
Bank De-Risking of Non-Profit Clients

A Business and Human Rights Perspective

NYU Paris EU Public Interest Clinic

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"Bank De-Risking of Non-Profit Clients: A Business and Human Rights Perspective is a welcomed and much-needed contribution to better understand the human rights risks associated with financial institutions' decisions to de-risk NPOs. Over several years, much of the policy debate has focused on the effects of de-risking on NPOs, especially humanitarian organizations delivering vital assistance to populations in need, but there has been scant guidance for banks as to how they can balance regulatory requirements and their responsibility to respect human rights under the UN Guiding Principles. This is an important resource for banks and NPOs to help avoid de-risking."

- Sue Eckert, Senior Adviser, International Peace and Lecturer at the Jackson Institute for Global Affairs, Yale University

"This report is very welcome. Civil society organizations (or Non-Profit Organizations - NPOs) need access to banking services like any other company or individual does. The overwhelming vast majority of NPOs engage in legitimate activities for the protection of human rights, the betterment of society, the environment and other worthy causes; those who use an NPO 'façade' to engage in illegitimate activities should be stamped out without affecting the whole NPO community. In recent years, the space for NPOs to operate freely and safely has been significantly restricted and limited, and society as a whole is all the poorer as a result. CIVICUS 2020 global report says that 87% of the world's population now live in countries rated as 'closed', 'repressed' or 'obstructed'. Hence now more than ever NPOs need support to be able to continue their vital work unrestricted by political, arbitrary or inadvertently draconian measures, and banks have a responsibility, as well as an important role to play to ensure this is the case. As the report says, de-risking is a human rights issue and NPOs have human rights."

- Mauricio Lazala, Deputy Director & Head of Europe Office, Business & Human Rights Resource Centre

"This report is a crucial tool for businesses seeking to better understand the importance of NGOs having access to banking services in order to conduct their work effectively. NGOs being targeted by policies that disrupt their ability to conduct their activities is bad for business. Companies focused on long-term sustainability recognize that a strong and vibrant civil society sector is a key part of a healthy foundation for building sustainable, inclusive economies and well-functioning democracies."

- Annabel Lee Hogg, Senior Manager, Governance & Human Rights, The B Team

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1. Introduction

This report has been prepared by the European Public Interest Law Clinic of New York University Law School in Paris, in cooperation with Human Security Collective (HSC), ABN AMRO and Dentons Netherlands. It aims to raise awareness amongst banks about the human rights impacts of de-risking of Non-Profit Organization (NPO) clients. In many ways, banks do not treat NPO clients differently from business enterprises. As the UK Financial Conduct Authority has suggested, “the decision to accept or maintain a business relationship is ultimately a commercial one for the bank.”¹ However, in the wake of stricter anti-money laundering and counter-terrorism financing (AML/CTF) legislation, NPOs have suffered disproportionate restrictions on access to financial services. In some cases, governments deliberately impose restrictions on the ability of NPOs to solicit, receive and utilize financial resources.²

This report explores decisions made by banks that lead to de-risking. It is based on the premise that banks’ discretion to de-risk NPOs is limited, and should be guided by their responsibility to respect human rights under the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises.³ Although many banks recognize the UNGPs and the OECD Guidelines as authoritative normative frameworks, implementation has focused mostly on human rights risks that banks are exposed to via their corporate lending, project finance and asset management activities.⁴ Better understanding of the human rights risks associated with banks’ own operations, the domain in which they may cause instead of contribute, or be directly linked to adverse impacts on human rights, is important for those institutions that aspire to fully implement the UNGPs and OECD Guidelines. The announcement of the European Commission to introduce mandatory due diligence legislation in 2021 makes those efforts even more pertinent.

This report explains the forms, root causes and consequences of de-risking, the relevant human rights norms and practical actions to allow banks to manage perceived risks of their NPO clients whilst respecting human rights.⁵ It is intended for a broad audience of banking staff. We hope that it will serve as the basis for cross-functional cooperation within banks to better facilitate access to financial services for NPOs. If you have feedback on this report, or good practices that you would like to share, please send an email to info@hscollective.org.

¹ Human Security Collective and European Center for Non-For-Profit Law, “At the Intersection of Security and Regulation: Understanding the Drivers of ‘De-Risking’ and the Impact on Civil Society Organizations” 2018, p 19.

² UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, pp 17-18, http://freeassembly.net/wp-content/uploads/2015/09/A_70_266_ENG.pdf, A/70/266.

³ The human rights chapter in the OECD Guidelines is aligned with the UNGPs.

⁴ See for example: OECD, “Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises” 2019.

⁵ FATF, “FATF clarifies risk-based approach: case-by-case, not wholesale de-risking” 23 October 2010, <http://www.fatfgafi.org/topics/fatfrecommendations/documents/rba-and-de-risking.html>.

2. What is a Non-Profit Organization and what do they do?

Non-Profit Organizations, sometimes also referred to as “Civil Society Organizations” or “Charitable Organizations”, are associations of people, organized on a not-for-profit and/or voluntary basis. People may associate informally or formally, offline or online, locally, nationally or internationally. Once people have associated formally within an NPO (by incorporating a legal entity), then the NPO itself has rights and responsibilities, just like a company does. NPOs also make use of banking services, just like companies do, to receive funds and disperse them in the course daily operations.

NPOs can be large or small and can have formal employees or rely exclusively on volunteers. Some NPOs may secure their funding entirely through donations from the public, while others may rely on funding from governments, private foundations or even companies, as well as a combination of these sources. NPOs may be active in different fields and have different values or missions, for example, related to sports, politics, poverty reduction, international human rights, environmental protection etc.

NPOs are independent actors with mandates and missions to serve society in its broadest sense, but may also have a narrower mandate by issue, geography, stakeholder, etc.. They do this by, for example, holding governments and businesses to account or representing the interests of disadvantaged groups of people. They could carry out these activities by engaging in public advocacy campaigns; participating in the policy and lawmaking process; raising money for those in need; or providing important services to the disadvantaged.

3. De-risking of NPOs

3.1 Forms of de-risking

Banks provide vital financial services to NPOs across the world. However, many NPOs struggle to obtain access to banking services because of de-risking. De-risking refers to various internal banking practices that may impose significant hurdles for NPOs' ability to access financial services.⁶ Throughout the financial sector, the practice of de-risking NPO clients has increased in recent years. The "risk" in "de-risking" usually refers to the bank's concern that the customer poses a risk for money laundering or terrorism financing, or that processing transactions for them might entail a breach of sanctions regulations.

There are varying distinctions in the definition of de-risking that are worth pointing out for the purpose of clarity. De-risking may, for some in the banking sector, be defined as fully justified steps taken by the bank to decrease the risk its services are abused for criminal activities, which they are required to do by law. For the purposes of this report, we will use the definition by the Financial Action Task Force (FATF),⁷ which 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.⁸ Similarly, the 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."⁹ This definition of de-risking looks at specific acts by banks that are deemed overzealous, unnecessary, disproportionate or even discriminatory. With this said, it is important to emphasize that there may be justified reasons for banks to terminate or restrict services to certain clients, and that the difference between what is a justified limitation of services and what is de-risking may at times be difficult to distinguish. This report does not aim to engage in a discussion over definitions. Rather, it urges banks to examine questions around access to financial services for NPOs through a human rights lens. This perspective—which is focused on risk to people—complements, and does not replace, the compliance perspective that focuses on risk to the bank and the integrity of the financial system.

⁶ Chatham House, "Humanitarian Action and Non-state Armed Groups: The Impact of Banking Restrictions on UK NGOs" 28 April 2017, <https://reader.chathamhouse.org/humanitarian-action-and-non-state-armed-groups-impact-banking-restrictions-uk-ngos#introduction>.

⁷ The FATF is the recognized global standard setter, seeking to combat money laundering, terrorism financing and other threats to the international financial system.

⁸ FATF, "FATF clarifies risk-based approach: case-by-case, not wholesale de-risking" 2014, <https://www.fatf-gafi.org/documents/documents/rba-and-de-risking.html>.

⁹ Remarks by Acting Under Secretary Adam Szubin at the ABA/ABA Money Laundering Enforcement Conference, 16 November 2015, <https://www.treasury.gov/press-center/press-releases/Pages/jl0275.aspx>.

While NPOs are active all around the world, many NPOs are active in parts of the world where people are in need of aid. Often, their activities take them to countries that banks classify as high-risk, which means the bank must perform enhanced due diligence to prevent money laundering or the financing of terrorist activities. Due diligence in this context, simply means the act of performing background checks on a potential customer to ensure they do not pose an excessive risk to the bank.¹⁰ Although these Know Your Customer (KYC) procedures are no different from those carried out for corporate clients active in high-risk countries, NPOs are believed to be more often affected by de-risking. Financial institutions that are committed to respecting human rights should be sure that they are not merely avoiding, rather than managing, perceived risks.¹¹

De-risking comes in different shapes and sizes, and can occur before, during or at the end of a contractual relationship between the bank and the NPO. The table below provides some illustrative examples of de-risking as experienced by NPOs.¹²

On requesting to open a bank account	Once a bank account has been opened	Ending the banking relationship
<ul style="list-style-type: none"> 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) 	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> 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

¹⁰ This is different from human rights due diligence, which is a responsibility on banks under the UNGPs.

¹¹ FATF, "FATF clarifies risk-based approach: case-by-case, not wholesale de-risking" 23 October 2010, <http://www.fatfgafi.org/topics/fatfrecommendations/documents/rba-and-de-risking.html>.

¹² As evidenced by, among others: Sue Eckert et al, "Financial access for US Nonprofits" Charity and Security Network, February 2017, p vi, <https://charityandsecurity.org/csn-reports/finaccessreport/>.

3.2 Root causes of de-risking

There is no straightforward answer to the questions of why banks engage in de-risking. The following four (interrelated) root causes are at the heart of the problem. This list also shows that while this paper addresses the responsibility of banks to minimize unnecessary de-risking, they are not the only relevant actors. Governments, financial sector regulators and NPOs themselves also have an important role to play.

Complex and multilayered regulation

This report does not intend to provide a comprehensive description of applicable AML/CFT laws and regulations. The sheer size and complexity of AML/CFT regulating bodies and applicable norms and requirements make navigating the associated risks a complicated task for banks and NPO's alike.

In general, it may be observed that financial regulators and supervisors all around the world are becoming more forceful on CFT and AML compliance by financial institutions (banks) and other sectors such as NPOs. The Financial Action Task Force (FATF) is arguably one of the most impactful. It is the recognized global standard setter, seeking to combat money laundering, terrorism financing and other threats to the international financial system. It is both a policymaking and an enforcement body. Almost all countries across the world endorse its 40 Recommendations ('the standards'). The FATF works on the assumption that if countries effectively implement their standards, financial systems and the broader economy will be protected from money laundering, terrorism financing, proliferation financing and other threats with direct links to the financial sector. Other relevant policymaking bodies include the UN Security Council, the European Union, US Treasury and national governments. This regulatory regime is, in turn, internalized by the financial services sector. Banks and money transfer agencies are required to carry out extensive due diligence on their customers to fulfil compliance requirements and face large fines and/or untold reputational damage if they are found to be in contravention of any of these regulations.

Engagement between the FATF and the Global NPO Coalition on the FATF has, to a large extent, along with the backing of a number of ‘civil society friendly governments’, ensured that the FATF takes serious note of the negative effects of its standards on the financial and operational space of civil society. This has resulted in the revision of Recommendation 8 in 2016 to change the designation of NPOs as being “particularly vulnerable to terrorism financing”, and an emphasis on the Risk-Based Approach, amongst others. In 2021, the FATF Secretariat also announced it was beginning a new work stream on the unintended consequences of poorly implemented AML/CFT measures – from financial exclusion to the abuse of counter terrorism measures to suppress civil society.

The FATF emphasises in its Guidance for Terrorism Financing (TF) Risk Assessment, to which Global NPO Coalition members contributed, that countries need to understand the residual or net risk for TF abuse of NPOs. The guidance encourages governments not to view NPOs as inherently at risk for TF abuse but to value and validate financial and administrative measures already taken by NPOs to prevent risk. The Taskforce underscores what NPOs have been stressing all along: that zero risk related to work in and on conflicts, human rights issues and humanitarian crises does not exist.¹ In this regard, the issue of de-risking becomes of importance to both government, banks and donors, whose support to NPOs is predicated on the support of vulnerable populations affected by humanitarian crises, and groups and individuals whose rights are being violated by those in power.

Sanctions regimes are an additional factor. Banks also need to take heed of international and domestic sanctions lists, to ensure they are not in breach of those when they are taking on a client or processing a payment. Sanctions can be imposed by the UN Security Council, the European Union and individual states. An influential player in the global sanctions architecture is the United States’ Treasury’s Office of Foreign Asset Control (OFAC) which issues and enforces US Sanctions. As a large majority of international trade is conducted through the US dollar, and these transactions often require a US - based correspondent bank for the transfer to occur (even between two non-US parties). Those correspondent banks fall under US Treasury jurisdiction and all transactions that pass through them, even if it is not the end destination, comes under the OFAC jurisdiction and must be blocked if they are in violation of OFAC Sanctions.¹³ The importance of the US dollar internationally – and the fear other banks may have of losing access to risk-averse US correspondent banks and potentially violating OFAC’s material support provisions – means that most major financial institutions around the globe integrate compliance with OFAC in their due diligence work, even in transactions in which there is absolutely no connection to US dollars, US persons, or US jurisdiction.¹⁴

¹³ The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

¹⁴ Adam Smith, “Dissecting the Executive Order on Int’l Criminal Court Sanctions: Scope, Effectiveness, and Tradeoffs” 15 June 2020, <https://www.justsecurity.org/70779/dissecting-the-executive-order-on-intl-criminal-court-sanctions-scope-effectiveness-and-tradeoffs/>.

Business profile of NPO clients and the ‘right’ to a bank account

The business profile of NPO clients may vary enormously. Some are small and have checking accounts only, while others may hold large asset portfolios. As such, there is often no single service model that banks offer. When the (expected) cost of compliance (i.e., the cost of the know your customer (KYC) due diligence that a bank must perform) outweighs revenues the bank could decide not to accept the NPO as a client, or to terminate the relationship. Under EU law, every “consumer” legally resident in the EU has a right to an account with basic features (Directive 2014/92/EU, Chapter IV). However, under the Directive, “consumers” are defined as “natural persons” who are acting for “purposes which are outside their trade, business, craft or profession”, thus excluding NPOs (i.e. legal entities).

Under the principle of freedom of contract and the terms of the banking services contract, in most countries financial institutions will have the right to terminate the contract under certain circumstances given prior notice. Indeed, in the context of de-risking, the UK Financial Conduct Authority has suggested, “the decision to accept or maintain a business relationship is ultimately a commercial one for the bank”.¹⁵ Moreover, most banking services contracts will have provisions specifically allowing for termination where necessary to comply with anti-money laundering and counter-terrorism financing (AML/CTF) regulations.

However, in the Netherlands a handful of organizations have been successful in bringing claims against banks following de-risking decisions.¹⁶ Dutch courts take the view that consumers (including NPOs) have a general interest in access to banking services and that due to the special position of banks (as service providers) in that regard, in the interests of fairness, a greater level of protection should be given to the consumer. The courts have held that the consumer’s interest in having access to the financial system and to use banking services outweighed the bank’s interest to safeguard its integrity by strictly applying anti-money laundering and terrorism financing law and the de-risking decisions must be taken on a case-by-case basis following a careful consideration of the relevant facts.¹⁷

¹⁵ Human Security Collective and European Center for Non-For-Profit Law, “At the Intersection of Security and Regulation: Understanding the Drivers of ‘De-Risking’ and the Impact on Civil Society Organizations” 2018, p 19.

¹⁶ See 22 December 2015, Court of appeals in Amsterdam (appeal preliminary relief proceedings), ECLI:NL:GHAMS:2015:5323 (Hells Angels MC Foundation (Hells Angels)/ABN AMRO BANK N.V. (ABN AMRO)); 19 January 2018, Supreme Court of the Netherlands, ECLI:NL:GHAMS:2018:281 (Yin Yang c.s. (Yin Yang)/ING Bank N.V.(ING Bank)); and 4 November 2019, the court of Amsterdam, ECLI:NL:RBAMS:2019:8144, (Project C Holding B.V. (Project C)/ABN AMRO Bank N.V. (ABN AMRO Bank)).

¹⁷ See *id.* (Hells Angels/ABN AMRO BANK).

Knowledge and capacity at the bank

Larger NPO clients may have a relationship manager who can be contacted about questions on complicated issues, like transactions to a conflict area in which the NPO is doing humanitarian work. Typically, these relationship managers have a larger portfolio of NPOs, which means that they have profound knowledge of the Non-Profit Sector. They may also have close connections with important stakeholders in the field, such as industry associations or large donors (including the Ministry of Foreign Affairs). Relationship managers' expertise helps the bank to better understand and assess risks in order to have an efficient KYC process and, vice versa, they can advise their clients on actions they can take to mitigate risks.

When this level of expertise is lacking, the odds of de-risking increases. The KYC-process for small NPOs is typically handled by staff without specific sectoral knowledge. Organizations without a relationship manager also have less of an opportunity to build trust and rapport with the bank and are put in the position where they have to constantly re-introduce themselves to the attending KYC-officer. Issues that a specialized relationship manager would find perfectly normal may be more easily flagged as 'risks', such as assets originating from major donors. Real risks may be more easily deemed unacceptable, whereas a specialized relationship manager would know how to mitigate the risk and communicate this to the NPO as a condition to maintaining or starting the client relationship. And mistakes are easily made, for example when an NPO is refused a bank account because a board member is the national of a 'sanctioned' country, although the imposed sanctions only target a handful of political leaders. Banks' sanctions desks will be well-aware of this nuance, but less specialized KYC-officers may not be. NPO clients with more, or more serious risk indicators would typically be subjected to more frequent screening. This significantly raises the cost of compliance, which in turn increases the chance that a NPO is refused banking services on commercial grounds.

Knowledge and capacity at the NPO

Lack of expertise may also be an issue on the side of the NPO. For example, NPOs may not be aware that AML/CTF regulations that banks must comply with have such a large impact on their onboarding process. While it may appear simple to open a bank account, the KYC process for new clients may be time consuming. The bank may ask all kinds of questions to obtain a level of comfort concerning the risk profile of a new NPO client, which may seem excessively burdensome, but is actually standard practice. This could lead to frustration on the side of the NPO, and critical questions on why the bank needs certain documents. In turn, this feeds the suspicions of the KYC-officer that the NPO is not cooperative and 'must be hiding something'.

Deliberate misinformation campaigns

There is growing concern that NPO's are vulnerable to de-risking as a result of online attacks and campaigns that spread false information. Some States' or organizations with an ideological agenda have sought to pressure banks to de-risk those NPOs with whom they do not agree.¹⁸ These attacks are designed to intentionally create confusion, disparage targeted organizations and their leaders, and promote inaccurate views about their beneficiaries or the communities they support. Interaction, the largest alliance of U.S.-based nonprofits that work around the world, recently put out a toolkit, saying "from Muslim-based foundations in the U.S. to humanitarian assistance organizations assisting refugees in Europe, disinformation campaigns have visibly burdened the operation of NGOs and put beneficiary communities in harm's way".¹⁹ These attacks occur either directly, through contacting the banks or other financial institutions, or indirectly, by flooding the internet with disinformation, which is then picked up by the bank's compliance software.²⁰

3.3 Effect of de-risking on the work of NPOs

While the purpose of anti-money laundering and counter-terrorism financing (AML/CTF) regulations and legislation is undisputedly important, the consequences of de-risking NPOs that provide legitimate and vital community services to vulnerable people, deliver humanitarian aid, or engage in advocacy or human rights work, can be severe. In some cases, the failure to get funds from A to B may literally cost lives. Banking personnel may inadvertently believe that certain de-risking decisions are compulsory under the AML/CTF rules; the rules may be broad or vague and the penalties for non-compliance may be severe. These rules are aimed at illegal activity, but many NPOs' legitimate activities have become targets under AML/CTF regulations.²¹ The significant negative effects of de-risking NPOs have been found in several studies.²²

¹⁸ Charity and Security Network, "Input on Thematic Paper on Disinformation" 15 February 2021, <https://charityandsecurity.org/wp-content/uploads/2021/02/CSN-Inputs-to-UNSR-Opinion-Expression-comments-on-disinformation.pdf>.

¹⁹ Interaction disinformation toolkit: <https://www.interaction.org/documents/disinformation-toolkit/>.

²⁰ Middle East Eye, "Palestinian activist receives damages after being placed on World-Check blacklist" 12 January 2021, <https://www.middleeasteye.net/news/zaher-birawi-palestinian-activist-world-check-terrorism-list>.

²¹ Karina Avakyan et al, "The Hole in the Bucket: The Impact of De-risking on Non-Profit Organizations," FinDev Gateway, 25 February 2019, <https://www.findevgateway.org/blog/2019/02/hole-bucket-impact-de-risking-non-profit-organizations>.

²² Duke Law Int'l Human Rights Clinic and Women's Peacemakers Program, "Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security" March 2017, <https://web.law.duke.edu/humanrights/tighteningthepursestrings/>. Tracey Durner and Liat Shetret, "Bank De-Risking and Its Effects on Financial Inclusion" Global Center on Cooperative Security and Oxfam, November 2015, https://www-cdn.oxfam.org/s3fs-public/file_attachments/rr-bank-de-risking-181115-en_0.pdf.

On refusing to open a bank account	Once a bank account has been opened	Ending the banking relationship
<ul style="list-style-type: none"> ● 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 	<ul style="list-style-type: none"> ● Higher transaction costs for cross-border transactions²⁴ ● 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 	<ul style="list-style-type: none"> ● 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)

The problem of de-risking is now faced by numerous NPOs irrespective to their size, geographic area of activity and type of work.²⁵ Certain religious and diaspora groups and organizations working on women's rights seem to be disproportionately affected. This is also the case for NPOs operating in more politically contentious contexts, such as Israel/Palestine or Iran, or on topics considered controversial in their context. Additionally, the impact of being de-risked is not the same for all NPO's; smaller, less well-known, less financially resilient organizations will struggle more to secure redress.

²³ HPG Working Paper, "The impact of de-risking on the humanitarian response to the Syrian crisis" 2018, <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12376.pdf>.

²⁴ *Id.*

²⁵ Human Security Collective and European Center for Non-For-Profit Law, "At the Intersection of Security and Regulation: Understanding the Drivers of 'De-Risking' and the Impact on Civil Society Organizations" 2018, p 9.

4. De-risking as a human rights issue

4.1 Impact on the human rights of NPO beneficiaries

Beyond having consequences for the NPOs themselves, de-risking can have in-direct impacts on the human rights of NPO beneficiaries. In some cases, for example when an NPO is refused a bank account, direct and indirect human rights impacts go hand-in-hand. But in the case of delays or blockage of transfers of funds, the right to freedom of association is not impaired, while the impacts on vulnerable people may be imminent and severe. Indeed, the indirect human rights impacts of de-risking may far outweigh the direct ones. Some argue that, through de-risking, financial institutions are having an effect on strategic programming of the assistance to victims of crises (notable examples are Somalia²⁶ and Syria²⁷). In the worst-case scenario, people die because funds are held up in Western bank accounts (or bank accounts in the developing world) awaiting risk clearance. However, even outside of such extreme examples, de-risking may impact an NPO's ability to engage in its core activities, whether that is the provision of community-based services to those in need or engaging in advocacy to promote public interest causes. In turn this may affect the human rights of those who NPOs serve and represent, including women and children, refugees, victims of domestic violence and many more.

4.2 Direct human rights impacts of de-risking on the NPOs

NPOs have human rights

Human rights are literally the rights that one has because one is human. The Universal Declaration of Human Rights first established the world's commitment to protecting human rights following the atrocities of the Second World War. Today there is a global human rights system consisting of several international and regional treaties, courts and protection bodies. This international system is underpinned by the protection of human rights in national legal systems and constitutions throughout the globe.

Human rights protect the most fundamental aspects of being human, such as life, liberty and bodily integrity. They also protect important aspects of our collective existence as humans such as our freedoms to express opinions and share and receive information, to assemble and to associate with one

²⁶ Humanitarian Policy group, "The challenge of informality, counter-terrorism, bank de-risking and financial access for humanitarian organisations in Somalia" 2018, <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12258.pdf>.

²⁷ LSE blog, Stuart Gordon, "The risk of de-risking: the impact of the counterproductive financial measures on the humanitarian response to the Syrian crisis" 2019, <https://blogs.lse.ac.uk/crp/2019/03/20/the-risk-of-de-risking-the-syrian-crisis/>.

another based on our values and beliefs. NPOs, as associations of people pursuing common objectives, also have human rights. The European Convention on Human Rights, for example, accepts applications from NPOs claiming to be a victim of a violation of the convention.²⁸ Key among them are the rights to freedom of expression and information,²⁹ assembly,³⁰ and association.³¹ The Conventions of the International Labour Organization provide more specific rules to guarantee freedom of association for trade unions.³²

De-risking may have direct impacts on the human rights of NPOs. After being de-risked, the ability of NPOs to cooperate with businesses, philanthropy and charities is hindered and their ability to transfer money is compromised. This could result in NPOs being de-legitimized and excluded from public dialogue. Of particular concern are the impacts of de-risking on the rights to freedom of association and non-discrimination.

The right to freedom of association

De-risking decisions may have particularly adverse impacts on NPOs' rights to freedom of association under international, regional and national human rights law.³³ Article 22 of the International Covenant on Civil and Political Rights (ICCPR) affirms, "Everyone shall have the right to freedom of association with others [...]" The UN Human Rights Committee has interpreted Article 22 broadly to guarantee also the right of associations to freely carry out their statutory activities.³⁴ Similarly, the European Court of Human Rights has interpreted Article 11 of the European Convention on Human Rights (on freedom of association) to protect the right for NPOs to register and to receive financial resources.³⁵ This has recently also been confirmed by the European Court of Justice in relation to Article 12 of the Charter on Fundamental Rights.³⁶ Accordingly, the ability for NPOs to access funding and other resources from domestic, foreign and international sources is embedded in the right of freedom of association.³⁷

²⁸ See Article 34 of the European Convention on Human Rights (the right to individual petition) which explicitly notes that the Court may receive applications from "any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto..."

²⁹ See, for example, *Hungarian Civil Liberties Union v. Hungary*, Nr. 37374/05, 14/07/2009.

³⁰ See, for example, *Helsinki Committee of Armenia v. Armenia*, Nr. 59109/08, 30/06/2015.

³¹ See for example, *Moscow Branch of The Salvation Army v. Russia*, Nr. 72881/01, 05/01/2007.

³² Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) concerns the obligations of public authorities; Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Concerns mutual obligations between trade unions and employers' organisations.

³³ See e.g. Article 22 of the International Covenant on Civil and Political Rights; Article 11 of the European Convention on Human Rights; or Article 12 of the EU Charter of Fundamental Rights.

³⁴ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf, A/HRC/23/39, 24 April 2013, para 16 referring to Human Rights Committee Communication No. 1274/2004, *Korneenko et al. v. Belarus*, para 7.2.

³⁵ See *Republican Party of Russia v. Russia*, Nr. 12976/07, 12/04/2011; and *Parti nationaliste basque — Organisation régionale d'Iparralde v. France*, Nr. 71251/01, 07/06/2007.

³⁶ Case C-78/18, *European Commission v. Hungary*, 18 June 2020.

³⁷ Under international law, freedom of association encompasses not only the right to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association,

Access to financial services is essential for an NPO to function in the modern economy. Without the ability to access such services, NPOs are unable to complete their functions, such as receiving and transferring funds for their charitable operations. It has been argued by the UN Special Rapporteur on Freedom of Assembly and Association (UN Special Rapporteur), that a denial of banking facilities - including bank accounts and funds transfer facilities - without reasonable suspicion that the targeted organization or transaction constitutes support of terrorism or money laundering would likely constitute an “adverse impact” on the right to freedom of association insofar as it prevents and NPO from freely carrying out its statutory activities.³⁸

The right to non-discrimination

De-risking decisions may also have an adverse impact on NPOs’ right to equal treatment. They can experience discrimination vis-à-vis companies but also from discrimination between different types of NPOs. In the context of his comparative report between domestic legal environments for businesses and NPOs, the Special Rapporteur explicitly qualifies some forms of differential treatment as “discrimination against civil society.”³⁹ A more explicit point of reference on access to finance in relation to discrimination between different types of NPOs is found in The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. It provides in Article 6 (f) that the freedom of thought, conscience, religion or belief shall include, inter alia, the freedom “to establish and maintain appropriate charitable or humanitarian institutions” and “to solicit and receive voluntary financial and other contributions from individuals and institutions.” Some studies have found that Muslim charities are particularly affected by de-risking policies.⁴⁰ As such, there is suspicion that many cases of de-risking NPOs may be due to anti-Muslim bias.⁴¹ De-risking of a NPO due to general characteristics, such as due to its religious or cultural associations, would clearly constitute an adverse impact on the right to non-discrimination.⁴² The singling out of organizations on stereotypical

https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf, A/HRC/23/39, 24 April 2013, para 20.

³⁸ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/148/02/PDF/G1314802.pdf?OpenElement>, A/HRC/23/39, Add1, 17 June 2013, para 85.

³⁹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 4 August 2015, para 50, <https://undocs.org/A/70/266>.

⁴⁰ Stuart Gordon and Sherine El Taraboulsi-McCarthy, “Counter-terrorism, bank de-risking and humanitarian response: a path forward,” Humanitarian Policy Group, August 2018, p 2-3, <https://cdn.odi.org/media/documents/12368.pdf>.

⁴¹ Duke Law Int’l Human Rights Clinic and Women’s Peacemakers Program, “Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security” March 2017, p 43. Tracey Durner and Liat Shetret, “Bank De-Risking and Its Effects on Financial Inclusion” Global Center on Cooperative Security and Oxfam, November 2015, p 18. De-risked NPO are rarely given a reason for why it has been de-risked.

⁴² See for example the case of UK Muslims charities facing de-risking, Huda Salih, “In spite of the imposed rigours, UK Muslim charities have, in recent years, faced the threat of having their bank accounts closed by their banking partners, owing to fears over the destination of funds” 4 July 2017, <https://www.riskadvisory.com/news/banks-de-risking-and-the-effect-on-muslim-charities/>

assumptions based on an organization's religion is discriminatory and prohibited under international law.⁴³

Small NPOS serving underserved, marginalized, vulnerable communities may be likely to be represented by persons of the same characteristics. Where the banks' standardized processes result in the routine denial of financial services to such people, you have a discriminatory outcome in fact, despite the fact that the processes are not intended to have that discriminatory effect. In its due diligence the bank should be assessing whether its processes are or are likely to have this outcome in fact by identifying the characteristics of NPOs being routinely de-risked.

4.3 De-risking as a business and human rights issue

Adopted in 2011, the United Nations Guiding Principles on Business and Human Rights (UNGPs) are a set of 31 principles that provide a global standard for preventing and addressing adverse human rights risks and impacts connected to business activity. The UNGPs rest on three pillars: (1) the state duty to protect, (2) the corporate responsibility to respect, and (3) access to remedy for those who suffer human rights harms. Although the focus of this report is on the responsibility of banks, which is based on Pillars 2 and 3 of the UNGPs, states have a clear role to play. De-risking now appears to have become so entrenched that it has come to undermine other international policy goals and concerns, such as economic development, financial inclusion, human rights protection and the creation of an 'enabling environment for civil society'. As such, States should be aware of this policy incoherence, and refrain from certain interventions that either intentionally or unintentionally limit access to financial services for NPOs. They should actively work to mitigate de-risking at the systemic level. The UNGPs explicitly address the need for policy coherence for "governmental departments, agencies and other State-based institutions that shape business practices." This would include ministries, law enforcement agencies and financial sector regulators that shape and enforce AML/CFT legislation. Luckily, in some countries there is active dialogue between the government, banks, NPOs and other stakeholders about the unintended consequences of AML/CFT regulations. This can lead to concrete results, such as the Risk Compliance guidelines for financial access for NPOs active in Syria that were adopted in 2019.⁴⁴

⁴³ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/148/02/PDF/G1314802.pdf?OpenElement>, A/HRC/23/39, Add1, 17 June 2013, para 85.

⁴⁴ Justine Walker, "Risk Management Principles Guide for Sending Humanitarian Funds into Syria and Similar High-Risk Jurisdictions", May 2020, <http://files.acams.org/pdfs/2020/The-Risk-Management-Principles-Guide-for-Sending-Humanitarian-Funds-into-Syria-and-Similar-High-Risk-Jurisdictions.pdf>, Global NPO Coalition on FATF, "Compliance Dialogue on Syria-related Humanitarian Payments" 3 July 2019, <https://fatfplatform.org/news/compliance-dialogue-on-syria-related-humanitarian-payments/>.

Under their second pillar, the UNGPs contain several key principles for business enterprises, including banks.

- **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.
 - **Principle 13** -- The responsibility to respect human rights requires that business enterprises:
 - (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
 - (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.
 - **Principle 15** -- To respect human rights, enterprises should have in place policies and processes appropriate to their size and circumstances,
 - (a) A policy commitment to meet their responsibility to respect human rights;
 - (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
 - (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.
 - **Principle 22** -- Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.
-

Like any company, banks are expected to implement these principles. They should act with due diligence to avoid infringing on the rights of others and to address any adverse human rights impacts caused. This means that banks are expected to identify both actual and potential adverse human rights impacts which they might be connected to through their own operations or business relationships. Their precise responsibilities on how to address issues are determined by whether they have caused, contributed to or are directly linked to the human rights impacts.⁴⁵

⁴⁵ IRBC Agreements, Dutch Banking Sector Agreement, Working Group Enabling Remediation, Discussion Group, May 2019, 7.

In practice, implementing the UNGPs as a bank is different from a mining company or a textiles manufacturer, for example. There is increasing guidance on how banks can operationalize the UNGPs. Key publications include those of the OHCHR,⁴⁶ the OECD,⁴⁷ the Thun Group,⁴⁸ the Dutch Banking Sector Agreement on Human Rights,⁴⁹ and the NGO Banktrack.⁵⁰ Notably, these publications focus mostly on project finance, general corporate lending and asset management. Other ways in which banks may be connected to adverse human rights impacts, for example through direct discrimination of employees or clients, receive less attention.

Neither domestic jurisdictions nor international law provide an unfettered ‘right to have access to bank accounts’ for legal entities including NPOs. A generic commercial decision not to offer financial services to an NPO is therefore not necessarily at odds with the bank’s responsibility to respect human rights. Rather, the responsibility to respect human rights in the context of de-risking would entail that banks act with due diligence to avoid overzealous, unnecessary or discriminatory de-risking. Clear examples would include a generic refusal to bank Muslim NPOs,⁵¹ or the freezing of assets of an NPO client at the request of a government for politically motivated reasons. But less extreme examples could also be deemed to be contrary to a bank’s responsibility to respect human rights. The UNGPs are clear that the greater the involvement of the bank in the adverse human rights impact, the greater the responsibility of the bank to take action to prevent or mitigate that impact.⁵² In this report we will not analyze (fictitious) cases to determine if banks can be considered to have caused, contributed to or be directly linked to adverse human rights impacts through de-risking.

First and foremost, banks should have mechanisms in place to consider their responsibility in relation to adverse human rights impacts themselves. The following section therefore contains practical guidance on how banks can balance anti-money laundering and terrorism finance requirements and their responsibility to respect human rights under the UN Guiding Principles.

⁴⁶ OHCHR, “OHCHR response to request from Banktrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector” 2017.

⁴⁷ OECD, “Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises” 2019.

⁴⁸ Thun Group of Banks, “Paper on the Implications of UN Guiding Principles 13b & 17 in a Corporate and Investment Banking Context” December 2017.

⁴⁹ For all publications of the Dutch Banking Sector Agreement on Human Rights, see: <https://www.imvoconvenanten.nl/en/banking/about-this-agreement/publicaties>.

⁵⁰ Banktrack, The Banktrack Human Rights Benchmark 2019 Third Edition, November 2019.

⁵¹ BBC, “Why did HSBC shut down bank accounts?” 28 July 2015, <https://www.bbc.com/news/magazine-33677946>

⁵² OHCHR, “OHCHR response to request from Banktrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector” 2017, p 5 (internal references omitted).

5. Practical actions for dealing with NPO clients and avoiding de-risking

5.1 Embedding de-risking in human rights policies and due diligence processes

The first ‘operational principle’ of the UNGPs that applies to business enterprises holds that they should express their commitment to meet their human rights responsibility in a policy statement. Various banks refer explicitly to the risk of discrimination in access to financial services. Whether this applies to all types of clients, including NPOs as legal entities, is usually not clarified by the banks. Similarly, the issue of freedom of association features in many human rights policies, but almost exclusively as a labour rights issue. Control and restrictions on the use of trade union funds by governments are flagged by the International Labour Organization as incompatible with the principle of freedom of association.⁵³ However, the role and responsibility of banks in this respect is less-well understood.

There may be various reasons for not mentioning NPOs as rightsholders and/or the issue of de-risking in a bank’s human rights policy. The UNGPs recognize that it may not always be possible to address all potential impacts simultaneously, and therefore recognize the necessity for principled prioritization of bank resources to address impacts that are most salient. This term is defined as follows:

The most salient human rights for a business enterprise are those that stand out as being most at risk. This will typically vary according to its sector and operating context. The Guiding Principles make clear that an enterprise should not focus exclusively on the most salient human rights issues and ignore others that might arise. But the most salient rights will logically be the ones on which it concentrates its primary efforts.⁵⁴

Through a continuous process of human rights due diligence, banks can identify their human rights risks, prioritize the most salient ones for action, integrate and act upon these findings, track responses and communicate how impacts are addressed. Importantly, where a bank identifies that it has caused or contributed to adverse impacts, it should provide for or cooperate in the remediation of these impacts through legitimate processes.

⁵³ Freedom of Association. Compilation of decisions of the Committee on Freedom of Association / International Labour Office – Geneva: ILO, 6th edition, 2018, paras 706-715.

⁵⁴ OHCHR, “The Corporate Responsibility to Respect Human Rights: An Interpretative Guide” 2012, p 8.

The first step for banks to examine de-risking of NPOs from a human rights perspective would therefore be to explicitly consider it in their human rights due diligence. This will allow the bank to identify if it has de-risked NPOs or whether it is at risk of doing so, what the direct and human rights impacts of these actions are, how they can prevent or mitigate de-risking of NPOs.

5.2 Stakeholder engagement

Engagement with affected stakeholders is a key element of good human rights due diligence. It enables companies to better understand concerns and identify concrete action for the mitigation of human rights risks. In various countries, banks participate in multistakeholder platforms that bring together all relevant actors, including NPOs. These initiatives often combine policy discussions with guidance on practical steps that banks can take to enhance financial inclusion of NPOs.

- Currently, the Dutch stakeholder roundtable co-convened by the Ministry of Finance and Human Security Collective on financial access for NPOs is considered to be exemplary in terms of addressing de-risking stemming from AML/CFT and sanctions, finding solutions and thereby improving the financial inclusion of NPOs. It includes NPOs, banks, government departments, supervisors, regulators and the Financial Intelligence Unit among others.⁵⁵
- In the United Kingdom, a working group on financial access is another example of a national roundtable which brings together representatives from across the UK Government, the NGO sector, regulators and banking institutions to identify joint solutions to navigate the complex AML/CFT and sanctions landscape with the aim of facilitating payments, in support of humanitarian aid in particular.
- At the international level, the World Bank and ACAMS have convened roundtables to primarily solve de-risking in the US context through a number of work streams, the outcome of which is expected in the coming months. The World Bank, in collaboration with the Dutch roundtable co-conveners, also organized an international gathering of stakeholders in 2018 to address the issue.⁵⁶

⁵⁵ Speech by Queen Maxima of the Netherlands, the UN Secretary-General's Special Advocate for Inclusive Finance for Development at the Group of Financial Intelligence Units Plenary Meeting in The Hague, July 2019, <https://www.hscollective.org/news/timeline/queen-maxima-discusses-de-risking-of-npos/>.

⁵⁶ Dutch Ministry of Finance, World Bank and Human Security Collective, "International Stakeholder Dialogue: Ensuring Financial Services for Non-Profit Organizations: 2018, http://fatfplatform.org/wp-content/uploads/2018/02/Ensuring-Financial-Access-for-Non-profit-Organizations_Final-Report.pdf.

- Another international initiative, supported by the Swiss government and EU ECHO, aims to develop risk compliance guidance for banks, governments and NPOs in order for payments to safely reach vulnerable populations in Syria.⁵⁷

Each of these roundtables, in their own way and according to the geographic and thematic context in which they are conducted, aims to strike a balance between development, humanitarian or human rights on the one hand, and regulatory requirements stemming from AML/CFT standards and sanctions on the other. Understanding each other's challenges to comply with these requirements is a major first step in owning up to an issue that is sometimes described as 'everyone's problem but no one's responsibility'.

Banks that are not yet actively engaging with NPO stakeholders are encouraged to reach out to the [Global NPO Coalition on FATF](#) or one of the associated NPOs for more information on best practices for engaging with NPOs on this topic.

5.3 Alignment with compliance policies and guidance documentation

Banks' compliance policies and supporting guidance documentation would be an obvious starting point for integrating the findings of the human rights due diligence process. AML/CFT policies are typically not publicly disclosed. External scrutiny by civil society organizations is therefore impossible. Banks themselves must assess whether their compliance policies contain rules that are problematic, for example because they may prescribe wholesale determinations that could cause adverse effects as they do not take into account the particularities of an individual NPO.

De-risking may also occur because policy provisions are too vague or implicitly biased. Vagueness may be caused by the use of standardized documents that are – for efficiency reasons – used for KYC-checks on business enterprises as well as NPOs, but that are not suitable for the latter. Such documents may, for example, ask information about the 'ultimate beneficiary owner', which is interpreted differently for an NPO compared to a commercial enterprise. An example of implicit bias would be a policy that defines 'red flags' that could indicate whether an NPO poses an AML/CFT risk, without explaining how these risks can be mitigated, or providing a list of 'green flags' that can be used to obtain comfort about a new relationship.

⁵⁷ FATF Platform Website: <http://fatfplatform.org/announcement/compliance-dialogue-on-syria-related-humanitarian-payments/>

5.4 Internal learning and cross-functional co-operation

NPOs, especially smaller organizations, are less likely to have institutional knowledge regarding proper banking practices to respond to de-risking decisions. Thus, it is important for banks to have dedicated staff, such as designated NPO account managers for larger NPOs or knowledgeable KYC-officers for smaller NPOs, on hand to help NPOs navigate this process. These individuals must be well versed in the needs and communication styles of NPOs so that they can effectively convey information to potential NPO clients throughout the application process. These staff should also be prepared to answer any questions that NPOs may have regarding the application process.

Expertise to prevent de-risking is often spread across different functions. While a relationship manager for larger NPOs would typically not be involved in the KYC-process for small ones, he or she will have relevant expertise in case the KYC-officer is unsure on how to assess certain information. Likewise, 2nd line compliance teams, sanctions desks and human rights advisors all have a role to play in preventing de-risking.

5.5 External communications and capacity building

Communication is key to building and maintaining a relationship built on trust. Banks should make every effort to communicate their KYC-needs and concerns to NPO clients early and often to head off negative developments in the relationship. Furthermore, early communication of potential problems allows for more time to remedy the issue before it becomes something that could result in the termination of the banking relationship. This is especially important for smaller NPO clients that do not have the operational capacity to preemptively predict what information they must present to banks when seeking to open a bank account. Providing a list of important documents that prospective NPO clients should have ready for their initial screenings would increase process transparency and reduce associated administrative costs that come with back and forth communications. In addition, banks should explain why difficult questions are being asked and how information is going to be used. Banks could also help NPOs to enhance their knowledge about AML/CFT and sanctions regulations through general capacity building activities. They could partner with law firms that provide pro bono trainings for NPOs in this area, as well as established NPOs with expertise in this area.

5.6 Fee differentiation and service models

In addition to measures that look at banks' compliance policies and internal and external communications about those policies, there may also be commercial ways to address de-risking. Banks are required to conduct KYC-checks on their clients. They typically use risk categories which dictate the rigour and frequency of these checks. A humanitarian organization that is active in Syria is assessed more often than an organization that works on inclusive sports for disabled children in the Netherlands, for example. The KYC-process is costly, and if the expected revenues do not match these costs (or another target the bank has set) the NPO could be refused to be banked on commercial reasons. In other words: except for cases in which the NPO is classified as an 'unacceptable' AML/CFT risk, the cause of some forms of de-risking is not only based on AML/TF risk but also on the expected revenue.

This problem could be resolved in two ways: by making the KYC-process more cost-effective, or by raising the bank fee on the products and services offered to NPOs. The possible actions that are described above – e.g., resolving ambiguous or implicitly biased policy provisions, better use of available internal expertise, clear communications towards NPOs – all contribute to a more cost-effective process. Increases of fees are not often discussed in the debate on NPO de-risking. The use of so-called 'compliance maintenance fees' is increasingly common in commercial sectors that are sensitive to AML/CFT risks. It does invoke the dilemma that such a fee could also raise the costs for NPOs that (1) are considered to be 'medium risk' entities, or (2) high risk NPOs that currently do not experience any difficulties. Importantly, compliance maintenance fees should be seen as an option of last resort. Engagement with existing clients and other NPOs could help banks to determine whether changes in the fee structure and service model would help or hinder financial inclusion for NPOs in their context.

5.7 Addressing the remedy gap

Another important element of the UNGPs to consider in the context of NPO de-risking is access to effective remedy. Remedy is defined as encompassing "both the processes of providing remedy for an adverse human rights impact and the substantive outcomes that can counteract, or make good, the adverse impact."⁵⁸ Once an NPO client has been de-risked, it can face insurmountable obstacles to securing any meaningful form of remedy. While, on paper, NPOs can make use of both legal (judicial) and non-legal (non-judicial) procedures to pursue remedy, in practice there are serious flaws with most if not all of these avenues. This is true for actions before national courts, as well as the potential of three forms of non-judicial mechanisms: (1) The OECD National Contact Points, (2) Financial Sector Ombudsman procedures, (3) National Human Rights Institutions.

⁵⁸ OHCHR, "The Corporate Responsibility to Respect Human Rights: An Interpretative Guide" 2012, p 7.

Given the challenges with all of the other possible avenues for remedy, and in accordance with the UNGPs as discussed above, banks may play an important role in enabling remedy for de-risked NPOs. This begins with the identification of potential obstacles. For example, where accounts are closed, banks sometimes simply send a letter without justifying the closing of the account. Where the reasons to terminate the contractual relationship are not provided, the capacity for NPOs to challenge the decision is therefore severely limited.

In addition, banks can make adaptations in their internal complaints processes, such as:

- I. effectively track/monitor NPO de-risking;
- II. ensure that further due-diligence is carried out where there is any indication of de-risking;
- III. ensure that any harm done to the NPO or any inconvenience caused is minimized and mitigated;
- IV. ensure that there is as much transparency as possible throughout the entire process; and
- V. ensure that remedy or redress is provided where appropriate (for example, in the form of (re-)opening of accounts or compensation).

6. Resources

In addition to the sources in the footnotes, the following reports and websites contain valuable information for banks to learn more about de-risking and its broader context.

- HSC & ECNL – [At the Intersection of Security and Regulation: Understanding the Drivers of ‘De-Risking’ and the Impact on Civil Society Organizations](#) (2018).
- Duke Law International Human Rights Clinic and Women Peacemakers Program – [Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security](#) (2017).
- Charity and Security Network – [Examples of the many guidelines and best practice standards developed by charitable and philanthropic organizations](#). They reflect due diligence practices that protect charitable assets to be used solely for charitable purposes.
- ABNAMRO – [Human Rights Report 2018](#), pp 21-22.