Bank De-Risking of Non-Profit Clients

A Business and Human Rights Perspective

NYU Paris EU Public Interest Clinic

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Program

- **Introduction to de-risking of NPOs**: Thalia Malmberg, Human Security Collective
- **Brief introduction to the research:** Lamin Khadar, European Public Interest Law Clinic of New York University Law School in Paris
- **The impact of de-risking on the work of NPOs and their beneficiaries**: Tahir Iqbal, Islamic Relief Worldwide; and Riad Sabbagh, Norwegian Refugee Council
- **A business and human rights perspective**: Ruben Zandvliet, ABN AMRO
- **Way forward**: Lia van Broekhoven, Human Security Collective
- **Q & A**

Human Security Collective

We work to bridge the gap between people and security by involving citizens and communities in decision-making in the security domain and protecting the operational and political space of civil society.
www.hscollective.org

Co-chair of the NPO Coalition on the FATF
A loose network of over 200 NPO's
The aim is to mitigate the unintended consequences of countering the financing of terrorism (CFT) policies on civil society in order that legitimate charitable activity is not disrupted.
www.fatfplatform.org

What is de-risking?

- Financial Action Task Force (FATF) defines de-risking as the phenomenon of financial institutions terminating or restricting business relationships with clients or categories of clients to avoid, rather than manage, risk in line with the FATF's risk-based approach.

- U.S. Government defines de-risking as "instances in which a financial institution seeks to avoid perceived regulatory risk by indiscriminately terminating, restricting, or denying services to broad classes of clients, without case-by-case analysis or consideration of mitigation options."

- This definition of de-risking looks at **specific acts by banks that are deemed overzealous, unnecessary, disproportionate or even discriminatory.**

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Some examples of de-risking

On requesting to open a bank account	Once a bank account has been opened	Ending the banking relationship
• Disproportionately burdensome due diligence requests, especially where the NPO is very small and may not have resources to effectively comply with due diligence requests or where this is intended to discourage the prospective client • Based on insufficient or generic due diligence on the part of the bank, such as refusing to open a bank account based on generic information (e.g. the countries where the NPO operates) or unverified information (e.g. unverified information about the NPO provided to the bank by a third party)	• Delaying or blocking the transfer of funds, especially where the funds are being transferred to conflict-affected areas and high-risk countries • Refusing to provide documentation or explanation when delaying or blocking the transfer of funds • Freezing of existing bank accounts • Restricting access to banking services (e.g. refusing to open additional accounts or provide access to credit to existing NPO clients) • Increased or inconsistent due diligence requirements	• Closure of bank accounts, especially where the banking relationship is terminated without explanation or possibility to file a complaint • Termination of scheduled or delayed transfers, especially where the bank returns accepted funds to the donor after the NPO client has already spent the money

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Root Causes of De-risking

- Complex and multilayered regulation
- Business profile of NPO clients and the ‘right’ to a bank account
- Knowledge and capacity at the bank
- Knowledge and capacity at the NPO
- Deliberate misinformation campaigns

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Effects of De-risking

On refusing to open a bank account	Once a bank account has been opened	Ending the banking relationship
• Reduced ability to raise funds from donors • Resorting to informal financial sector or transferring funds through less secure channels (e.g., physically moving cash)[23] • Reducing humanitarian aid funding (especially donations to small NPOs) • Forcing civil society activity underground and delegitimizing civil society work	• Higher transaction costs for cross-border transactions[24] • Withdrawal of donations from donors subject to enhanced due diligence • Inability to provide humanitarian funding to conflict-affected areas • Delay of life-saving humanitarian assistance in conflict-affected areas	• Inability to operate in or transfer funds to conflict-affected areas • Increased risks of transferring money via informal channels • Chilling effect on freedom of association and, consequently, other human rights • Chilling effect on humanitarian aid (e.g. donors become reluctant to further contribute to an NPO once it has been de-risked)

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Scope of de-risking

- **2/3 of all U.S. nonprofits that work abroad are having financial access difficulties** (Charity and Security Network 2019)

- **79 percent of charities face difficulty in accessing or using mainstream banking channels and most of them do not know why they are de-risked** (UK Charity Finance Group 2018)

- **Bank accounts of NPOs were being closed without prior notification, 29% of those surveyed** (Kosovo Platforma CiviKos/ECNL Report, 2019)

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Lamin Khadar, Global Adjunct Professor of Law at New York University in Paris teaching European Public Interest Law & Pro Bono Manager for Dentons Europe

Islamic Relief Worldwide

Tahir Iqbal, Head of Treasury, Finance and Services

Presentation at the Launch of the Report on "Bank De-Risking of Non-Profit Clients: A Business and Human Rights Perspective"

22 June 2021

Who we are

Islamic Relief was founded in Birmingham in 1984 by a team of medical doctors in response to the famine in Africa.

Today our headquarters in Birmingham, United Kingdom manage global aid and development programmes in over 40 countries.

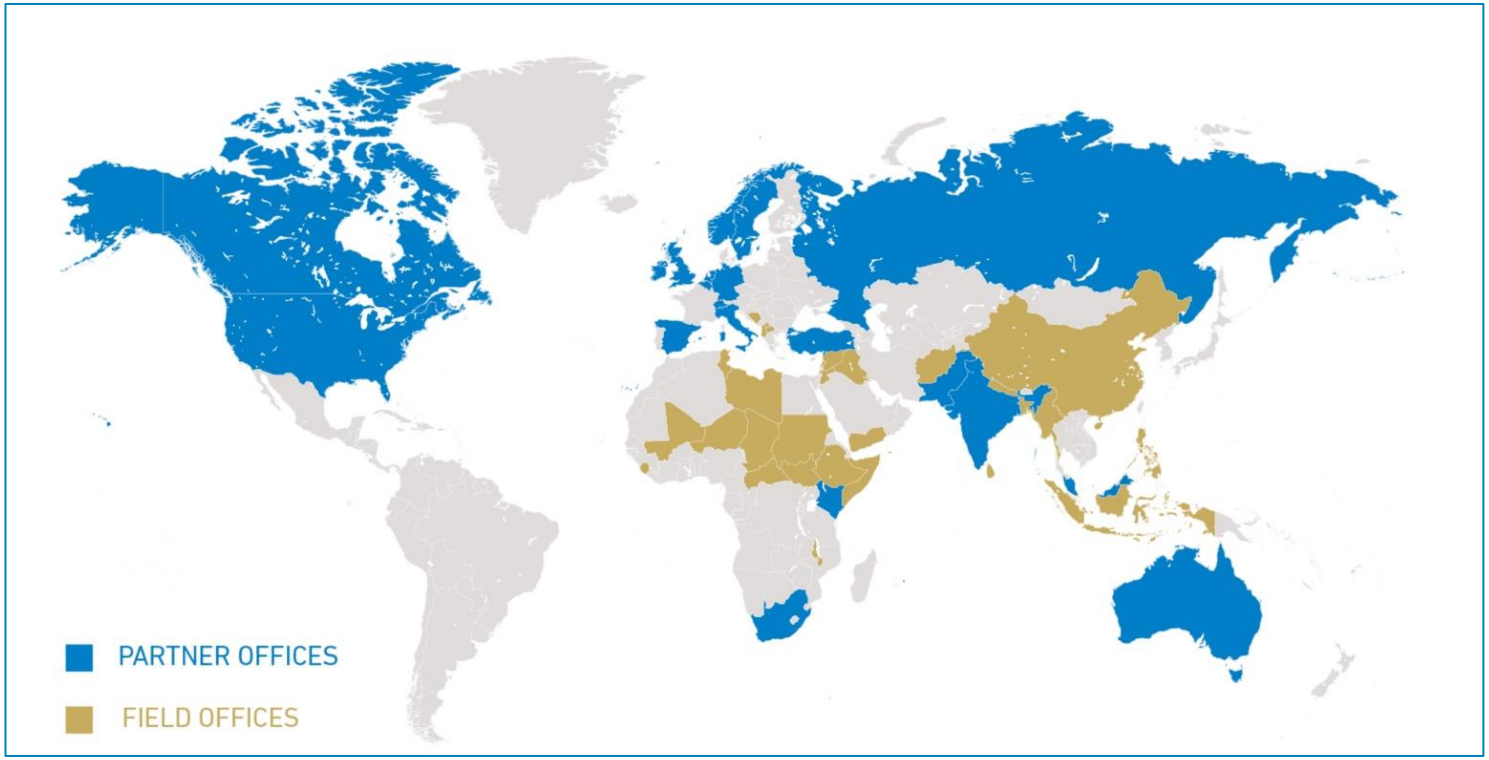
IRW income in 2020:

£130 million

Income globally:

$400 million

Where we work



Who we are:
The Islamic Relief "Family" of Organisations

The Islamic Relief family - encompasses the wider federated structure, at the centre of which is the international headquarters' Islamic Relief Worldwide' (IRW).

This federated structure adopted is common with a number of its peer humanitarian organisations i.e. with some small variations, similar structures exist within Save the Children, Plan, and World Vision.

IRW is a non profit organisation - registered with the government appointed charity regulator for England and Wales.

IRW must meet the strict standards of the UK's charity and company laws - the organisation's annual accounts be produced according to Financial Reporting Standards and be subject to independent audit.

2020 IN NUMBERS

13.8 MILLION PEOPLE HELPED OR EMPOWERED IN 39 COUNTRIES

371 emergency projects reached 7.2 million people in 30 countries

Water, sanitation and hygiene projects served over 692,000 people

£30 million invested in life-saving emergency programming in Syria

122 Covid-19 prevention and support projects assisted 1.5 million people

Over 310,000 people across 15 countries received winter survival items

364 development projects reached 2.1 million people

Over 3.3 million people in 28 countries received qurbani meat

3.6 million people helped in war-torn Yemen, where Islamic Relief is the main implementing partner for the UN World Food Programme

934,000 individuals in 31 countries benefited from our Ramadan food packs

Around 180,000 children and adults given access to education

Over 735,000 people supported to earn an income

18 multi-year advocacy projects in operatio

Radha, who lives in Lwatana, Nepal, received blankets and a voucher with which to buy winter survival items.

De-Risking and its Impact to NPOs: IRW findings

2020: Cost on our programmes, impact on humanitarian aid delivery

£93m International payments

30% Queried
4% of Payments Rejected

Additional **£500,000**

Lost in Switching Currency Costs

Up to **£300,000**

Compliance Costs

De-Risking and its Impact to NPOs: IRW findings

2020: Cost on our programmes, impact on humanitarian aid delivery

371 emergency projects

&

364 development projects

40% delayed between 3 to 12 weeks, by correspondent banks

In total, **3.72** million people we are trying to help were affected

Engagement with banks: lacking transparency; understanding and collaborative change - Muslim faith-based charities are disproportionately affected

De-risking makes it impossible to enable local communities and local organisations to shape their own development

Our partners and donors

ISLAMIC RELIEF

UKaid from the Department for International Development

USAID FROM THE AMERICAN PEOPLE

DEC DISASTERS EMERGENCY COMMITTEE

WFP United Nations World Food Programme

World Health Organization

UNHCR The UN Refugee Agency

unicef for every child

THE LUTHERAN WORLD FEDERATION

جمعية الهلال الأحمر العراقي IRAQI RED CRESCENT SOCIETY

INSANIA | إنسانية
الصناديق الإنسانية
Humanitarian Funds

EUROPEAN COMMISSION
Humanitarian Aid

Global Affairs Canada / Affaires mondiales Canada

قطر الخيرية
QATAR CHARITY

SWISS AGENCY FOR DEVELOPMENT AND COOPERATION SDC

cbha

African Union
a United and Strong Africa

mfcd

Sida

المؤسسة الخيرية الملكية
Royal Charity Organization

Bank De Risking

INGOs in SYRIA

DAMASCUS BASED INGOS / DINGO'S

RIAD SABBAGH, NORWEGIAN REFUGEE COUNCIL

Present situation

- DINGO forum is composed of 26 international organisations with headquarters spread across 11 different countries.
- In 2020, DINGOs delivered humanitarian assistance to over **7.5 million persons in Syria** with a combined funding volume of **$179 million (USD).**
- Projections for 2021 to reach over **7.6 million** persons with an "anticipated" budget of over **$180 million.**
- **BUT** with confirmed reduction in donor funding more than $26.4 million less than anticipated, leading to scale down humanitarian aid by **so far** 30% and consequently leaving **2.3 million Syrians out of urgently needed assistance**

Present situation

- Today, Damascus INGOs (DINGOs) are relying on a small number of Lebanon and Tunisia based intermediary banks to fund humanitarian programs in Syria.
- Before 2016 more channels were available then were affected by emerging of counter-terrorist financing legislation and more coercive measures, and the U.S. Caesar Act…
- Banks very understandably, feared implication, liability, and financial penalties, but DINGOs were left with fewer alternatives.

Findings / April 2021

62%

DINGOs either continue facing difficulty receiving funding in Syria or have found a resolution just in April, 2021 **BUT** without any guarantees that difficulties won't resurface again.

12%

of requested transfers were rejected outright by international banking institutions

Out of processed one:

12%

were unsuccessful

32%

Faced severe delays between a minimum of 3 to 10 months

Findings / April 2021

77%

indicated that justifications received for the rejections or the delays on the simple fact that **"transfers were going to Syria"**

68%

of respondents were requested to provide **additional information** for the financial institution to proceed with the transfer

50%

had to wait for **further due diligence** from the sending bank

45%

experienced issues with **corresponding bank.**

Compliance Capacity

68%

have dedicated compliance staff in their main headquarter or regional offices

55%

have full-time dedicated staff working solely on compliance

24%

Support capacities in the US

16%

Support capacities in Brussels

8%

Support capacities in the UK

$360,000 Spent on compliance In 2020

38%

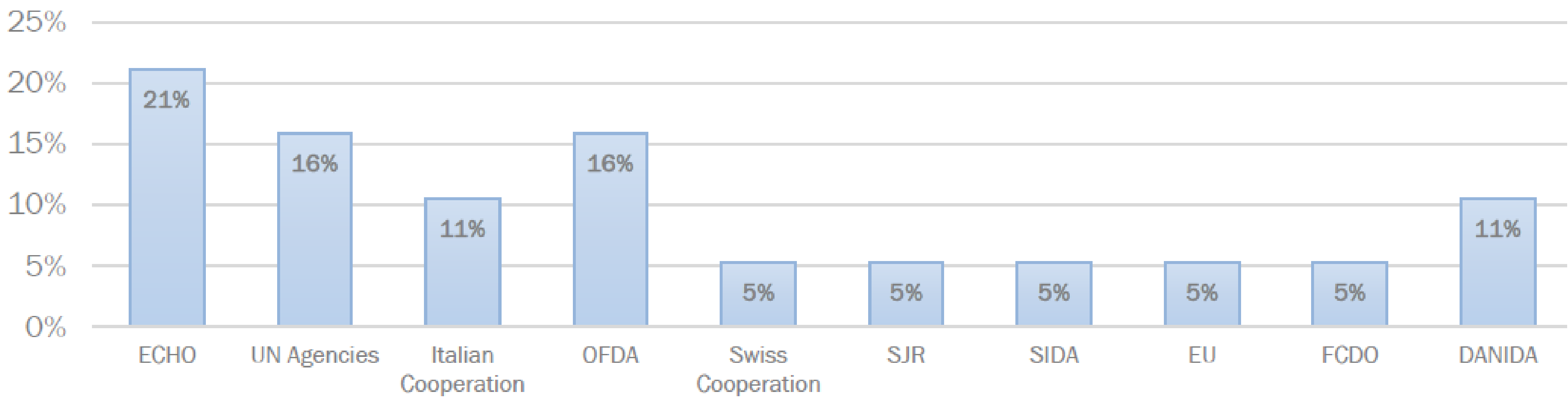
Expect the need to allocate more in 2021

Donors' Response

63%

indicated **NOT** having received the needed support from their respective donors regarding transfer challenges

Frequency of donors direct engagement on DINGOs banking challenges



What INGOs would hope for:

- **While working to achieve the ultimate goal of setting up dedicated humanitarian banking channels,**
- Continue the dialogue between relevant stakeholders.
- Support for getting legislative clarity on humanitarian exemptions.
- Provide Legal services and compliance capacities to INGOs free of charge.
- Continued support to Damascus based INGOs by donor's providing of supporting letters to relevant institutions and bilateral engagement with financial institutions as intermediary measures while longer term solutions are secured.

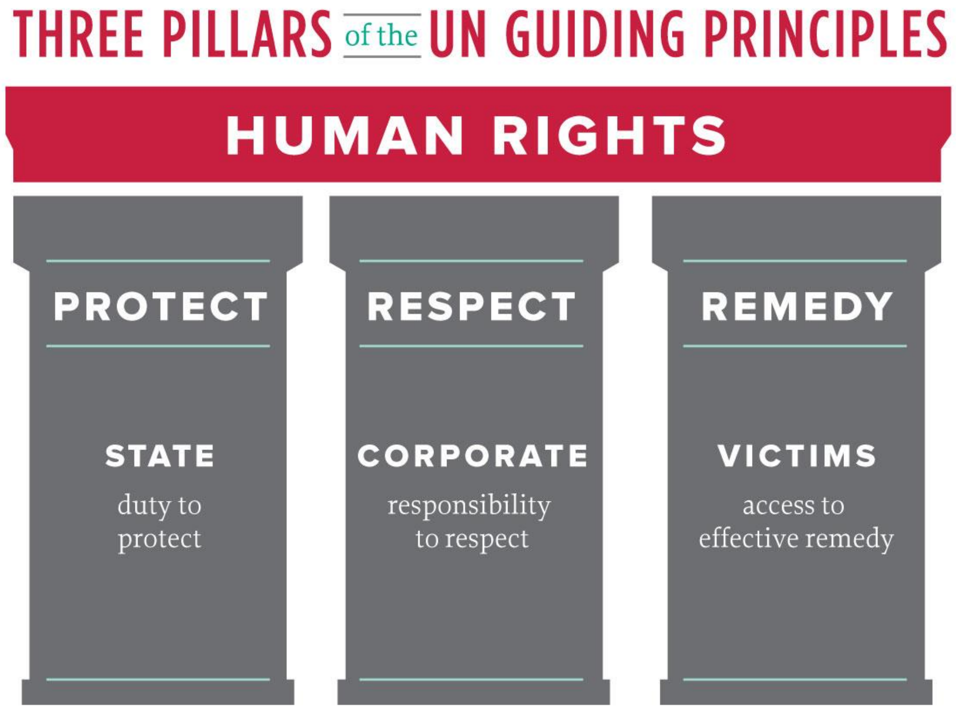
De-risking of NPOs:

A business and human rights perspective

Ruben Zandvliet
Business & Human Rights Advisor

The UN Guiding Principles on Business and Human Rights

- **Endorsed in 2011 by the UN Human Rights Council**
- **Normative guidance, not (yet) legally binding**



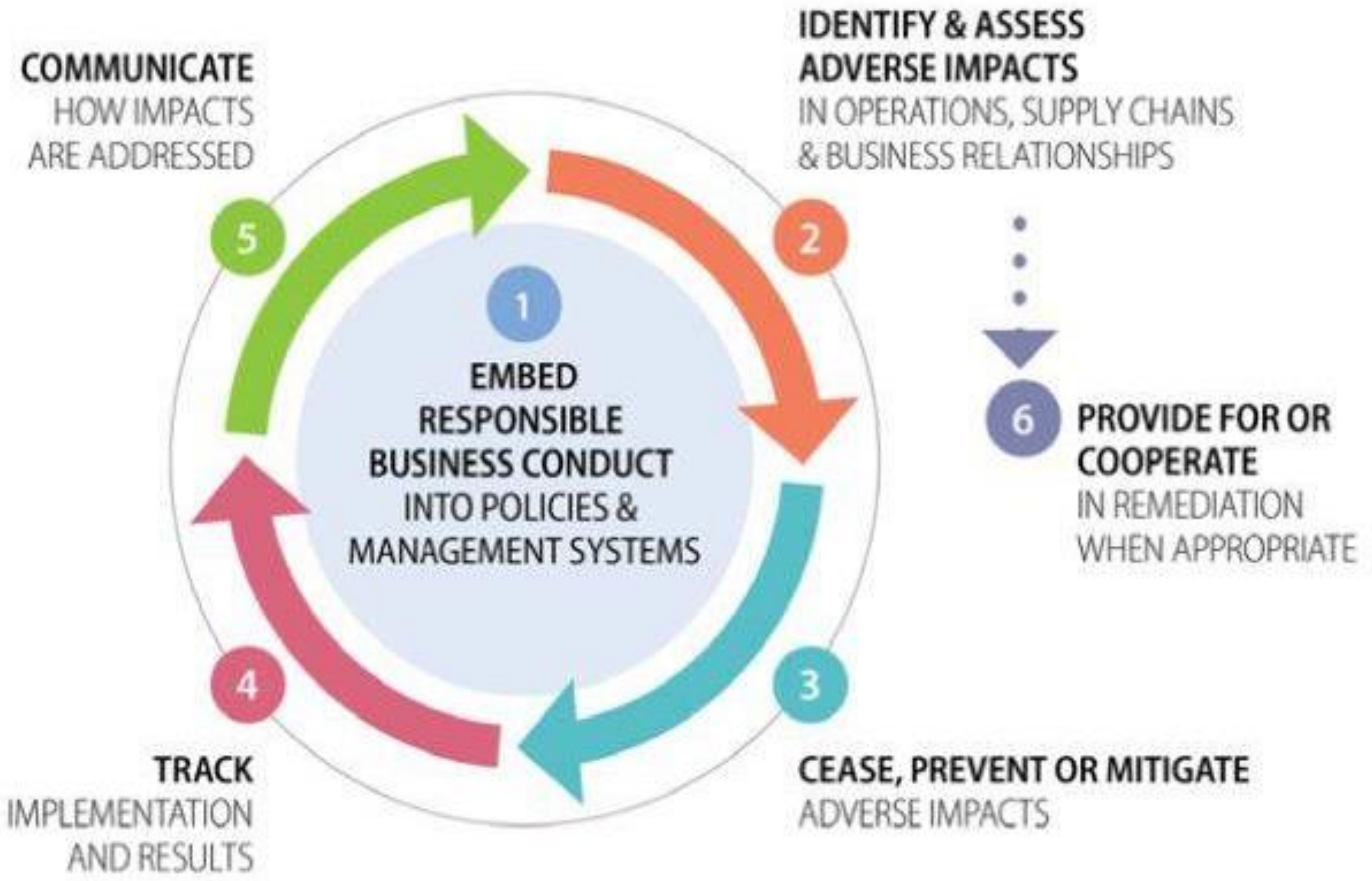
Key principles

- **Principle 11** -- Business enterprises should respect human rights [meaning] that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

- **Principle 12** -- The responsibility of business enterprises to respect human rights refers to the entire spectrum of internationally recognized human rights.

De-risking has direct and indirect human rights impacts

Human Rights Due Diligence



Policy commitment

- **Many banks mention risk of discrimination in access to financial services**

  …but unclear whether this applies to NPOs

- **Many banks refer to freedom of association**

  …but usually as something their corporate clients have to respect

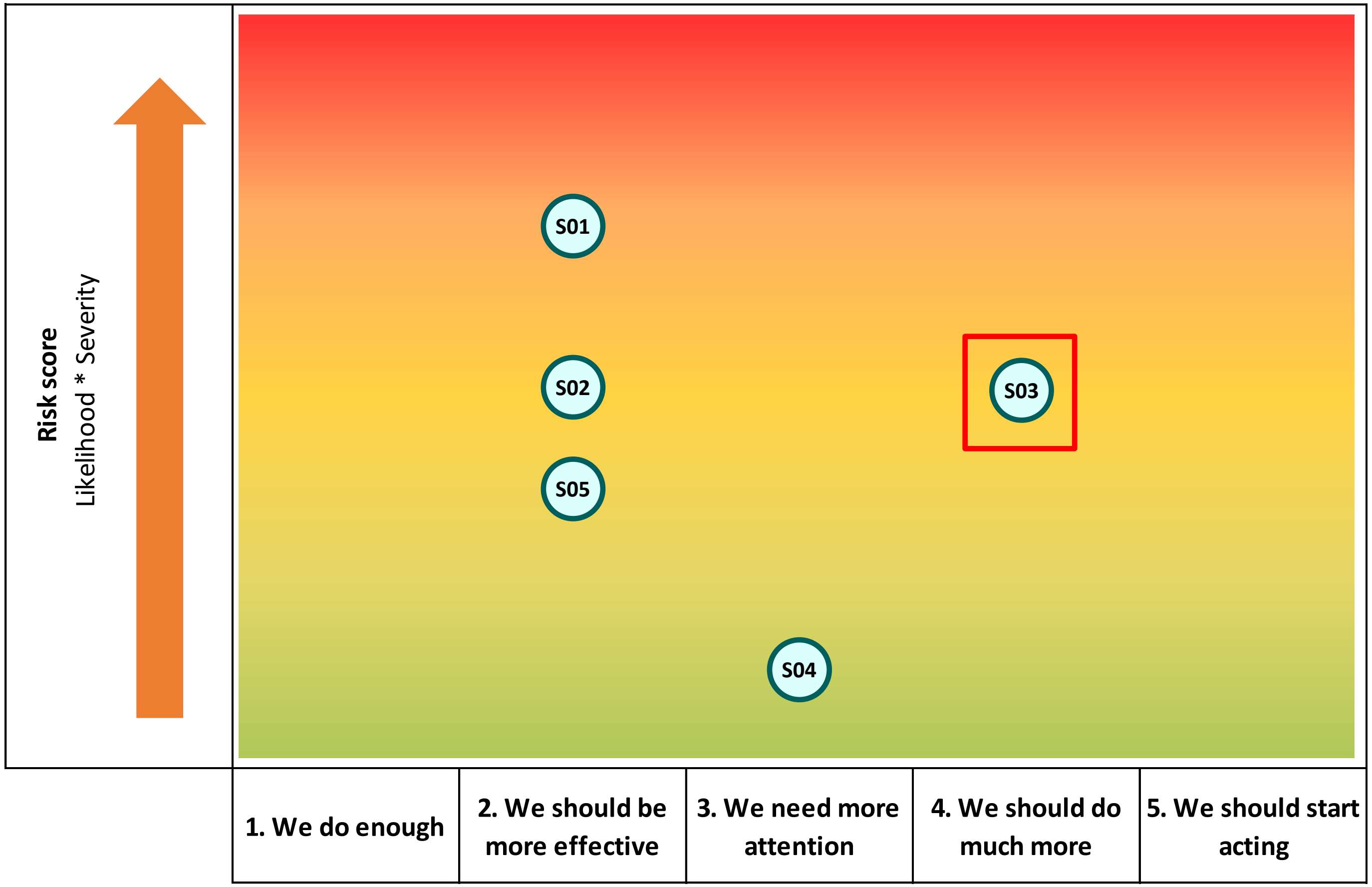
- **General human rights statements v. operational AML/TF policies**

Prioritization of de-risking and its human rights impacts

‘Salient’ human rights

The human rights at risk of the most severe negative impacts through ABN AMRO’s operations and business relationships

ABN AMRO's salient human rights in our role as a service provider



#	Issue
S01	Privacy
S02	Inadequate standard living due to financial distress
S03	**Discrimination in / or exclusion from banking services**
S04	Discrimination in communications
S05	Ignoring potential issues of e.g. human trafficking

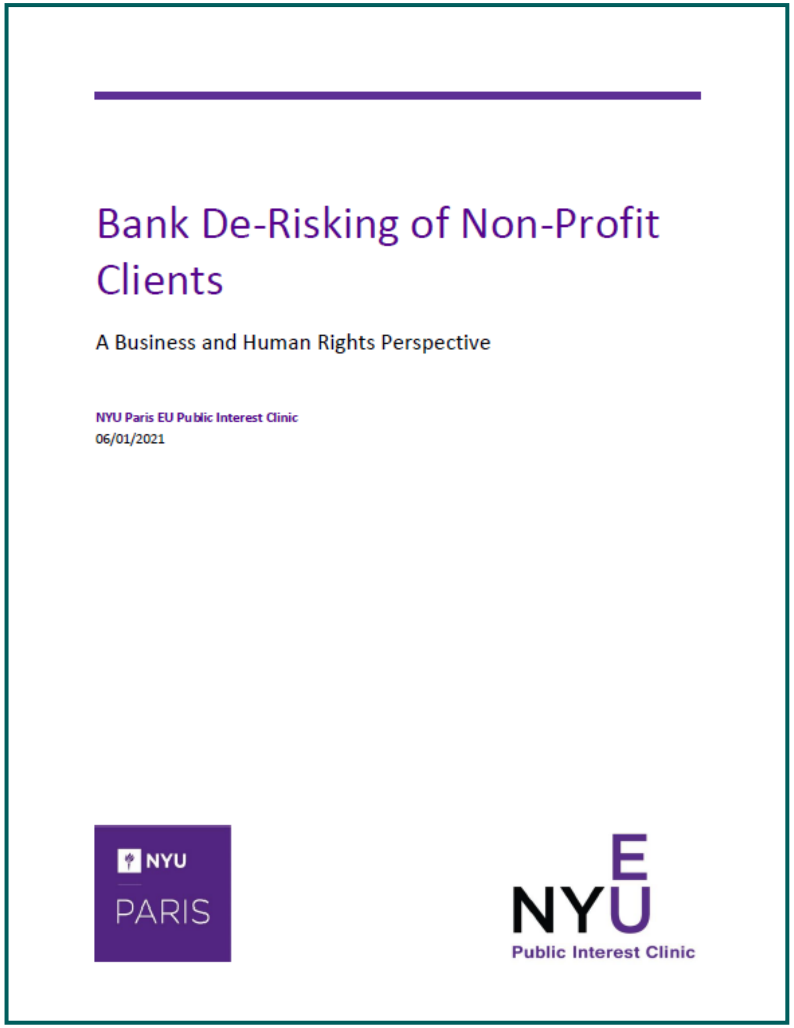
Identifying de-risking may be difficult

- **How to spot discrimination in KYC process?**
- **Not opening a bank account for an NPO ≠ de-risking**
- **Compliance v. commercial drivers**
- **Does not surface via regular client complaints mechanisms**

But banks can start taking action

- **Organize cross-functional collaboration**
- **Asses whether de-risking *may be* an issue at your bank**
- **Engage with affected stakeholders / other NPOs**
- **Communicate clearly**
- **Include specific NPO triggers in registration of complaints**

Thank you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Continue the conversation?

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Lia van Broekhoven, Executive Director of Human Security Collective

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Way Forward

The FATF Unintended Consequences Project 2021
Part one: trends and patterns
Part two: solutions

- De-risking of NPOs, Money Transfer Businesses, Correspondent Banking
- Financial Inclusion of individuals
- Suppression of NPOs through non implementation of a Risk Based Approach
- Threats to fundamental Human Rights stemming from a violation of the FATF standards or AML/CFT assessment processes

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Way Forward

Multi-stakeholder dialogues/Round Tables to address de-risking of NPOs and identify solutions

Good practices to be published in report by the Global Counter Terrorism Forum based on practices and lessons learnt in the UK, the Netherlands, the US (led by the World Bank and ACAMs), France and the EU/Swiss government

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Thank you!

The report can be found on www.hscollective.org
Or on Twitter @hscollective

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