about how taxes are paid and how financial transactions are carried out, among other financial and social impacts. It is already challenging for the government to monitor formal financial transactions, so to do the same for informal transactions is even more arduous. Additionally, many governments already struggle to collect taxes from formal economic activities. If those in the informal sector opt to use cryptocurrencies, these governments, especially in those jurisdictions that do not regulate cryptocurrencies, will continue to face an uphill battle to collect tax revenues.

The LAC region has had these conditions engrained for decades. The levels of poverty, informality, and technological and financial gaps create unique challenges, especially when a new digital revolution of cryptocurrencies and virtual assets comes into play without adequate regulation, government oversight, and consumer awareness. Addressing cryptocurrencies and the crypto-ecosystem in the LAC region is not only about crypto per se; it includes recognizing these contextual elements.

DRIVERS OF CRYPTOCURRENCY ADOPTION IN LAC

The LAC region has registered a continuous increase in use of cryptocurrencies. On average, from 2017-2020 the region had 6% of the total volume of bitcoins worldwide. By early 2020, it had grown to 15.8 percent and it has kept growing exponentially since then.¹¹ Four LAC countries are among the top 20 of the 2021 Global Crypto Adoption Index: Venezuela, Argentina, Colombia, and Brazil; and in this report, we address the last three to understand their developments in the regional context.¹²

7 “¿Cómo están la inclusión y educación financiera en América Latina?” CAF Banco de Desarrollo de América Latina, May 7, 2021, <https://www.caf.com/es/conocimiento/visiones/2021/05/como-estan-la-inclusion-y-educacion-financiera-en-america-latina/>.

8 Franz Drees-Gross and Pepe Zhang, “El escaso acceso digital frena a América Latina y el Caribe ¿Cómo solucionar este problema?,” Banco Mundial Blogs, August 12, 2021, <https://blogs.worldbank.org/es/latinamerica/el-escaso-acceso-digital-frena-america-latina-y-el-caribe-como-solucionar-este>.

9 Ibid.

10 Banco Interamericano de Desarrollo División de Mercados de Capital e Instituciones Financieras, *Informalidad, productividad y crecimiento Propuesta metodológica basada en censos industriales* (Washington D.C.: IADB, 2011), Pg. 62 <https://publications.iadb.org/publications/spanish/document/Informalidad-productividad-y-crecimiento-Propuesta-metodol%C3%B3gica-basada-en-censos-industriales.pdf>.

11 Mariana Palacios, “Cryptocurrencies in Latin America,” Observatorio Económico Latinoamericano, April 29, 2021, <http://obela.org/en-analisis/cryptocurrencies-in-latin-america>.

12 “The 2021 Global Crypto Adoption Index: Worldwide Adoption Jumps Over 880% With P2P Platforms Driving Cryptocurrency Usage in Emerging Markets,” Chainalysis, October 14, 2021, <https://blog.chainalysis.com/reports/2021-global-crypto-adoption-index/>.

The reasons for crypto adoption in LAC can vary drastically, and include the desire for a decentralized currency not tied to an institution, the need for innovative ways to save especially in an unstable political and economic context, and the search for lower transaction fees when sending remittances. The following are some of the main drivers of cryptocurrency adoption in LAC:

I. An alternative to traditional transfers and remittances

Remittances play an extremely important role in the economies of the LAC region. In 2020 alone, inbound remittances to Central America were more than US\$30 billion,¹³ and in the broader LAC region, remittances totaled US\$128 billion in 2021, representing a considerable part of the GDP.¹⁴ Traditional remittance transfers have a variety of costs and delivery times that can vary depending on amounts, destinations, and method of payment, among other things. Meanwhile, bank transfers or traditional banking transactions require the users to be bancarized; moreover, depending on factors such as the bank and type of account, in some cases the transfers may take days to complete.

Transaction fees, transaction speeds, and bank account requirements may discourage people from using the formal financial system. Experts interviewed for this project mentioned that cryptocurrencies may offer an attractive alternative, with low barriers to access.

II. Political and financial instability

Citizens in unstable political and financial environments may not trust their governments and formal institutions. Moreover, they may have serious concerns about data privacy or face severe inflation. In response to these scenarios, citizens have turned to cryptocurrencies as an alternative to protect their savings and to manage daily transactions without losing major value in their fiat currencies. Even if cryptocurrencies are more volatile when compared to fiat currencies, they may represent a preferable alternative in highly unstable contexts.

III. Young population

Regardless of their socio-economic situation, among citizens that have a smartphone and access to the internet, young citizens tend to use more technology. According to Ana Gonzalez Barrera from Pew Research Center, “... part of that is actually that Hispanics are younger than other groups, and they are more likely to use technology because they are younger.”¹⁵ According to the United Nations, the young population in LAC is around 160 million and will “continue to represent a very substantial proportion of the population in some countries in the coming decades.”¹⁶

IV. Consumer curiosity, in spite of limited knowledge

Many users are adopting crypto out of curiosity. However, this can also become a financial risk. If

13 Central American Bank for Economic Integration, *Remittances in Central America: The Role of CabeI* (Tegucigalpa: Central American Bank for Economic Integration, 2021), Pg. 4 https://www.bcie.org/fileadmin/user_upload/Remittances_in_Central_America_the_Role_of_CABEI.pdf.

14 Jeremy Harris and René Maldonado, “Un nuevo récord para las remesas en América Latina y el Caribe”, IDB Blog La Maleta Abierta, March 3, 2022, <https://blogs.iadb.org/migracion/es/un-nuevo-record-para-las-remesas-en-america-latina-y-el-caribe/#:-:text=Los%20C3%BAltimos%20datos%20que%20consolidamos,alto%20en%20casi%2020%20a%20C3%B1os>.

15 Carolina Zepeda, “Why is Latin America the most crypto-friendly region in the world?,” Contxto, September 19, 2019, <https://contxto.com/en/informative/cryptocurrency-revolutionizes-monetary-exchanges-latin-america/>.

16 U.N. Economic Commission for Latin America and the Caribbean, “Youth,” <https://www.cepal.org/en/topics/youth>.

governments are not protecting consumers or providing oversight, then consumers are left on their own and can potentially become easy victims of financial crime. Granted, financial literacy is an on-going issue and can be reflected in the low rates of bank account ownership and in the prevalence of cash for daily transactions and savings. However, with new technologies and products, it is becoming more difficult to keep up, with each consumer doing the best they can with limited information.

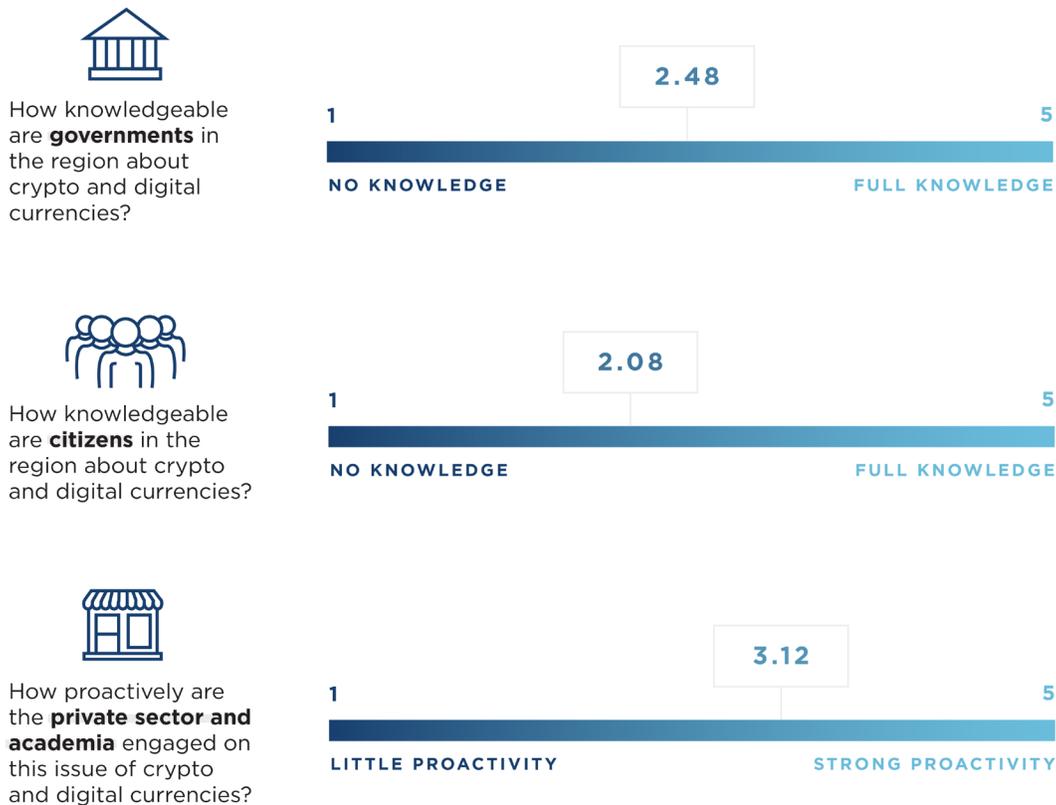
According to expert interviews, even though crypto adoption is increasing in LAC, most citizens are not necessarily knowledgeable about cryptocurrencies. As can be seen in Graphic 1, on a scale of one to five, where one represented no knowledge and five represented full knowledge, experts ranked citizens' knowledge of crypto at only 2.08/5, the lowest in our research on crypto knowledge. At the same time, the regulation has not kept up with the region's crypto adoption. Some concerning issues emerge within this scenario.

For our research, we decided to group the private sector and academia together because in LAC they engage in similar advocacy efforts, although not all countries have a debate arena or opportunities where both sectors work together and create synergies. Given this, when evaluating their knowledge and advocacy, experts rated the region at 3.12/5 in proactively addressing cryptocurrencies.

GRAPHIC 1

Crypto Knowledge in the Latin America and the Caribbean Region

Average scores have been standardized from expert assessments on a scale of 1 to 5, according to each question.



Still, from our analysis it appears that the private sector and academia do have efforts to address the “new” cryptocurrency reality. When regulating cryptocurrencies, governments should consider including the perspectives and expertise of these institutions. If these sectors’ efforts are not considered when regulating and addressing the topic, then valuable resources and information could be dismissed.

FINANCIAL RISKS

In the LAC region, cash has traditionally been used for most transactions, and until 2018, 80 percent of payments were cash transactions. However, in 2020 this rate went down to only 25 percent.¹⁷ These statistics, according to PYMNTS, reflect that consumers and citizens have been turning to digital options, especially after the pandemic. Furthermore, during the pandemic, around 50 million people in LAC adopted digital payments for the first time.¹⁸ However, half of them indicated a preference to return to cash.¹⁹ This raises several questions on the specific reasons, which may include factors such as vulnerability to fraud and scams, affordability of data and cellphone usage, and consumer knowledge.

Crypto literacy remains very low in the region. For example, in a Crypto Literacy study, 99 percent of Brazilian interviewees failed a “basic assessment on crypto literacy”.²⁰ Nevertheless, crypto adoption is robust and trending in the region. Users embracing cryptocurrency without having a basic understanding of what it is poses a risk for financial crimes. Users may be vulnerable to scams as well as to engaging in money laundering (ML), unknowingly acting as a money mule.

According to the Chainalysis’ *2022 Crypto Crime Report*, the most common crypto-based crime transactions, based on value received, are stolen funds, child abuse, fraud, and scams, among others, with stolen funds being the most prevalent in 2021.²¹ Regarding ML, criminals typically look for ways to move and keep illicit proceeds. Exchanges with little to no know your customer (KYC) policies, as well as programs that camouflage operations and identities, present heightened risks.

According to the Financial Action Task Force (FATF), the most common illicit uses for crypto include illicit trafficking as well as fraud, scams, ransomware and extortion, where sales and transfers were conducted in virtual assets (VAs) or proceeds were converted to VAs during the layering stage of ML.²² Scams and ransomware are very dynamic and constantly changing crypto-based crimes. For example, there is an increasing tendency to demand ransomware payments in Monero (AEC) due to its high level of anonymity.²³

17 “Cash No Longer King in Latin America,” PYMNTS, November 17, 2021, <https://www.pymnts.com/digital-payments/2021/cash-no-longer-king-in-latin-america/>.

18 “The rise of digital financial inclusion during the COVID-19 pandemic,” World Bank Blogs, February 7, 2022, <https://blogs.worldbank.org/latinamerica/rise-digital-financial-inclusion-during-covid-19-pandemic>.

19 Ibid.

20 Global News Wire, “99% of Brazilians Can’t Pass a Basic Crypto Literacy Assessment”, accessed December 21, 2021, <https://www.globenewswire.com/en/news-release/2021/11/01/2324316/0/en/99-of-Brazilians-Can-t-Pass-a-Basic-Crypto-Literacy-Assessment.html>.

21 Chainalysis, *The 2022 Crypto Crime Report* (New York: Chainalysis, 2022), Pg. 4, <https://go.chainalysis.com/2022-Crypto-Crime-Report.html>.

22 Financial Action Task Force, *Virtual Assets Red Flag Indicators of Money Laundering and Terrorist Financing* (Paris: FATF, 2020), Pg. 4, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Virtual-Assets-Red-Flag-Indicators.pdf>.

23 Alexander Culafi, “Ransomware actors increasingly demand payment in Monero,” TechTarget, January 18, 2022, <https://www.techtarget.com/searchsecurity/news/252512142/Ransomware-actors-increasingly-demand-payment-in-Monero>.

Regarding trends, the FATF reports that most VA offenses are related to ML, but criminals also use VAs to avoid financial sanctions and raise funds for terrorism.²⁴ According to case studies from 2017-2020, offenses included ML related to the “... sale of controlled substances and other illegal items (including firearms), fraud, tax evasion, computer crimes (e.g. cyberattacks resulting in thefts), child exploitation, and human trafficking.”²⁵

Some crypto ML relates to illegal activities that happen offline (mainly traditional crimes), and the crypto wallets/owners may not be yet identified as related to those activities, even if visible in the blockchain. When law enforcement has the relevant technological capacity, they can “follow the money” from offline to online, analyzing the blockchain to trace keys and identify patterns.

Even if transactions are visible in a particular cryptocurrency’s blockchain, associating them with an individual or account (for example, matching their private and public keys) can be challenging for law enforcement. This aspect can depend on the country’s regulation and capacities to do so. According to expert interviews and other sources, criminals typically prefer to use money services and exchanges located in jurisdictions that have not regulated cryptocurrencies and/or do not have sufficient AML/CFT requirements to collect customer information on the individuals behind the transactions.

Even with regulated exchanges and established procedures, criminals will look for ways to avoid being traced. There are several ways of anonymously using cryptocurrencies when committing a financial crime, such as using anonymizers, mixers, moving assets through multiple addresses, and using different blockchains. These tools can allow users to avoid identification and prevent transaction tracing. In addition, these tools can prevent regulated virtual asset service providers (VASPs) from accurately evaluating the risk presented by the user.

From a government and institutional perspective, Graphic 1 (pg. 5) shows that interviewed experts gave this sector an average rating of 2.48/5 in terms of how knowledgeable they are about cryptocurrencies. In most countries, experts noted that the legislative branch was the least knowledgeable about the matter, and in most cases there was no political will to debate it or include it on the legislative agenda. Experts reported that this was likely due to the fact that legislators have a limited understanding of cryptocurrencies and the ecosystem, and therefore they are not actively looking towards addressing this topic.

On the other hand, experts noted that the central banks and the financial intelligence units (FIUs) seemed to be more knowledgeable on the matter compared to the legislative branch. In some countries, these institutions have raised concerns on the lack of guidelines or the ineffectiveness of the current guidelines. While these efforts are helpful, they are not sufficient to provide a complete and robust framework for all sectors to act. In most cases, addressing cryptocurrencies through ad-hoc guidelines, as opposed to through a comprehensive framework, can create more issues.

Graphic 2 (pg. 8) highlights the countries that GFI has identified as having a cryptocurrency law or regulation with and without clear guidelines, definitions and general parameters on the matter. This situation creates certainty on the legality of cryptocurrencies and the range of action of government entities, including sanctions, reports, and regulations, among other factors to consider.

²⁴ FATF, *Virtual Assets Red Flag Indicators*.

²⁵ *Ibid.*

GRAPHIC 2

Cryptocurrency Regulatory Framework in Latin America and the Caribbean as of March 2022



On the other hand, there are several countries that have adopted a passive role towards cryptocurrencies, creating potential financial risks as there are unclear or incomplete regulation on how to approach the crypto ecosystem. Some countries that have not passed laws to regulate crypto have used lower level norms such as circulars, statements, or even press declarations either prohibiting, allowing or raising concern on the use of crypto. However, this brings a sui generis scenario where it is not clear the course of action on dealing with cryptocurrencies. It should be noted that even if the vast majority of countries do not currently have a robust legal framework on cryptocurrencies, almost every country has initiatives either from the government or the private sector on how to better address cryptocurrencies, empower their benefits in some cases, and mitigate financial crime risks.

GENERAL RISKS

The FATF queried 104 jurisdictions on the greatest barriers to the implementation of FATF standards on VAs and VASPs.²⁶ The following were the top five barriers, or challenges, to implementation:

1	Lack of capacity, expertise and experience in public sector agencies to implement R.15/INR.15 (on new technologies)
2	Implementation of the travel rule and the lack of sufficient technological solutions
3	Challenges in identifying and registering/licensing VASPs
4	Lack of implementation of domestic regulations for virtual assets/VASPs
5	Challenges in conducting ML/TF risk assessments and understanding the size of the virtual asset/VASP sector

Source: FATF, 2021.

Even though the above challenges were identified within the global context, GFI considers them relevant to how these VAs and VASPs are addressed in the LAC region, including how they can constitute financial risks.

The FATF also mentioned that there has not been enough progress on the implementation of the travel rule worldwide, which can disincentivize the private sector to invest in technological solutions and infrastructure to comply with regulatory requirements.²⁷

Other risks include crypto P2P transactions, which do not necessarily comply with AML/CFT standards and may be used by criminals to hide their identities and/or transactions. Countries need to establish a position on P2P transactions and how to address any associated risks. These considerations should also address decentralized finance (DeFi), which are financial services that run on smart contracts. DeFi holds some benefits, such as access to loans, insurance, and interest-bearing accounts; however, it also poses certain risks as it can expose users to scams.²⁸

Governments are working towards tackling virtual currencies either nationally or through international cooperation. For example, in 2020 the U.S. Department of Justice seized US\$24 million on behalf of Brazil, which was possible under the Mutual Assistance in Criminal Matters.²⁹ This case involved a large crypto fraud scheme worth an estimated US\$200 million that affected thousands of Brazilians, according to the Brazilian government.³⁰ This case and others like it show that cryptocurrency crime is a reality that affects citizens and governments, and involves millions of dollars in

²⁶ FATF, *Second 12-month Review*, 31.

²⁷ *Ibid*, 36.

²⁸ CoinDesk, “How to stay safe in DeFi: Red Flags and Risks you need to know”, accessed January 28, 2022. <https://www.coindesk.com/learn/how-to-stay-safe-in-defi-red-flags-and-risks-you-need-to-know/>.

²⁹ The U.S. Department of Justice has an initiative called National Cryptocurrency Enforcement Team (NCET) which is empowering their own capacities to tackle crypto crime, with impactful results. For example, in 2022, the Department seizes US\$3.6 billion (from 94,000 Bitcoin), the largest in cryptocurrency. Criminals were charged on ML and conspiracy against the U.S. <https://www.dlapiper.com/en/us/insights/publications/2022/02/us-department-of-justice-aided-by-cryptocurrency-exchanges/>.

³⁰ United States Department of Justice, “U.S. Seizes Virtual Currencies Valued at \$24 Million Assisting Brazil in Major Internet Fraud Investigation” accessed February 24, 2022. <https://www.justice.gov/opa/pr/us-seizes-virtual-currencies-valued-24-million-assisting-brazil-major-internet-fraud>.

losses. National efforts as well as international cooperation are key to tackling financial crime in the new digital era.

CBDCs

While the focus of this report is not on CBDCs, it is worth briefly mentioning this regional trend. CBDCs are not cryptocurrencies, which are decentralized. Rather, CBDCs are a digital form of a legal tender.

From our research and expert interviews, some of the main reasons for countries to adopt CBDCs include promoting financial inclusion, minimizing fees, providing security and traceability (which was raised as a concern but also as a benefit by experts), and, perhaps most importantly, providing a centralized way to conduct transfers in a digital format. The reasons for countries to adopt CBDCs are similar to those for adopting cryptocurrencies, however crypto's decentralized component becomes a strength in some contexts (especially in complex financial scenarios such as inflation or instability).

The Bahamas was the first country to fully launch the Sand Dollar in October 2020, being the first nation to go beyond the pilot phase.³¹ Other Caribbean countries such as Antigua and Barbuda, Grenada, St. Kitts and Nevis, and Saint Lucia, among others, have been part of DCash, the “first digital currency to be used by a monetary union”³² launched by the Eastern Caribbean Central Bank, where it can be distributed by non-bank financial institutions as well as licensed banks.³³ Meanwhile, Mexico, Brazil, Peru, and the United States, among other countries, have expressed interest in developing CBDCs.³⁴

Graphic 2 (pg. 8) shows how cryptocurrencies and CBDCs have been addressed so far, highlighting the measures governments are starting to take regarding new technological options. Some governments, like St. Kitts and Nevis or Antigua and Barbuda, have addressed both cryptocurrencies and CBDCs in their legislation, while others only addressed one or the other. Others have taken a very timid approach, emitting statements or norms that are not robust enough to bring clarity to users and government officials on how to address them. Finally, some other countries have not taken a position on either of these matters. However, even if governments are not officially addressing them, there are often private sector or civil society initiatives underway.

Cryptocurrencies and CBDCs are fundamentally different, and provide different advantages and disadvantages for consumers and governments. Even if this new trend is becoming appealing to governments, the implementation phase is critically important. Pilot programs and implementation have been a learning experience for countries involved, and time will determine their level of success.

31 “Central Bank Digital Currency Tracker,” Atlantic Council, accessed March 2022, <https://www.atlanticcouncil.org/cbdctracker/>.

32 Jim Wyss, “A Bold Caribbean Experiment in E-Cash Hits a Major Obstacle,” Bloomberg, February 21, 2022, <https://www.bloomberg.com/news/articles/2022-02-21/eastern-caribbean-dcash-outage-is-test-for-central-bank-digital-currencies>.

33 “ECCB Digital EC Currency Pilot: About the Project,” Eastern Caribbean Central Bank, accessed March 2022, <https://www.ecb-centralbank.org/p/about-the-project>.

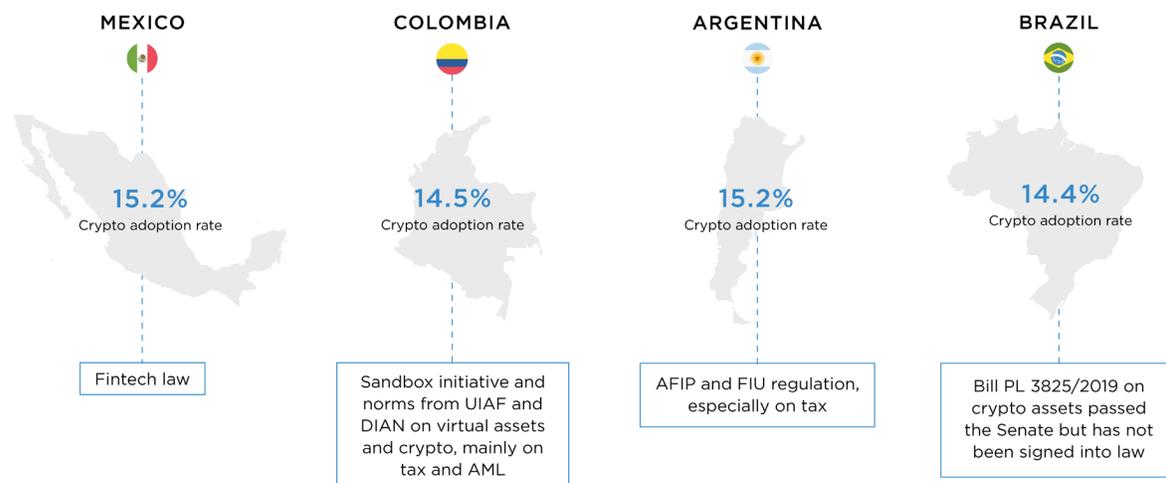
34 Andrés Engler, “Mexico Plans to Issue a CBDC by 2024, Government Confirms,” CoinDesk, December 20, 2020, <https://www.coindesk.com/policy/2021/12/30/mexico-plans-to-issue-a-cbdc-by-2024-government-confirms/>.

Country Cases

As part of GFI's analysis, we included five country case studies in the LAC region: Argentina, Brazil, Colombia, El Salvador and Mexico. In Argentina, the usage of cryptocurrencies increased due to financial instability, and even without robust regulation in place, the cryptocurrency ecosystem has somehow developed satisfactorily for most citizens. Similarly, Brazil has a high usage of cryptocurrency and is currently debating a law in congress. Colombia has yet to adopt cryptocurrency legislation, but has different initiatives and a growing number of crypto users, as well as an interesting hybrid sandbox initiative. In 2021, El Salvador became the first country to approve Bitcoin as legal tender, making it a particularly interesting case to follow. Additionally, Mexico has emerged as a regional leader in regulating cryptocurrencies under their Fintech Law. The following section of the report delves deeper into each of these country cases, shedding light on the unique LAC cryptocurrency panorama as well as on key aspects to consider in the regulatory process.³⁵

GRAPHIC 3

Crypto Adoption, Main Legislation and Initiatives in Mexico, Colombia, Argentina and Brazil



© Global Financial Integrity, 2022.
Source: National legislation and Finder, March 2022.

ARGENTINA

Argentina is considered as one of the early adopters of cryptocurrencies, mainly as a response to high inflation and restrictions against foreign currencies. For decades now, Argentinians have tried to find stable outlets to secure savings and investments in light of the devaluation of the Argentine peso. While cryptocurrencies are not a legal currency in the country, they are not prohibited. Despite no formal law on the matter, crypto is indirectly addressed through tax and AML regulations.

³⁵ The report includes main legal norms and initiatives up to March 2022.

I. Ecosystem

Because there is not a clear framework, issues have arisen among consumers and investors. Also, recent actions from the government towards restructuring their financial deal with the International Monetary Fund (IMF) sought to “strengthen the peso” while also discouraging the use of digital currencies to prevent money laundering.³⁶ It is unclear how this situation will impact the crypto ecosystem. With inflation at over 50 percent, and decades of financial instability, Argentinians have been eager to find alternative methods of savings and investment, including cryptocurrencies.³⁷ All of these factors coupled with the absence of any prohibition against cryptocurrencies has fueled one of the largest crypto markets in LAC.³⁸ As seen in Graphic 3 (pg. 11), Argentina has a 15 percent crypto adoption rate, which is the highest in the region.³⁹ Also, it has a 90 percent internet connectivity rate and 87.9 percent smartphone access rate, which creates the necessary conditions for cryptocurrencies to keep flourishing.⁴⁰

Experts also commented that in Argentina, cryptocurrencies have permeated society, and that citizens are always looking into new financial opportunities. Crypto exchanges in Argentina implement KYC protocols and require documentation, not only because of their own obligations but also to keep business competitive, according to interviews conducted. For decades, Argentinians have managed to have a parallel market to exchange US dollars, or manage cash, or have foreign bank accounts.

II. Legislation, initiatives and analysis

FIU Resolution 300/2014 addressed virtual currencies, mainly to provide a definition. In 2017, the Resolution was modified to include cryptocurrencies for tax purposes. In Argentina, the *Administración Federal de Ingresos Públicos* (Federal Administration of Public Revenues or AFIP) addressed digital payments through General Resolution AFIP 4614/2019 in 2019 requiring information on transactions that include virtual accounts, digital wallets and service providers. The AFIP gathers information on how the crypto ecosystem is developing and collects revenues from those transactions on a monthly basis. Another relevant legal norm that regulates cryptocurrencies is Decree 796/2021 modifying the Decree 380/2001 (the Competitiveness Law) under which cryptocurrency payment transactions must pay taxes. Law 27/430 regulates the taxation aspects of digital and cryptocurrencies and Resolution 70/2011 (following FATF recommendation) imposes AML obligations. An interesting initiative by the previous administration was the Financial Innovation Roundtable (*Mesas de Innovación Financiera*), where experts highlighted that several ideas and norms on QR payments, digital payments, wallets, etc. came up, creating an open space for discussion.⁴¹ Other entities such as the

36 “IMF Executive Board Approves 30-month US\$44 billion Extended Arrangement for Argentina and Concludes 2022 Article IV Consultation,” International Monetary Fund, March 25, 2022, <https://www.imf.org/en/News/Articles/2022/03/25/pr2289-argentina-imf-ex-ec-board-approves-extended-arrangement-concludes-2022-article-iv-consultation>; International Monetary Fund, Western Hemisphere Department, *Argentina: Staff Report for 2022 Article IV Consultation and Request for an Extended Arrangement Under the Extended Fund-Facility-Press Release; Staff Report; and Staff Supplements* (Washington D.C.: IMF, 2022), 19, <http://www.shorturl.at/pqwV6>.

37 Andrés Engler, “Argentine Congress Approves IMF Debt Deal That Would Discourage Crypto Usage,” CoinDesk, March 18, 2022, <https://www.coindesk.com/policy/2022/03/18/argentine-congress-approves-imf-debt-deal-that-would-discourage-crypto-usage/>.

38 Angélica Serrano-Román and Ignacio Olivera Doll, “Cryptocurrencies Prove a Lifeline in Argentina’s Chaotic Economy,” Bloomberg, March 9, 2022, <https://www.bloomberg.com/news/articles/2022-03-09/cryptocurrencies-prove-a-lifeline-in-argentina-s-chaotic-economy>.

39 “Finder Cryptocurrency Adoption Index,” Finder, accessed March, 2022, <https://www.finder.com/finder-cryptocurrency-adoption-index#cryptocurrency-adoption-statistics-by-country>.

40 Statista “El uso de internet en Argentina – Datos estadísticos” accessed July, 2022, https://es.statista.com/temas/7678/el-uso-de-internet-en-argentina/#topicHeader_wrapper

41 “El Directorio formalizó la Mesa de Innovación Financiera,” Banco Central de la República de Argentina, February 7, 2019, <http://www.bcra.gov.ar/noticias/Mesa-innovacion-financiera.asp>.

Banco Central de Argentina (Central Bank or BCRA) have stated that cryptocurrencies are extremely volatile, although not prohibited, and warned of several threats for users as well as ML/FT risks.⁴²

The experts interviewed noted that there are different views on this matter. Some experts noted that regulation against crypto might lead to informal transactions, similar to what happens with the US dollar in Argentina, in the parallel market.

The latest legal development that affects cryptocurrencies is the 30-month extended agreement with the IMF (under the Extended Fund Facility) for US\$44 billion. The agreement, which has been approved by Congress, seeks to empower the peso and discourages the use of cryptocurrencies due to concerns around money laundering risks and informality.⁴³ The deal was signed in the context of a new financing schedule to replace a previous program from 2018, which the country failed to pay back because of inflation and the recession.⁴⁴ NGOs such as Bitcoin Argentina have formally requested information from the Ministry of Economy to better understand the measure.⁴⁵ It is still not clear how the cryptocurrency market will be affected. While it is understandable that the country wants to limit crypto-related ML risks, it is debatable whether restricting usage is going to be the best option, especially as the country already has a working crypto ecosystem.

From a law enforcement perspective, the Cybercrime Specialized Unit (Unidad Fiscal Especializada en Ciberdelincuencia or UFECI) is responsible for “detecting, prosecuting and repressing” organized crime in IT and digital attacks.⁴⁶ Cybercrimes in Argentina that are related to cryptocurrencies have grown, mainly through scams and cyber-attacks. For example, in Argentina, there has been a growing use of ransomware to extort victims, in cases where criminals ask for high sums of money or even crypto.⁴⁷ According to UFECI, scams and identity theft grew 106% and 700% respectively, and that tendency is going to grow in 2022, especially in new industries such as crypto.⁴⁸ Also, as part of an unprecedented Court decision, the Judiciary made the cryptocurrency exchange Binance return the amount of Bitcoins of a victim who got her phone stolen and the criminals subtracted them from her account.⁴⁹ Prosecutors suggested that the cryptocurrency would remain in the victim’s account as a “judicial deposit”. Cases like this one highlight the importance of joint efforts of prosecutors, the judiciary, and the private sector, among other stakeholders, to prevent and punish these kinds of crimes that have an innovative digital component.

The Argentinian crypto market is booming, and has turned into an alternative for citizens looking for

42 “Alerta del BCRA y la CNV sobre los riesgos e implicancias de los criptoactivos,” Banco Central de la República de Argentina, May 20, 2021, <http://www.bkra.gov.ar/Noticias/alerta-sobre-riesgos-implicancias-criptoactivos.asp>.

43 “Argentina and the IMF”, International Monetary Fund, accessed March 2022, <https://www.imf.org/en/Countries/ARG>

44 Nicolás Misculin, “Argentina’s Senate gives thumbs up to \$45 bln IMF debt deal,” Reuters, March 18, 2022, <https://www.reuters.com/business/argentinas-senate-gives-thumbs-up-45-bln-imf-debt-deal-2022-03-18/>.

45 ONG Bitcoin Argentina, “ONG Bitcoin Argentina presentó un pedido de acceso de información pública al gobierno nacional por el acuerdo con el FMI,” Medium, March 10, 2022, <https://medium.com/@ongbitcoinargentina/ong-bitcoin-argentina-present%C3%B3-un-pedido-de-acceso-de-informaci%C3%B3n-p%C3%BAblica-al-gobierno-nacional-por-12e84babfb6f>.

46 Ministerio Publico Fiscal, “Unidad Fiscal Especializada en Ciberdelincuencia (UFECI)”, March 20, 2022 <https://www.mpf.gob.ar/ufeci/>.

47 Ambito, “Alertan por el aumento de ciberataques y el impacto en mercado de criptomonedas”, March 29, 2022 <https://www.ambito.com/sociedad/criptomonedas/alertan-el-aumento-ciberataques-y-el-impacto-mercado-n5402913>.

48 Ibid.

49 SIBJud. “Fallo inédito: la Justicia argentina le ordenó a Binance devolver Bitcoins sustraídos de la cuenta de una víctima de un robo de su celular”, September 30, 2022 <https://www.justiciajujuy.gov.ar/bibliotecapj/index.php/77-fallo1>.

more stable ways of keeping value and still being able to transact among exchanges and P2P transactions. Additional regulatory action is needed to combat scams and ransomware and to ensure greater consumer financial protection. The country already has a functioning crypto market, and with more regulatory and legislative clarity, it could become one of LAC's tech hubs. Better set, clearer rules on this matter (other than mainly tax matters) could help to bring more investment to the country and more stability to its financial system.

BRAZIL

In terms of cryptocurrencies, Brazil is currently a very dynamic country, where the usage and industry keeps growing, but regulation is still partial, and is mainly addressed in terms of taxation.⁵⁰ Despite legislative debates on potential regulation, no robust framework has been passed into law. In this sense, Brazil operates by the principle that if the law does not prohibit it, then it is allowed. Another initiative in the country has been the regulatory sandbox, promoted by the Central Bank of Brazil (*Banco Central do Brasil* or BCB) and other entities to better understand financial technology (fintech), particularly blockchain technology. Self-regulation has emerged as key players in the crypto ecosystem have developed best practices in order to be competitive with their peers in attracting users.

I. Ecosystem

Around 82.7 percent of homes in Brazil are connected to the Internet⁵¹ and 81 percent of citizens have a cell phone for personal use,⁵² which promotes good foundations for crypto adoption as well. By 2019, 60 million adults were unbanked,⁵³ mainly because of high interest rates and lack of trust, according to our experts. Brazilians adopt crypto for several reasons, but mainly because they are looking for financial stability, especially in light of inflation and devaluation. By February 2022, Brazil was facing a 10 percent inflation rate, which is one of the highest in large economies.⁵⁴

Another driver for adoption has been the Tax on Financial Transactions (*Imposto sobre Operações Financeiras* or IOF), as Brazilians are taxed on foreign currency exchange. According to Coindesk, data from the BCB revealed that in August 2021, Brazilians had \$50 billion in crypto while only \$16 billion in US stocks.⁵⁵ In this sense, Brazilian citizens from all sectors of society are turning to crypto in search of more economical options for financial safety and personal investment.

Regarding crypto crimes, there has been a “wave of crypto related crimes” that included a US\$210

50 “Brazil and Cryptocurrency,” Freeman Law, accessed March, 2022, <https://freemanlaw.com/cryptocurrency/brazil/>.

51 “Pesquisa mostra que 82,7% dos domicílios brasileiros têm acesso à internet,” Ministério das Comunicações, April 14, 2021, <https://www.gov.br/mcom/pt-br/noticias/2021/abril/pesquisa-mostra-que-82-7-dos-domicilios-brasileiros-tem-acesso-a-internet>.

52 “Uso de Internet, Televisão e Celular no Brasil,” IBGEeduca, accessed on March, 2022, <https://educa.ibge.gov.br/jovens/materias-especiais/20787-uso-de-internet-televisao-e-celular-no-brasil.html>.

53 International Trade Administration, “Brazil - Country Commercial Guide” accessed on January 28, 2022. <https://www.trade.gov/country-commercial-guides/brazil-finance>.

54 “Brazil’s 10% inflation is eroding incomes and the president’s popularity,” *The Economist*, February 26, 2022, <https://www.economist.com/the-americas/2022/02/26/brazils-10-inflation-is-eroding-incomes-and-the-presidents-popularity>.

55 Andrés Engler, “Why Brazil Is the Big Latin American Bet for Global Crypto Exchanges,” CoinDesk, January 21, 2022, <https://www.coindesk.com/business/2022/01/21/why-brazil-is-the-big-latin-american-bet-for-global-crypto-exchanges/#:~:text=Brazilians%20have%20incentives%20to%20purchase,does%20not%20apply%20to%20stablecoins>.

million pyramid scheme involving crypto with more than 55,000 victims.⁵⁶ According to experts, even if authorities have certain tools to address crypto and technological crimes, it is still important to have a framework of action, inter-institutional exchange and information, as well as the resources needed to keep tackling crypto crimes.

As mentioned, crypto scams have become more popular, based on Ponzi schemes that do not follow regulations, combined with eager Brazilian users that are looking for high returns.⁵⁷ For example on Graphic 4 (pg. 16), Operation Poyais, an investigation of an international cryptocurrency fraud ring investigated by the Brazilian Federal Police, U.S. Homeland Security Investigations (HSI) and international partners include charges of ML, fraud, and crimes against the national financial system, among others, reaching an estimated USD\$800 million.⁵⁸

II. Legislation, initiatives and analysis

Brazil has not adopted regulation that specifically addresses cryptocurrency transactions. Cryptocurrencies are considered assets and must be declared to the Special Secretariat of the Federal Revenue of Brazil (*Receita Federal do Brasil* or RFB) under the Normative Instruction 1,888/2019, a ruling that identifies the individuals and legal entities required to report information on crypto transactions.⁵⁹ This includes information on crypto holders, values involved, etc. and applies to crypto assets and exchanges. While the RFB has embraced cryptocurrency in terms of taxation, other agencies seem hesitant. For example, the BCB has published concerns regarding virtual currencies, warning of differences with e-money (Electronic money backed by FIAT currency, the Brazilian Real in this case) and risks of losing “invested resources.”⁶⁰

Regarding the AML aspect, Law 9,613/1998 addresses cryptocurrencies indirectly.⁶¹ ML is an ongoing problem in Brazil, as several national and international scandals have demonstrated. Specific policies are needed to more adequately address crypto crimes, including establishing clear transaction guidelines, identifying crime typologies, as well as establishing the responsible authorities. Despite having a ML law and specific institutions for AML, such as the National Strategy Against Corruption and Money Laundering (*Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro*) and the Council for Financial Activities Control (*Conselho de Controle de Atividades Financeiras*), AML regulations are still needed to directly address crypto.

56 Steve Kaaru, “Brazilian police arrest culprits behind \$210 million crypto scam,” Coingeek, May 24, 2019, <https://coingeek.com/brazilian-police-arrest-culprits-behind-210-million-crypto-scam/>.

57 Blocknews.com, “Brazil Police Close Down on “Bitcoin Sheikh” For \$766 Million Crypto Theft.”, Accessed October 23, 2022 <https://blocknews.com/brazil-police-close-down-on-bitcoin-sheikh-for-766-million-crypto-theft/>.

58 According to government prosecutors, the criminal organization worked with investors in several countries falsely basing their business in cryptocurrency financial products. Criminal activities included crimes in Brazil for over 4 billion Brazilian Reais (around USD\$800 million) moved through the banking system plus the illicit proceeds transferred via crypto. The criminal network was led by Francisco Valdevino da Silva (the “Bitcoin Sheikh”) that scammed investors for crypto-related funds that took advantage of lax regulations, and immutability of transactions to favor his criminal scheme and disappear when convenient.

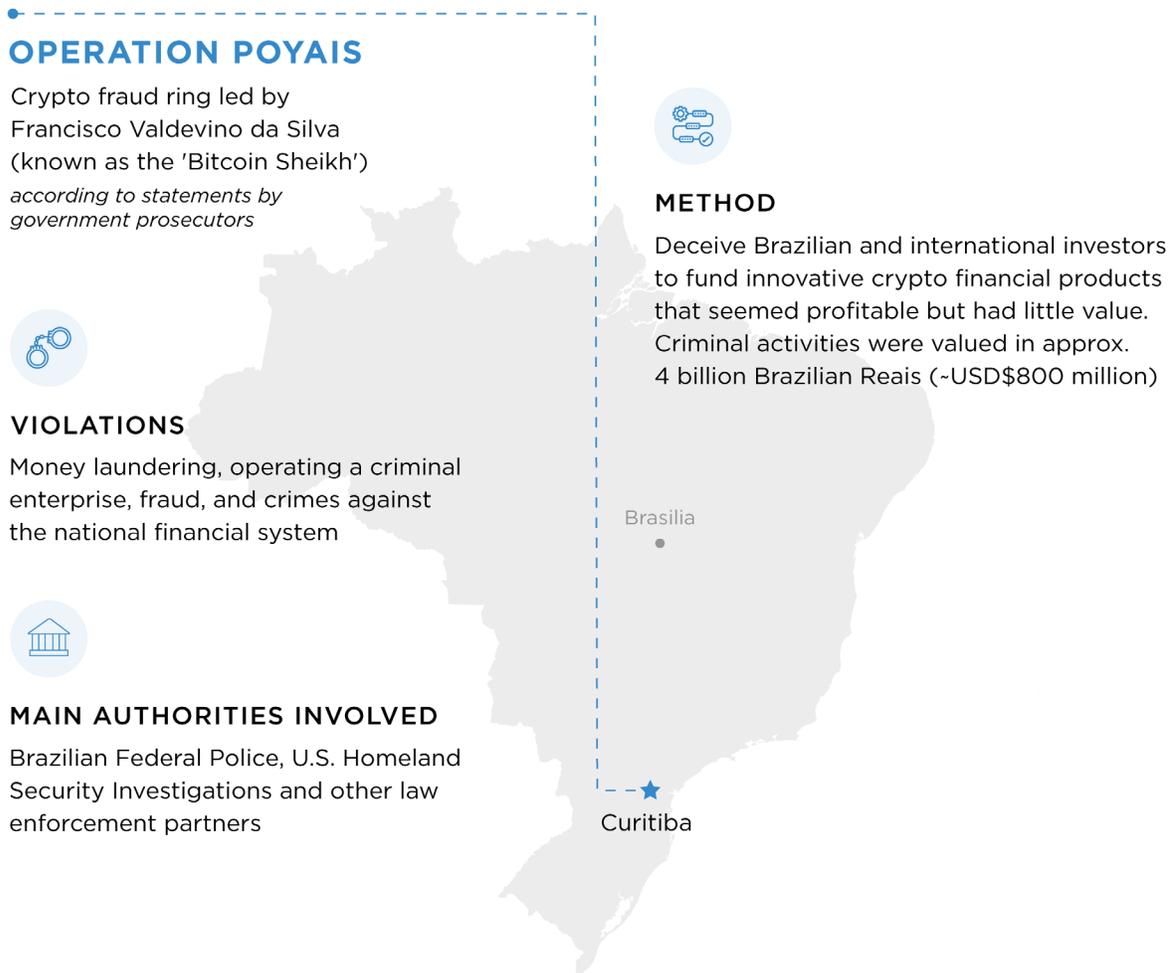
59 Secretaria Especial da Receita Federal do Brasil do Ministério da Economia, Instrução Normativa n° 1.888 de 3 de Maio de 2019, introduced on May 7, 2019, <https://www.in.gov.br/web/dou/-/instru%C3%87%C3%83o-normativa-n%C2%BA-1.888-de-3-de-maio-de-2019-87070039>.

60 Banco Central Do Brasil, Communiqué 31,379, introduced on November 16, 2017, <https://www.bcb.gov.br/ingles/norms/Virtual-currencies-Communique-31379-English.pdf>.

61 Congresso Nacional, Lei N° 9.613, de 3 de Março de 1998, introduced on March 3, 1998, http://www.planalto.gov.br/ccivil_03/leis/l9613.htm.

GRAPHIC 4

Operation Poyais in Brazil



© Global Financial Integrity, 2022.

Source: ICE, "US-Brazil investigation leads to disruption of transnational cryptocurrency fraud ring", October 2022.

Several bills to regulate crypto have been debated in the House and in the Senate since 2015, including bills to define virtual assets, address service providers, and establish the role of the Central Bank. Some of the latest initiatives from 2022 look to address ML risks and provide clear rules for investors so as to keep promoting business and investment.⁶² The RFB is seeking to ensure that data is available not only to collect taxes, but also for other authorities if necessary, which is key for AML purposes.

Another bill, PL 3825/2019, was passed by the Senate in February 2022, but has not yet been signed into law.⁶³ The Bill would regulate crypto-asset markets, including establishing definitions, super-

⁶² Daniel Carvalho and Maria Eloisa Capurro, "Brazil's Senate Takes First Step Toward Regulating Crypto," Bloomberg, February 22, 2022, <https://www.bloomberg.com/news/articles/2022-02-22/brazil-s-senate-takes-first-step-toward-regulating-crypto>.

⁶³ Senador Flávio Arns, "Projeto de Lei n° 3825, de 2019," Senado Federal, accessed March 2022, <https://www25.senado.leg.br/web/atividade/materias/-/matéria/137512>.

vision, penalties, the role of exchanges, and AML/CFT requirements. As of April 2022, no major updates have been made.⁶⁴ If this bill is approved, it would bring better awareness and guidance on how to manage the crypto ecosystem in the country.

The regulatory sandbox mentioned earlier, promoted by the BCB along with the Securities and Exchange Commission (*Comissao de Valores Mobiliarios of Brazil* or CVM), the Ministry of Economy and the Superintendent of Private Insurance (*Superintendência de Seguros Privados*),⁶⁵ is focused on financial and payment innovations that would follow AML/CFT prevention measures.⁶⁶ Selected fin-techs were able to test blockchain-like transactions, data analytics and artificial intelligence.⁶⁷

The BCB had also instituted a sandbox to address blockchain technology in 2021, which focused on establishing better ways to ensure integrity and compliance in the environment.⁶⁸ Even though this initiative is not crypto-centric, it did pave the way in exploring how blockchain regulation might impact payments and deepening the appreciation for the role blockchain can play in promoting AML/CFT in future crypto regulation in Brazil.

At the same time, private sector measures have sought to self-regulate the market in Brazil. Brazilian crypto companies created a code of self-regulation with the support of ABCripto,⁶⁹ an association of organizations and individuals that promotes cryptocurrency and blockchain as tools for technological innovation. This code can be impactful as the crypto companies involved – Foxbit, Ripio, Bitcoin Market, and Novadax – are responsible for 80 percent of crypto transactions in Brazil.⁷⁰ As signatories, the companies have agreed, among other points, to enact measures to combat corruption, fraud, and ML as part of their code of ethical conduct.⁷¹ In addition to this initiative, Brazilian firms have also incorporated AML protocols in their platforms, establishing compliance standards and practices.⁷²

As seen in Graphic 3 (pg. 11), the crypto market in Brazil is expanding, and in December 2021, crypto users represented about 14.4 percent of Brazil's population, which is one of the largest usage rates in LAC.⁷³ Brazil represents a very important crypto market in the region and not having adequate regulation creates legal voids that can be detrimental for crypto users and investors. Regardless of the initiatives to address crypto in the National Congress, there still are no laws in place to regulate crypto except in the realm of taxation. In a context where crypto regulation is either self-enforced by

64 Ibid.

65 “Brazil to create a regulatory sandbox,” Hogan Lovells, June 18, 2019, <https://www.engage.hoganlovells.com/knowledgeservices/news/brazil-to-create-a-regulatory-sandbox>.

66 Banco Central Do Brasil, “Regulatory Sandbox,” accessed March 2022, <https://www.bcb.gov.br/en/financialstability/regulatory-sandbox>.

67 Joana Vaccarezza, “2021: the year of regulatory sandboxes in Brazil,” Instituto Propague, March 19, 2021, <https://institutopropague.org/en/news/2021-the-year-of-regulatory-sandboxes-in-brazil/>.

68 “Sandbox BC vai desenvolver proposta do Lift Lab,” Banco Central do Brasil, December 20, 2022, <https://www.bcb.gov.br/detalhe-noticia/596/noticia>.

69 Terence Zimwara, “Brazilian Crypto Companies to Self-Regulate: Target a \$100 Billion Market by Year-End,” *Bitcoin.com*, August 24, 2020, <https://news.bitcoin.com/brazilian-crypto-companies-to-self-regulate-target-a-100-billion-market-by-year-end/>.

70 Andrea Leal, “Empresas de criptomonedas en Brasil se autorregularán para crecer el mercado de Bitcoin,” *Criptonoticia*, August 17, 2020, <https://www.criptonoticias.com/regulacion/empresas-criptomonedas-brasil-autoregularan-crecer-mercado-bitcoin/>.

71 “ABCripto: Self Regulation,” ABCripto, accessed March, 2022, <https://www.abcripto.com.br/autorregulacao-abcripto>.

72 Terence Zimwara, “Brazilian Crypto Companies to Self-Regulate: Target a \$100 Billion Market by Year-End”.

73 “Finder Cryptocurrency Adoption Index,” Finder, accessed March, 2022, <https://www.finder.com/finder-cryptocurrency-adoption-index#cryptocurrency-adoption-statistics-by-country>.

the private sector or tax oriented, efforts by authorities to tackle crypto financial crimes will remain stymied. A robust framework is needed to address crypto in the country, to provide consumer financial protection, to ensure AML security, and to provide guidance and resources to law enforcement.

COLOMBIA

Colombia is one of the biggest crypto markets in LAC. However, as with many other countries in the region, it does not have a current legal framework in place to address cryptocurrencies.⁷⁴ In response to crypto adoption and evolution in Colombia, regulatory authorities created a Sandbox project to understand the interactions among actors including banks and exchanges. However, according to experts interviewed for this project, the ultimate goal of the initiative is not to necessarily promote legislation.

I. Ecosystem

Colombia is the second country in LAC in crypto adoption.⁷⁵ It is also the eleventh country in the world in volume of crypto transactions.⁷⁶ In terms of access, by 2021 there were around 60 crypto ATMs (which allow exchange of currency, bank account or crypto), making Colombia a regional leader.⁷⁷ Also, crypto payment is accepted in around 687 shops, which in 2020 amounted to US\$147 million in bitcoin transactions.⁷⁸

According to experts interviewed, the profile of the Colombian crypto user can vary, with socioeconomic backgrounds that are quite diverse. Some users are looking for investment alternatives while others are only experimenting out of curiosity. Even if there is a fast increase in crypto users, it should be noted that most of this population is young and tech savvy. Specialists have highlighted that there is still a deep misunderstanding from citizens of all ages and socio-economic backgrounds on how crypto works.

II. Legislation, Initiatives and Analysis

As with many countries in the region, Colombia does not currently have a legal framework in place to address cryptocurrency. Nevertheless, announcements have been made by the Central Bank (*Banco de la República*),⁷⁹ the National Directorate of Taxes and Customs - DIAN (*Dirección de Impuestos y Aduanas Nacionales*), the Information and Financial Analysis Unit - UIAF (*Unidad de Información y Análisis Financiero*) and the Financial Superintendence of Colombia - SFC (*Superintendencia Financiera de Colombia*) in order to raise awareness about cryptocurrencies and their risks.⁸⁰

74 Antony Pinedo, “Bancolombia experimenta con cripto en sandbox, anticipa aumento de uso en Latam,” Iupana, February 21, 2022, <https://iupana.com/2022/02/21/bancolombia-experimenta-con-cripto-en-sandbox-anticipa-aumento-de-uso-en-latam/>.

75 Ibid.

76 “Colombia, en el puesto 11 en transacciones con criptomonedas del mundo,” Portafolio, February 8, 2022, <https://www.portafolio.co/economia/finanzas/colombia-ocupa-el-puesto-once-en-transaccion-con-criptomonedas-561479>.

77 Mariana Palacios Rodriguez, “Las criptomonedas en América Latina,” Obela, April 29, 2021, <http://www.obela.org/analisis/las-criptomonedas-en-america-latina>.

78 “Colombia, una de las naciones donde más se negocia bitcoin,” Portafolio, February 22, 2021, <https://www.portafolio.co/economia/finanzas/bitcoin-en-colombia-una-de-las-naciones-donde-mas-se-negocia-la-criptomoneda-549372>.

79 “Criptoactivos,” Banco de República de Colombia, accessed March 2022, <https://www.banrep.gov.co/es/publicaciones/documento-tecnico-criptoactivos>.

80 “Criptomonedas, Criptoactivos, Proyecto Piloto,” Superintendencia Financiera de Colombia, accessed March 2022, <https://www.superfinanciera.gov.co/jsp/10106486>.

Bills have been introduced in Congress since 2018, both in the Senate and the House. However, most of these bills have been archived. One of the bills that is still active is PL 139/2021C. It provides guidance on how to treat crypto, notes that any losses are not recoverable, requires AML/CFT measures, and seeks to minimize risks to consumers, among other measures. The experts interviewed were not sure if the bill would pass, but they were confident that with political debate, stronger proposals will eventually be approved.

There have also been sandbox initiatives with the government to further analyze ways to regulate cryptocurrencies in the country.⁸¹ The crypto sandbox initiatives in Colombia are led by the Presidential Council for Economic Affairs and Digital Transformation (*Consejería Presidencial para Asuntos Económicos y de Transformación Digital*), among other public agencies,⁸² and seek to address cryptocurrencies in operations of cash-in and cash-out in crypto platforms while creating alliances among participants to better understand the digital ecosystem and improve effectiveness.⁸³ It is an innovative initiative, as members can interact in a controlled environment, with a multisectorial perspective, where the public and private sector can interact. The initiative contributes to a better understanding of how the ecosystem works and how possible vulnerabilities might be mitigated, including an AML/CFT perspective. However, even though the initiative is very useful, it does not necessarily mean that it will result in the creation of adequate regulation.

The UIAF, the Central Bank and the DIAN have also issued statements on crypto, and other authorities have published warnings on the volatility of cryptocurrencies as well as scams related to ML/FT activities. In Resolution 314 of 2021, the UIAF required all users (natural persons and companies) to report suspicious transactions in the exchange of virtual assets to the Unit, to recognize possible ML/TF activities.⁸⁴ Even still, there is concern with how the information would be processed and the interinstitutional capacity with other authorities to prosecute these specific crimes.

In addition, the DIAN requires crypto users to report their crypto assets when they file their income taxes.⁸⁵ The DIAN is also putting processes in place to audit users that conduct transactions with crypto, looking for possible tax evasion.⁸⁶ Meanwhile, the Central Bank and the SFC have made announcements on the volatility, dangers, and risks of cryptocurrencies and how they are not considered money or legal tender in Colombia.⁸⁷

81 Ibid.

82 Other agencies include the *Ministerio de Hacienda y Crédito Público* (Ministry of Finance and Public Credit), the *Ministerio de Tecnologías de la Información y Comunicaciones* (Ministry of Information Technologies and Communications), the *Banco de la República* (Central Bank), the *Unidad de Regulación Financiera - URF* (Financial Regulation Unit), the *Superintendencia de Sociedades* (Superintendence of Companies), the *Superintendencia de Industria y Comercio* (Superintendence of Companies, Industry and Commerce), the DIAN and the UIAF.

83 “laArenera,” Superintendencia Financiera de Colombia, accessed March 2022, <https://www.superfinanciera.gov.co/inicio/innovas-fc/laarenera-10099575>.

84 “UIAF expide Resolución para imponer reportes a proveedores de activos virtuales,” Unidad de Información y Análisis Financiero, December 29, 2021, https://www.uiaf.gov.co/sala_prensa/noticias_comunicados/uiaf_expide_resolucion_imponer_30998.

85 DIAN, “DIAN realiza acciones de fiscalización a operación con criptoactivos - Bitcoin”, accessed February 23, 2022. <https://www.dian.gov.co/Prensa/Paginas/Comunicado-de-Prensa-009.aspx>.

86 “DIAN realiza acciones de fiscalización a operación con criptoactivos – BITCOIN,” Dirección de Impuestos y Aduanas Nacionales, January 28, 2022, <https://www.dian.gov.co/Prensa/ComunicadosPrensa/009-DIAN-realiza-acciones-de-fiscalizacion-a-operacion-con-criptoactivos-BITCOIN.pdf>.

87 “Criptoactivos,” Banco de República de Colombia; “Me informo y cuido mi dinero,” Superintendencia Financiera de Colombia, accessed March 2022, <https://www.superfinanciera.gov.co/jsp/10110918>.

Another important element to analyze is the AML regulatory landscape in Colombia. In January 2022, Law 2195 included key topics such as beneficial ownership, exchange of information, and transparency.⁸⁸ There has not been specific mention of cryptocurrencies, but considering the ever-changing environment in the country, it will be useful to include future amendments on this matter.

As shown on Graphic 3 (pg. 11), Colombia is a particularly interesting case to analyze. The country's crypto adoption rate of 14.5 percent is one of the highest in LAC.⁸⁹ Colombia has high rates of internet access at 56.5 percent and financial access at 87.8 percent,⁹⁰ which meets their goals for the National Development Plan.⁹¹ Because of this, the Colombian market is very connected and has a high rate of financial inclusion, which may be an advantage for crypto users. Experts interviewed for this project suggested that Colombians are likely adopting cryptocurrencies not to fulfill a necessity such as financial stability, but more as a choice of investment and/or out of curiosity. They also highlighted that, despite citizens being unfamiliar with cryptocurrencies, the market is growing.

The use of cryptocurrencies in Colombia is not illegal and, for now, it is only managed through specific and limited norms that do not provide a complete legal or regulatory framework. Despite the rising trend in Colombia to adopt cryptocurrencies, not having regulation in place to protect users and to guide its development is problematic.

Although the increase in use is acknowledged by authorities, it is primarily from a tax perspective, and it has not been completely addressed from a more multisectorial perspective. Like other countries in the region, Colombia is regulating crypto indirectly through some norms and has held hearings in Congress. However, until a solid framework is adopted, ambiguity and room for ML/FT may arise.

EL SALVADOR

In 2021, El Salvador became the first country in the world to accept Bitcoin as legal tender. President Bukele promoted the initiative with the goal of improving financial inclusion, promoting economic development, and developing new ways to transact remittances, which represent more than 20 percent of the Salvadoran GDP.^{92; 93}

The decision to adopt Bitcoin as legal tender was quickly approved by Congress and has received some positive feedback, including support from countries that might be interested in following El

88 Congreso de la República de Colombia, Ley 2195, introduced on January 18, 2022, <https://dapre.presidencia.gov.co/normativa/normativa/LEY%202195%20DEL%2018%20DE%20ENERO%20DE%202022.pdf>

89 "Finder Cryptocurrency Adoption Index," Finder, accessed March, 2022, <https://www.finder.com/finder-cryptocurrency-adoption-index#cryptocurrency-adoption-statistics-by-country>.

90 Financial access to at least one financial product.

91 Banca de las Oportunidades and Superintendencia Financiera de Colombia, *Reporte de Inclusión Financiera* (Bogotá: Banca de las Oportunidades and Superintendencia Financiera de Colombia, 2020), 4, https://www.bancadelasoportunidades.gov.co/sites/default/files/2021-07/REPORTE_DE_INCLUSION_FINANCIERA_2020.pdf

92 Personal remittances constitute 24.1% of the Salvadorian GDP. "Personal remittances, received (% of GDP) - El Salvador," World Bank, accessed March 2022, <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=SV>.

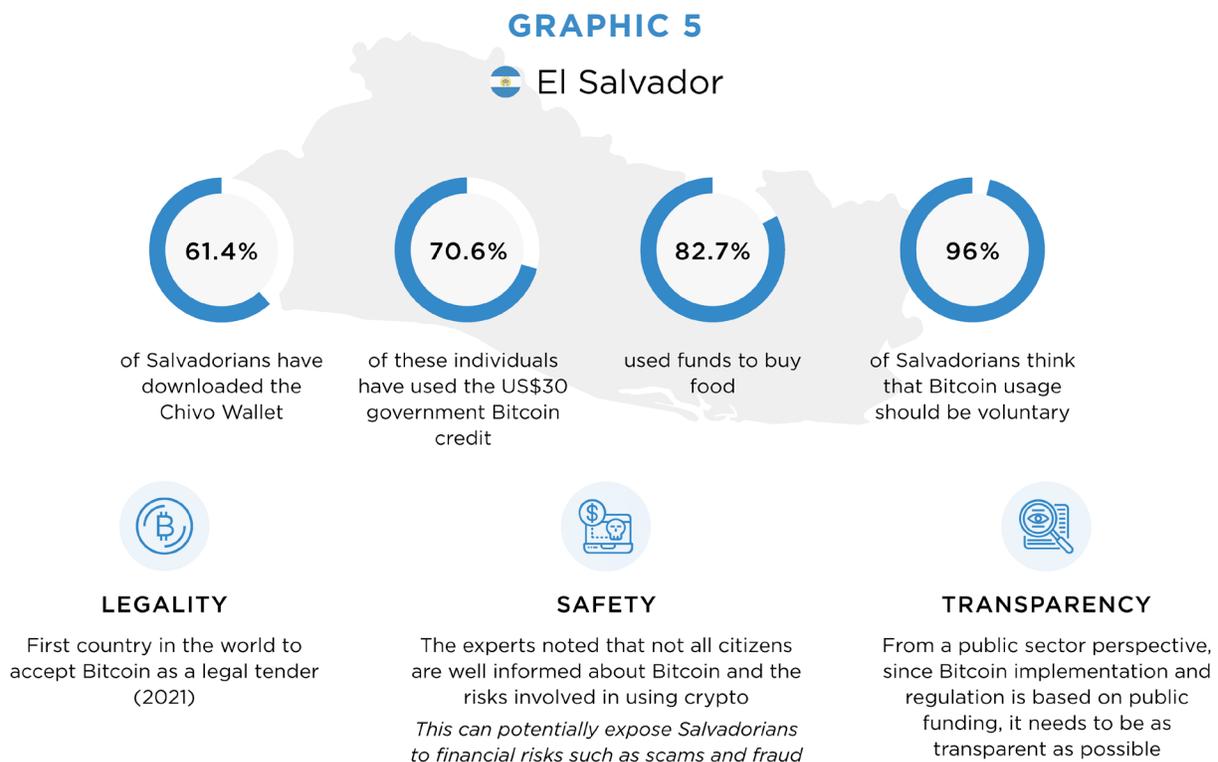
93 According to the Central Bank of El Salvador, the country received US\$7,517.1 million in remittances in 2021, an increase of 26.8% from 2020. "El Salvador recibió US\$7,517.1 millones en remesas familiares durante 2021," Banco Central de Reserva de El Salvador, January 21, 2022, <https://www.bcr.gob.sv/2022/01/21/el-salvador-recibio-us7517-1-millones-en-remesas-familiares-durante-2021/#:~:text=Por%20su%20parte%2C%20el%20monto,2021%20no%20fue%20la%20excepci%C3%B3n>.

Salvador's lead. However, it has also received criticism. In this context, it would be important to analyze factors such as poverty, access to the internet and mobile devices, levels of crypto knowledge, and rates of adoption to truly understand if including Bitcoin as legal tender is beneficial, or if changes are needed to better realize the government's goals and mitigate financial crime risks.

I. Ecosystem

The experts interviewed noted that citizens are not well informed about Bitcoin and the risks involved in using crypto. This can potentially expose Salvadorians to financial risks such as scams and fraud. From a public sector perspective, since Bitcoin implementation and regulation is based on public funding, it needs to be as transparent as possible.

Despite government claims that sending remittances is more affordable using Bitcoin, Salvadorians have not fully embraced this method, with more than 90 percent of Salvadorians still preferring to send remittances through means other than Bitcoin.⁹⁴ It will be important to monitor crypto adoption among citizens, and determine if adoption is only related to incentives (such as the US\$30 dollar credit) or if the usage is consistent over time and corresponds to actual Bitcoin penetration in the country.



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Source: GFI research and Fundaungo, "Evaluación del año 2021", January 2022.

94 Centro de Estudios de Opinión Pública, *Evaluación de la Gestión Gubernamental y Temas de Actualidad del 2021* (San Salvador: Fundaungo, 2022), 4, <https://www.fundaungo.org.sv/products/evaluacion-de-la-gestion-gubernamental-y-temas-de-actualidad-del-2021/717/>.

As seen in Graphic 5 (pg. 21), around 61 percent of Salvadorians have downloaded the Chivo Wallet and around 70 percent of these individuals have used the US\$30 government Bitcoin credit. It is interesting to note that around 80 percent of those that received the funds used it to buy food.⁹⁵ Despite more than 60 percent of the population accessing the Chivo Wallet, according to a recent report by the Salvadorian think tank Fundaungo, 96 percent of Salvadorians think that Bitcoin usage should be voluntary. In this context, regardless of the crypto product adoption rate in El Salvador, it is still necessary to analyze whether the crypto penetration is sustained or if it is circumstantial (such as simply taking advantage of the US\$30 incentive).

Also impacting usage is internet connectivity, which is an issue for many citizens, with only 57 percent being connected to the internet. El Salvador is still a country that is battling poverty and gang-related insecurity, which may limit the average citizen's ability to fully adopt Bitcoin or any other cryptocurrency as a daily legal tender.⁹⁶

II. Legislation, Initiatives and Analysis

Under Decree 57 from June 9th, 2021, President Bukele issued a law to adopt Bitcoin as legal tender.⁹⁷ Highlights of this law include a requirement for economic agents to accept Bitcoin as payment and the possibility of “paying tax contributions in Bitcoin” according to the law, though it is important to note that it does not provide further clarification on how the latter will be implemented. The government also promised to provide “training and the necessary mechanisms for citizens to access Bitcoin transactions” as a way to promote Bitcoin usage. However, some of our interviewed experts mentioned that other than some Chivo representatives in the ATMs to guide users, training has been limited.

The law also mentions the creation of a trust to ensure the convertibility of Bitcoin to USD (El Salvador's legal currency since 2000). The trust, also known as “FIDEBITCOIN”, was created under Decree 137 from August 31st, 2022,⁹⁸ whereas Executive Decree 27 regulates the Bitcoin Law, focusing on service providers and conduct guidelines.⁹⁹

The government partnered with CHIVO S.A. de C.V. to develop the government endorsed Bitcoin wallet app called “Chivo Wallet” to facilitate transactions.¹⁰⁰ As of September 2021, El Salvador had installed more than 200 Bitcoin ATMs in the country, becoming the “third-largest network of crypto ATMs after the United States and Canada.”¹⁰¹ However, some interviewed experts have questioned how companies were chosen for providing certain public services (like CHIVO S.A. de C.V) and whether there was a real bidding process.

⁹⁵ Ibid.

⁹⁶ José A. Barrera, “El Salvador alcanzó los 3.8 millones de usuarios de internet en 2020,” *Diario El Mundo*, February 8, 2021, <https://diario.elmundo.sv/Econom%C3%ADa/el-salvador-alcanzo-los-3-8-millones-de-usuarios-de-internet-en-2020>.

⁹⁷ “Ley Bitcoin,” Asamblea Legislativa de la República de El Salvador, June 9, 2021, <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/8EE85A5B-A420-4826-ABD0-463380E2603B.pdf>.

⁹⁸ “Ley de Creación del Fideicomiso Bitcoin,” Asamblea Legislativa de la República de El Salvador, August 31, 2021, <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/91A41A63-1796-4BA0-B969-9C16E505304F.pdf>.

⁹⁹ “Diario Oficial Tomo 425 No. 163,” República de El Salvador en la América Central, August 27, 2021, <https://www.diariooficial.gob.sv/diarios/do-2021/08-agosto/27-08-2021.pdf>.

¹⁰⁰ “Política de Privacidad,” Chivowallet, accessed March 2022, <https://chivowallet.com/politica-de-privacidad.html>.

¹⁰¹ “El Salvador ranks third in global Bitcoin ATM installations, data finds,” Sarkar, Arikat, CoinTelegraph, September 18, 2021, <https://cointelegraph.com/news/el-salvador-ranks-third-in-global-bitcoin-atm-installations-data-finds>.

Currently, there are several initiatives from the government to promote Bitcoin in the country such as giving US\$30 worth of Bitcoin to citizens when opening an account with Chivo Wallet,¹⁰² installing an additional 1,500 Bitcoin ATMs from AlphaPoint,¹⁰³ and promoting the sale of “Bonos Volcan” (Volcan Bonds) in order to build Bitcoin City which the government has also announced plans to build. The city is to be located at La Union at the base of the Conchagua Volcano in order to take advantage of the geothermal energy for mining Bitcoin.¹⁰⁴ In addition, the President is promoting 20 bills to create a regulatory framework to issue US\$1 billion bonds in Bitcoin.¹⁰⁵

Experts interviewed for this project highlighted several concerns, such as the volatility of Bitcoin itself and how that would impact the economy of the country, public projects and citizens wellbeing. These concerns have been echoed by the IMF, which has pointed to issues regarding the incomplete regulation of Bitcoin as well as the security of the Chivo Wallet, financial integrity, and consumer protection.¹⁰⁶

There are also concerns with access to information. Several experts mentioned that there is opacity in the way the data is publicly released, both as published by the authorities and when requested under the Access to Public Information Law.¹⁰⁷ Additionally, the experts interviewed questioned the lack of transparency in the bidding process for the delivery of public Bitcoin products and services.

Other concerns noted by experts interviewed included the security of the Chivo Wallet to prevent theft, the KYC policies in place, and availability of information on how FIDEBITCOIN works and data on its use among other important issues. It is understandable that sensitive and confidential information is provided, used, and collected in these processes, but general information, such as usage statistics, should be made available.

Another important issue to consider is the ML vulnerabilities that might arise as a result of the adoption of Bitcoin. As mentioned previously, cryptocurrencies can be a tool for criminals to launder money with impunity, especially if there is not a clear regulatory framework with sanctions, oversight, technical capacity in the judiciary, and clear prosecutorial procedures.

The AML law in El Salvador was enacted in 1998 (Decree 498) following the FATF’s guidelines, and underwent minor amendments in 2015 (Decree 104) and 2017 (Decree 844 - Interpretation of Art 2). However, the Government has not yet implemented AML guidelines on cryptocurrency, despite Congressional initiatives to address this issue. Currently, El Salvador is not fully following the FATF’s

102 Robert Hart, “Adults In El Salvador To Get \$30 In Bitcoin As Nation Unveils Details To Make Crypto Legal Tender,” Forbes, June 25, 2021, <https://www.forbes.com/sites/roberthart/2021/06/25/adults-in-el-salvador-to-get-30-in-bitcoin-as-nation-unveils-details-to-make-crypto-legal-tender/?sh=3f24f92b109c>.

103 Katlen Urquilla, “Empresa AlphaPoint pretende instalar 1,500 cajeros para usar Bitcoin en El Salvador,” Urquilla, Katlen, [elsalvador.com](https://www.elsalvador.com/noticias/negocios/chivo-wallet-bitcoin-el-salvador-bukele/923818/2022/), February 4, 2022, <https://www.elsalvador.com/noticias/negocios/chivo-wallet-bitcoin-el-salvador-bukele/923818/2022/>.

104 “El Salvador Bitcoin city planned at base of Conchagua volcano,” BBC, November 21, 2021, <https://www.bbc.com/news/world-latin-america-59368483#:~:text=El%20Salvador%20plans%20to%20build,Uni%C3%B3n%20President%20Nayib%20Bukele%20said>.

105 “El Salvador prepara 20 proyectos de ley para dar un marco legal a los bonos de Bitcoin,” Newen, Brian, CoinTelegraph, January 5, 2022, <https://es.cointelegraph.com/news/el-salvador-prepara-20-bills-to-provide-legal-framework-for-bitcoin-bonds>.

106 “El Salvador’s Comeback Constrained by Increased Risks,” El Salvador Country Team, IMF Western Hemisphere Department, February 16, 2022, <https://www.imf.org/en/News/Articles/2022/02/15/cf-el-salvadors-comeback-constrained-by-increased-risks>.

107 “Ley de Acceso a la Información Pública,” Asamblea Legislativa de la República de el Salvador, April 8, 2011, <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/FA6EB5A8-D51F-4190-A90F-0FA65913525A.pdf>.

recommendations on new technologies.¹⁰⁸ Even if Decree 27 touches on AML and the importance of following the AML law and FATF recommendations, it would be interesting to know how these mandates are actually being implemented.

Furthermore, failure to address the AML risks turns legal voids into vulnerabilities, not only for the government but also for citizens. Clearer AML regulation could help El Salvador meet its stated goals for Bitcoin adoption, while also helping prevent misuse for financial crimes. Moreover, the successful adoption of Bitcoin will rely on major stakeholders such as the government, the private sector, customers, supporting services, civil society and academia, etc. As such, it is important to include these stakeholders in the proposal, debate, approval and implementation of regulation and best practices in the Bitcoin ecosystem in El Salvador.

MEXICO

Mexico became the first country to issue fintech regulation in LAC in 2018, with the primary objective of regulating financial technology companies due to the exponential rate of growth in Mexico.¹⁰⁹ In addition, the fintech regulation brought new attention to cryptocurrency regulation in the country, including defining virtual assets and the role of the Bank of Mexico (*Banco de México* or Banxico). By establishing a regulatory foundation for crypto and adapting it to the national context, Mexico is a role model for other countries in the LAC region.

I. Ecosystem

Currently, Mexico has a population over 126 million; however, Mexico is a country that holds various realities.¹¹⁰ The portion of the population with higher levels of financial literacy, higher levels of education, greater access to the internet and information technology as well as more economic resources is likely to have a better understanding of cryptocurrencies. However, that is not the case for the 43.3 percent of the population that lives in poverty, most of whom do not have stable internet access.¹¹¹ This translates into a relatively low level of cryptocurrency adoption, with only 15.2 percent of the population using crypto.¹¹²

In spite of this ecosystem, the crypto market in Mexico is rapidly expanding. For example, Bitso, one of Mexico's leading crypto exchange, had by 2020 a 92 percent Mexican users (increasing its volume by 342 percent from 2019 -2020 according to the exchange).¹¹³

108 “Falta de regulación de bitcoin en Ley de Lavado incumpliría medidas del GAFI,” Espinoza, Claudia, *El Economista*, October 7, 2021, <https://www.eleconomista.net/cripto/Falta-de-regulacion-de-bitcoin-en-Ley-de-Lavado-incumpliria-medidas-del-GA-FI-20211007-0013.html>.

109 “Los tres retos principales de la Ley FinTech,” Deloitte, accessed March, 2022, <https://www2.deloitte.com/mx/es/pages/dnoticias/articulos/ley-fintech-retos.html>.

110 “Población,” Instituto Nacional de Estadística, Geografía e Informática (INEGI), accessed March, 2022, <https://www.inegi.org.mx/temas/estructura/>.

111 “Medición de la Pobreza,” Consejo Nacional de Evaluación de la Política de Desarrollo Social, accessed March, 2022, https://www.coneval.org.mx/Medicion/MP/Paginas/Pobreza_2020.aspx.

112 “Finder Cryptocurrency Adoption Index,” Finder, accessed March, 2022, <https://www.finder.com/finder-cryptocurrency-adoption-index#cryptocurrency-adoption-statistics-by-country>.

113 Sandali Handagama, “Why It’s Time to Pay Attention to Mexico’s Booming Crypto Market,” *Coindesk*, August 13, 2020, <https://www.coindesk.com/policy/2020/08/13/why-its-time-to-pay-attention-to-mexicos-booming-crypto-market/>.

II. Legislation, Initiatives and Analysis

Since 2016, the Government of Mexico has sought to promote technological innovation in the country. They have worked to develop a strong regulatory environment to encourage companies and start-ups to keep investing and developing in a way that is beneficial for the country and all stakeholders, rather than letting a market grow without a legal framework.¹¹⁴ As a result, the Fintech Law (“Ley para regular las instituciones de tecnología financiera”) was enacted by Mexico’s Congress in 2018.¹¹⁵ As acknowledged by the experts interviewed, this was a revolutionary step since, thus far, other countries had opted to adapt their existing laws and regulations instead of creating new legislation. The Fintech Law addresses two types of fintech: crowdfunding (debt, equity, co-ownership or royalties) and electronic payments (including e-wallets).

The Fintech Law provides guidelines for the operation of virtual asset services and establishes a regulatory framework for crypto, defining virtual assets as “the representation of value recorded electronically and used among the public as a means of payment for all types of legal acts and whose transfer can only be carried out through electronic means.”¹¹⁶ According to Mexican law, virtual assets are recognized by Banxico, but not as legal tender since, according to its Monetary Law, they cannot be considered as coins.¹¹⁷

The Fintech Law confers the core regulation of virtual assets to Banxico and only allows the use of those virtual assets authorized by Banxico. Furthermore, the institution is authorized to issue general regulations which, among others, established (i) the characteristics of virtual assets, (ii) the terms, conditions and restrictions of transactions that financial institutions may carry out with virtual assets, (iii) the information financial institutions must submit to Banxico related to virtual asset transactions, and (iv) the information financial institutions must supply to Banxico on virtual asset transactions in order to obtain the authorization to transact with virtual assets.¹¹⁸ Some criticism has come from this, as according to subject matter experts, the Fintech Law fails to address certain important matters or it is not updated enough, instead opting to delegate rule-making to Banxico.

In 2019, Banxico Circular 4/2019 (“General Provisions Applicable to Credit Institutions and Financial Technology Institutions in the Operations They Carry out with Virtual Assets”) further expanded the Fintech Law. The circular establishes that credit institutions may only carry out operations with virtual assets that relate to internal activities, operations and services carried out for clients, or carried out on their own account.¹¹⁹ This has been identified by some as restrictive and distorting the purpose and use of virtual assets, making them irrelevant and impractical whereas Banxico reinforced the goal of not transferring the risk of virtual assets to consumers.¹²⁰

114 Jorge Gaxiola Moraila, Alexis León Trueba and Gabriel Franco Fernández, “The new Mexican FinTech law – balancing innovation, security and stability,” *Financier Worldwide Magazine*, August, 2018, https://www.financierworldwide.com/the-new-mexican-fintech-law-balancing-innovation-security-and-stability#_YlbuNjPMK3L

115 Cámara de Diputados del Honorable Congreso de la Unión, *Ley para regular las instituciones de tecnología financiera*, introduced on March 9, 2018, https://www.diputados.gob.mx/LeyesBiblio/pdf/LRITF_200521.pdf.

116 *Ibid*, Article 30.

117 Cámara de Diputados del Honorable Congreso de la Unión, *Ley Monetaria de los Estados Unidos Mexicanos*, introduced on July 27, 1931, article 2, <https://www.diputados.gob.mx/LeyesBiblio/pdf/152.pdf>.

118 “Fintech Laws and Regulations: Mexican Chapter,” *International Comparative Legal Guides*, June 14, 2021, <https://iclg.com/practice-areas/fintech-laws-and-regulations/mexico>.

119 Banco de México, Circular 4/2019, introduced on March 8, 2019, <https://www.banxico.org.mx/marco-normativo/normativa-emiti-da-por-el-banco-de-mexico/circular-4-2019/%7BACDFD34F-1226-1893-52EE-D87A28645384%7D.pdf>.

120 “Acciones regulatorias por parte del Banco de México,” Banco de México, accessed March, 2022, <https://www.banxico.org.mx/sistemas-de-pago/6--acciones-regulatorias-po.html>.

Despite the fact that Mexico both currently lacks tax regulations on cryptocurrencies and that crypto is not considered legal tender, crypto owners are not exempt from paying taxes. Experts mentioned that this ability to tax cryptocurrencies is based on Articles 31 and 73 of the Mexican Constitution, which states that the obligation for citizens to pay taxes is based on having any lawful profit.¹²¹ A 2021 study prepared by the Taxpayer Defense Attorney's Office (*Procuraduría de la Defensa del Contribuyente* or Prodecon) established that the purchase and sale of cryptocurrencies is subject to a 20 percent income tax on the total transaction.¹²² According to Prodecon, since there is no particular category to classify the taxes that must be assigned to cryptocurrencies, they should enter the tax regime for the disposal of goods, as they are considered income derived from the sale of virtual assets.¹²³

The reasons behind the emerging use of crypto, according to experts, are still primarily speculative, but there are new trends emerging. For instance, remittances have played a key role in the explanation of crypto rise, especially during the pandemic.¹²⁴

Even if Mexico has a Fintech Law in place, there should be updates to better address the use of cryptocurrencies in the country, especially if its adoption is increasing. Also, a more updated element of AML/CFT should also be considered in the Fintech Law and complementary norms, as there is a reported increase in the use of cryptocurrencies in transnational criminal organizations and cartels laundering money, including Jalisco New Generation Cartel (CJNG) and the Sinaloa Cartel.¹²⁵

121 Constitución Política de los Estados Unidos Mexicanos, introduced on February 5, 1917, articles 31 and 73, <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf>.

122 Fernando Gutierrez, "Operaciones con criptomonedas deben de pagar ISR: Prodecon," *El Economista*, November 7, 2021, <https://www.eleconomista.com.mx/economia/Operaciones-con-criptomonedas-deben-de-pagar-ISR-Prodecon-20211107-0038.html>.

123 Ibid.

124 Andalusia Knoll Soloff, "The new wave of crypto users: migrant workers," *Rest of the World*, April 26, 2021, <https://restofworld.org/2021/crypto-remittances/>.

125 Diego Oré, "Latin American crime cartels turn to cryptocurrencies for money laundering," *Reuters*, January 13, 2022 <https://www.reuters.com/article/mexico-bitcoin-insight/latin-american-crime-cartels-turn-to-cryptocurrencies-for-money-laundering-idUSKB-N281IKD>.

Conclusions and Policy Recommendations

This report demonstrates that regulation of cryptocurrencies in LAC does not adequately match its current usage and adoption. Governments in the region should be aware that cryptocurrencies and crypto products cannot be eliminated: they represent new financial products that include risks that can, and must, be regulated to protect users, investors, and processes that, as of now, are either not regulated or only partially regulated. It is important to stress that cryptocurrencies per se do not necessarily present a greater financial crime risk compared to other forms of payment, particularly in terms of ML. However, just like other payment methods, cryptocurrency, as well as related products and services, do present a risk in the absence of adequate frameworks for regulation, oversight and enforcement. It is crucial to understand the risks that might arise when they are part of a transaction that does not meet the minimum requirements of national regulations and international standards.

Legal predictability is key to effective AML/CFT practices, especially in an ever-changing environment. In addition, effective standards can protect users and empower investors which will contribute to a country's development. Government regulation of cryptocurrency does not necessarily mean that cryptocurrency should be adopted as legal tender; rather, cryptocurrency and its related products and services should be addressed as part of the financial system of the countries and the region itself. In this sense, those users and investors who voluntarily decide to use cryptocurrencies will be protected by a regulatory framework.

Furthermore, from our analysis it appears that the private sector and academia do have efforts to address the "new" cryptocurrency reality. When regulating cryptocurrencies, governments should consider including the perspectives and expertise of these institutions. If these sector's efforts are not considered when regulating and addressing the topic, then valuable resources and information could be dismissed.

The following policy recommendations are intended to address cryptocurrencies from an AML/CFT perspective. These recommendations address different sectors since combating financial crimes requires a multisectoral approach. The recommendations also address ways to strengthen countries' capacity to address crimes that involve cryptocurrencies and new technologies, which includes empowering stakeholders from the judiciary, legislative branch, law enforcement, FIU, central bank, and customs, among others. The following recommendations are complementary to each other and should be understood as important requirements to better understand cryptocurrencies and mitigate financial crime risks.

- 1. Understand the crypto ecosystem in each country and the LAC region:** The cryptocurrency ecosystem in LAC is very diverse, with each country taking a different approach that does not necessarily follow usage or needs in the local context. With such a regionally diverse panorama, it is important for countries to understand their own reality, taking into consideration factors such as, but not limited to, poverty, internet access, mobile access, remittances, citizens' technical and financial awareness, and institutional capacities to address crypto crimes, among others. Governments must have access to the most up to date data in order to design policies that are relevant to and reflective of their own context and capacities.
- 2. Take real action and provide a comprehensive and substantial regulation that creates predictability:** Most countries in the region have issued formal directives, circulars, and statements

on the use of cryptocurrencies, but these communications tend to be indirect, such as addressing only one sector (often taxation), or providing insufficient information to both users and government agencies on how to handle the situation. This frequently results in inadequate coverage among stakeholders as well as confusion. Not only should governments take a direct stance on cryptocurrencies, they should create regulations with clear definitions, oversight, penalties and procedures. When the issue is only addressed partially, it creates an environment of vulnerability for users, as governments often focus on regulating users' profits (i.e. taxation), but overlook consumer protection.

- 3. Promote knowledge among citizens and users:** Even though crypto usage in LAC has been increasing, that does not necessarily mean that citizens are making informed decisions. Experts have highlighted that most users adopt crypto by need or curiosity, but are not necessarily informed of the risks. From our research, most citizens are aware of cryptocurrency, but they were unsure of its benefits, risks, or how it worked. Several countries have issued circulars or resolutions to create awareness; however, the campaigns were not always far-reaching, meaning that some users were likely overlooked. When a government does not invest in financial education, citizens are more vulnerable to scams and other crimes, which can be a burden not only for the victims but can also jeopardize the country's adaptability to new technologies and development.
- 4. Promote debate and exchange information among all sectors of society:** In order to develop effective crypto policies, practices and regulations, it is necessary to take into consideration all sectors of society involved, not only current stakeholders but potential stakeholders that might be affected by crypto regulation. It is also necessary to include academia and the private sector, which even if not directly involved, can promote transparency and knowledge. For example, round table discussions and/or sandboxes can be an appropriate space for stakeholders to exchange ideas, ensure flow of information, and even observe activities to suggest potential solutions (technical and legislative) to improve the security of the ecosystem within a country.
- 5. Empower academia and private initiatives:** From our research, the academic, nonprofit and private sectors are particularly interested in developing knowledge in cryptocurrencies, mostly because the ecosystem in their countries is developing fast and they want to understand the phenomenon. They may also be motivated by the fact that there is opacity or incomplete information about policies. Potential initiatives to promote knowledge can include exchange of information with government entities, congress and technical experts to understand the environment, using hard data to make informed decisions.
- 6. Follow national and international KYC and AML/CFT protocols:** Stakeholders such as exchange companies need to ensure that they follow appropriate KYC and AML/CFT protocols to avoid being part of a criminal activity or falling victim to one. An important aspect of this is that these entities need to collect and validate the beneficial ownership information provided by their customers. Collecting and disseminating this information promotes transparency and actionable intelligence so that authorities can better detect financial crimes. A tangible recommendation may include training and seminars on VAs, VASPs, AML/CTF measures within the crypto environment, and FATF recommendations so there is a common understanding and awareness among stakeholders about these topics.
- 7. Follow FATF recommendations on new technologies, VAs and VASPs:** Since cryptocurrencies are part of a fast-paced changing reality, it is important that countries closely monitor and

adopt FATF regulations and recommendations, focusing on VAs and VASPs as well as on new technologies (Recommendation #15) and how to mitigate risks. Conducting a National Risk Assessment focused on VAs and new technologies may be an option to consider, as well as incorporating international or independent studies on the matter.

- 8. Learn from other countries' experiences from the LAC region and from other continents:** Countries in the LAC region have taken different approaches to regulating cryptocurrencies. However, there is a clear benefit for countries to learn from each other, including good practices and areas of improvement. As part of this, it would be beneficial to engage in knowledge exchange with countries that have successfully addressed cryptocurrencies, or at least those countries that have more years of experience. Also, international studies from FATF regional bodies on the matter can be beneficial.
- 9. Strengthen prosecutorial capacity on crypto related financial crimes:** Cryptocurrencies and their ecosystem of products, processes, and criminal trends are in constant evolution. Jurisdictions should adapt their AML/CFT frameworks to include these new technological realities to best comply with FATF, international standards, country goals on AML/CFT and most of all, evolve in a way to protect their national regulation and citizens. Government agencies should establish the necessary framework(s) to exchange information, knowledge, training and talent as well as seek ways to work collaboratively on investigations. Knowing that many countries face financial and technological constraints, it is important that the legislative branch is incorporated into any effort to improve information exchange and capacity building to ensure sufficient funding for such efforts.