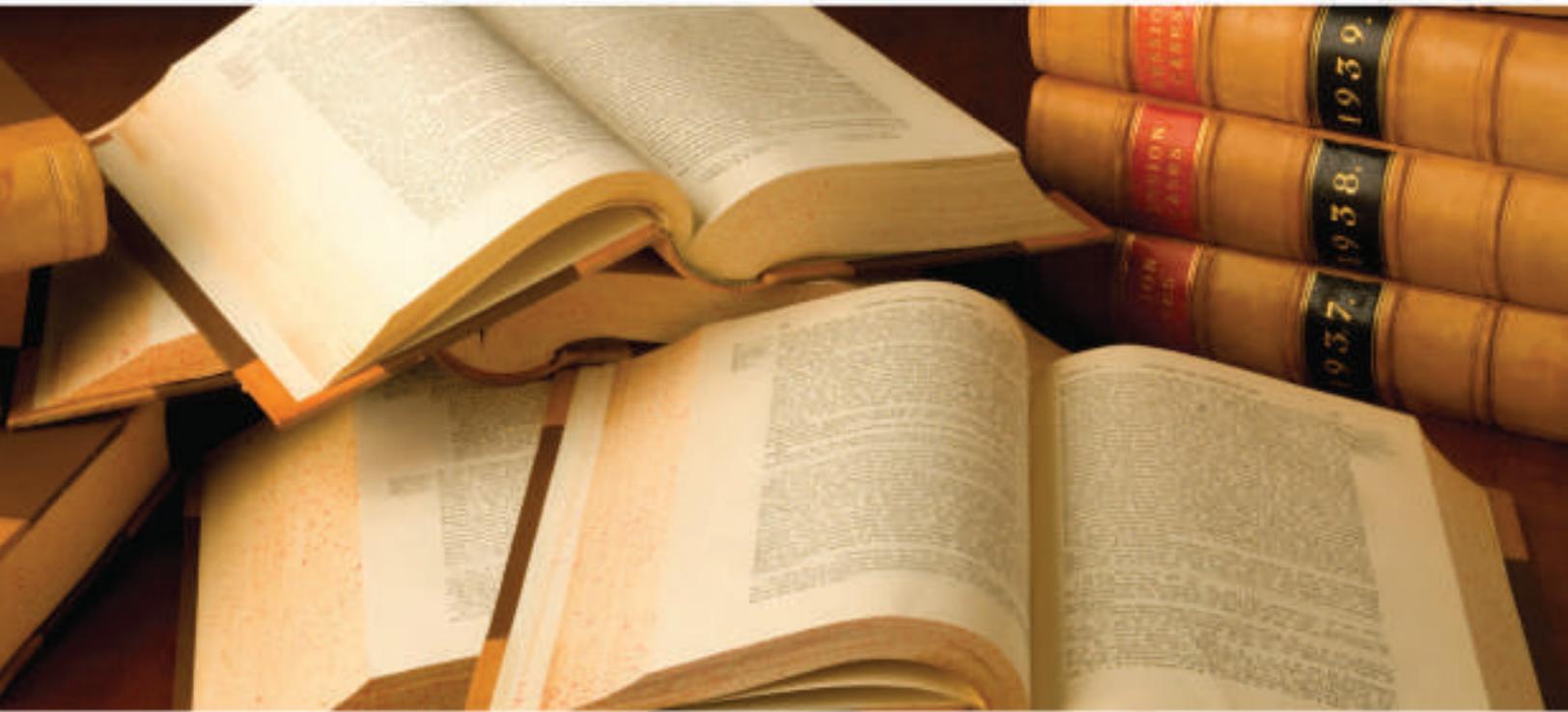




**DEFENDERS**  
PROTECTION INITIATIVE



**BRIEFING SUMMARY ON**  
**ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM**  
**FINANCING (AML/CTF) LAWS: AN EXAMINATION**  
**OF THEIR IMPACT ON CIVIC SPACE IN UGANDA.**

**JUNE 2021**

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# 1.0 Introduction

In the aftermath of the September 11, 2001, terror attacks on the United States of America (USA), countries around the world took heightened measures to enhance their national security and protect the life and property of their citizens. More significantly, the attack on the US created impetus for a global approach to the collective fight against terrorism. The United Nations which is the converging organ for all nations around the world has been at the forefront of this approach. Over the last few years, the UN has come up with different strategies to empower individual member states in countering terrorism within their national jurisdictions while at the same time contributing to their collective responsibility to ensure that the world is safe. The initiative for countries to adopt Anti-Money Laundering (AML) and Counter Terrorism Finance (CTF) laws and policies has been one of the most prominent approaches in this endeavor. This approach (use of AML/CTF legislation) to counter terrorism is highly complimented by the work of the Financial Action Task Force (FATF)- an inter-governmental organisation founded in 1989. Although its initial mandate was restricted to the detection and prevention of money laundering, it was expanded to include counter terrorism financing roles in the wake of the 2001 terror attacks on the US.

By virtue of it being a member state, Uganda is enjoined to follow the UN counter terrorism recommendations including the adoption of relevant AML and CTF legislations. Similarly, although Uganda is not a member of FATF, it is obliged to follow its recommendations as a matter of international comity. Besides, Uganda and East Africa as a region have had their own bitter experience with terrorism. On July 11, 2010, the country experienced its worst terror attack in the form of twin bombings at two prominent places of entertainment. In both these attacks a substantial number of lives were lost (76 people) while many others were left with permanent injuries.



*Twin Tower bombings, USA*



*Kyadondo Rugby club, Uganda*

In the wake of these events, and the growing international compulsion on states to enhance their efforts against terror, Uganda has in the last ten years heightened its counter terrorism efforts. The enactment of AML and CTF legislations represents one of the most prominent approaches that the country has taken as part of its efforts to counter terror. The laws criminalize terrorism and other related criminal acts such as money laundering. Most fundamentally, the laws contain stringent provisions for the detection and prevention of terrorism financing. While the adoption of laws for the control of terrorism financing is a very critical step in the fight against terrorism, there is a growing concern that the enforcement of such counter terrorism measures without due regard to due process and fundamental rights and freedoms can have devastating consequences for the operations of civil society.

Against this backdrop, the Defenders Protection Initiative (DPI) with the support from the Civil Society in Uganda Support Programme (CUSP) which is implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH with financial support from the European Union and the German government, commissioned a study with the objective to examine the impact of Uganda's anti-money laundering and counter terrorism legislation on civic space. In addition to this, the study explored the extent to which FATF style regulations have impacted on the operations of civil society in Uganda.



# 2.0 Study Findings

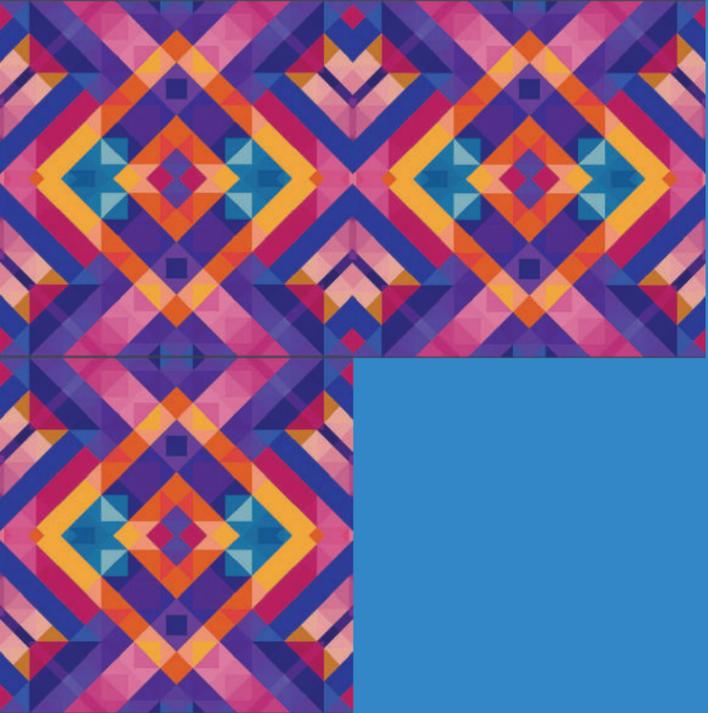
According to the findings, there is overwhelming evidence to show that although the formulation of AML/CTF legislation was legitimate and necessary, its enforcement has been problematic with detrimental effects on the operations of civil society. In the first place, current AML/CTF legislation contains very ambiguous and overly broad terms. The broad terms especially those in relation to the definition of the offence of terrorism and related offences have been used (abused) to criminalize the otherwise legitimate activities of Non-Government Organizations (NGOs) and their leaders. Still within the law, enforcement bodies such as the Financial Intelligence Authority (FIA) are given wide discretionary powers (often without judicial recourse) in respect to the enforcement of its provisions.

Secondly, it is a major finding of the study that in the last five years (2016-2021), AML/CTF legislation has been deployed against NGOs in a more arbitrary manner and in some cases in total disregard of fundamental rights and freedoms guaranteed in the Constitution. Given that this five-year period coincides with the controversial removal of the presidential age limit in the Constitution to enable the incumbent to seek another term in office, it has been one of the most contentious in the country's political history. Accordingly, NGOs that were involved in the campaign against the removal of the age limit which was seen as the last bastion for a peaceful transition of power faced unprecedented attacks including the arbitrary enforcement of AML/CTF legislations.

Most recently, Uganda had yet another highly contested general election which like others in the past was marred by several incidents of political violence, intimidation and violations of rights and freedoms, mostly perpetrated by state security agents. During this time there was a heavy reliance on AML/CTF legislation to lay siege on NGOs involved in advocating for a fair electoral process. In the process, the accounts of several NGOs were frozen, and others were given directions to provide their funding and financial information to the FIA. On most occasions this was done without adequate warning and the option for NGOs to recourse to courts of law. There were also several instances involving the arrest of individual leaders of NGOs on arguably trumped-up charges. Many of these leaders became victims of surveillance and protracted investigations only for the charges brought against them to be later dropped.

All this points towards a fault-finding approach by the FIA - the major agency responsible for the enforcement of AML/CTF legislation. Such an approach coupled with the arbitrary enforcement of AML/CTF legislation has had devastating consequences for civil society and especially those NGOs whose work involves advocacy for civil political rights, good governance, and accountability. The exercise of administrative measures such as the protracted freezing of accounts and transactions by NGOs under investigation by the FIA greatly disrupted the operations of those organisations and rendered them unable to deliver on their work. The consequences were even more deeply felt by the staff of the NGOs and direct beneficiaries of their services who included vulnerable groups of women, youth and those dependent on humanitarian interventions of NGOs. The freezing of accounts also had indirect financial consequences for service providers such as those in the hotel industry. More significantly, the affected NGOs were diverted from the core of their work to instead focus on fire fighting. In relation to this, they were forced to incur heavy legal expenses to have the actions against them reversed. Lastly, the arbitrary enforcement of AML/CTF Laws has greatly restricted the operating space for civil society with many NGOs and their leaders choosing to exercise self-restraint out of fear of charges being brought against them. Out of this same fear, a considerable number of NGOs have opted to engage in less contentious work and advocacy. As a result, several human rights and freedoms protected in the Uganda Constitution and the various human rights instruments that the country is party to have been contravened. The affected rights and freedoms include among others the right to freedoms of association and assembly as well as the right to participate in government.





## 3.0 Conclusion

Considering all these challenges, it is hereby concluded that the current biased and fault centered approach in the enforcement of AML/CTF legislation is not only arbitrary but also counterproductive in the long run. Globally it is recognized that NGOs have a huge role to play in countering terrorism since they act as a middle ground for the expression of disgruntlement and engagement with the state. This role helps to deflate and mitigate against issues and grievances that are often exploited by extremist groups to promote terrorism and violent extremism. For this reason and in as much as AML/CTF is necessary, it should be enforced in a manner that is consistent with existing international human rights standards. More importantly for Uganda, the Financial Intelligence Authority (FIA) should focus on empowering NGOs to comply with the provisions of the law instead of the current biased and fault-finding approach.



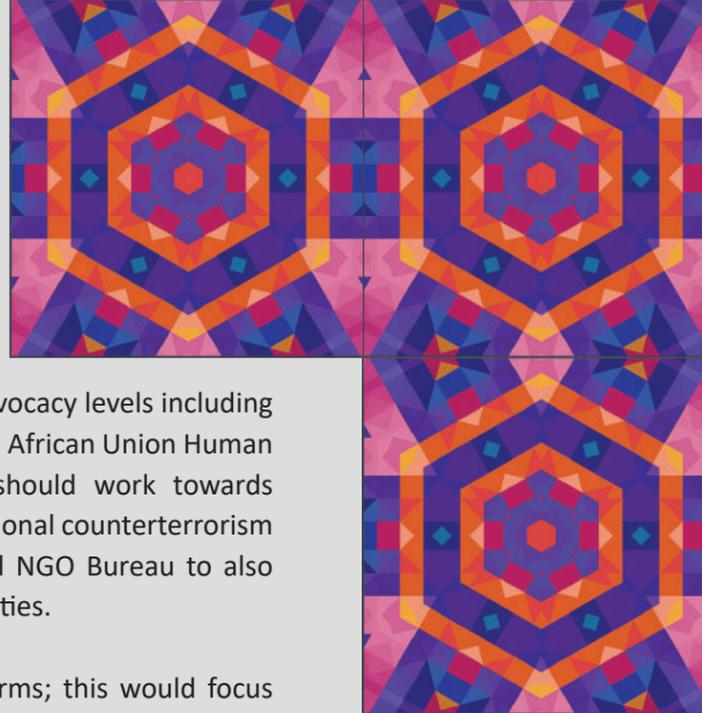
## 4.0 Recommendations

**4.1** Non-Governmental Organizations should streamline in-house periodic cleaning exercises in form of legal audits. These could involve legal requirements check lists that are statutory in nature as directed under the AML/CTF legal frameworks. In this way, the organizations can assess their weaknesses and rectify them to ensure compliance with the directives by the FIA. This would also make them ready to withstand the ‘fault finding’ approach of law enforcement.

**4.2** Conduct trainings and re-fresher awareness sessions with the entire staff of the non-governmental organizations so that all are knowledgeable on the organizational legal requirements and obligations under the AML/CTF legal framework. This kind of knowledge should not only be a reserve of the management of the organizations but rather to all the structures of a particular organization. This could further strengthen the NGOs personnel capacity in relation to the workings of the AML/CTF laws and attendant regulations.

**4.3** Establishment of a consistent, well-coordinated competent legal response CSOs team that is bestowed with the requisite resources and knowledge to contend with the unfair application of the AML/CTF and attendant legal framework as a political weapon to stifle the CSOs sector. This team could also offer tailor made trainings and awareness raising short modules to the CSOs fraternity and also be tasked with keeping abreast with the evolving legal amendments related to AML/CTF to ready the CSO fraternity response and also protection from unwarranted ambushes.

**4.4** Civil society acting collectively must continue the documentation (if possible, annually) and reporting on the negative impact of these laws to further



raise awareness about them on the various human rights advocacy levels including the human rights mechanisms within the United Nations and African Union Human Rights Systems. More importantly, the CSOs fraternity should work towards strengthening and deepening their engagement with the national counterterrorism and terrorism financing architecture, including the FIA and NGO Bureau to also enhance oversight and accountability further over these entities.

**4.5** The need for comprehensive legislative reforms; this would focus particularly on the definitions of terrorism, ‘acts of terrorism’, and ‘terrorism financing’ among others to expunge therefrom over broad, imprecise, vague, and ambiguous aspects that remain susceptible to abuse and as thus detrimental to the operations of the CSOs.

**4.6** The Parliamentary Committee on Human Rights and Constitutional Oversight and Accountability mechanisms such as the Uganda Human Rights Commission (UHRC) should take particular interest in the work methodologies of the FIA, ODPP and the Uganda Police to examine how compliant they are with procedural guarantees of fairness and justice for the CSOs that fall victim to AML/CTF laws. The UHRC can cause its findings to be tabled before Parliament for scrutiny and in the same vein the Parliamentary Committee on Human Rights has powers, on own volition to cause the examination and discussion of these laws in their Committee for potential legislative reforms.

**4.7** There is need for CSOs to develop a non-profit AML/CFT centered program to complement the regulator model. Such can take cognizance of the non-profit organisation experience or industry expertise that are relevant to the regulator.

**4.8** The CSOs should launch a De-listing Advocacy Campaign from being accountable persons under the AMLA. It is not a requirement under the FATF set standards.

**4.9** There is need for CSO to develop a non-profit AML/CFT centered program to complement the regulator model. Such can take cognizance of the NPO experience or industry expertise that are relevant to the regulator.

## DISCLAIMER

This document has been developed by **Defenders Protection Initiative (DPI)** with support from the **Civil Society in Uganda Support Programme (CUSP)** which is implemented by the **Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH** with financial support from the **European Union** and the **German government**. However, the contents of this publication are a sole responsibility **Defenders Protection Initiative (DPI)** and can under no circumstances be regarded as reflecting the position of the **European Union** or the **German Government** and **GIZ**.