



## IMPROVING THE RULE OF LAW: A GUIDE TO RISK MANAGEMENT



## ABOUT ADVOCATES FOR INTERNATIONAL DEVELOPMENT

Advocates for International Development (A4ID) was founded in 2006. It is a global charity that believes the law can and should, be used more effectively to advance fair and sustainable development. A4ID aims to inspire and enable lawyers to join the global fight to eradicate poverty by advancing the UN Sustainable Development Goals (SDGs). Through A4ID, the world's top lawyers provide free legal support to organisations working to advance human dignity, equality and justice. Its work has so far

had an impact in over 130 countries.

Led by A4ID, the Rule of Law Expertise (ROLE UK) Programme is funded by the Foreign, Commonwealth and Development Office. It supports partnerships to provide pro bono legal and judicial expertise with the aim of strengthening the rule of law in official development assistance (ODA)-eligible countries. The Programme's Knowledge Hub provides the pro bono legal sector with access to targeted and relevant information to inform and improve their technical assistance in development contexts.

[www.roleuk.org.uk](http://www.roleuk.org.uk) | [roleuk@a4id.org](mailto:roleuk@a4id.org)

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# FOREWORD



Risk management is a process familiar to most organisations. However, the way that risk is assessed and addressed varies depending on the type of work and the actors involved. International development agencies require a unique approach to risk management due to the complicated and challenging environments they work in. The complex contexts in countries with high levels of poverty and inequality, weak state institutions and weak legal systems mean that a whole host of risks can arise that require preparedness. This is especially true for legal

pro bono work that aims to strengthen the rule of law in these settings.

A4ID's ROLE UK Programme is committed to ensuring that the work it supports has proper risk management strategies in place that consider the internal and external, as well as the short-term and long-term, risks of particular projects. Comprehensive risk management strategies are necessary, not only to increase the likelihood of successful project delivery, but to reduce the chance of harm to the organisations and other stakeholders working on the project. Most importantly, risk management strategies ensure that any potentially negative side-effects of projects, for example on society and the environment are identified, analysed and addressed.

Through working with a range of legal sector actors, A4ID has found that legal stakeholders typically approach the concept of risk management from a business perspective. As such, legal experts often focus on the risks to the project and safety of those implementing it, rather than the risks to communities and wider society. It is important that legal actors

undertaking pro bono work assess contextual risk, as well as programmatic risk and institutional risk, to account for the uncertainties or even threats to the sustainability and effectiveness of a project. More specifically, when assessing these risks, legal experts must ensure that they abide by the principle of 'do no harm', by preventing avoidable harm to the local communities and environments that they are working within.

This guide contributes to A4ID's strategic objective to share and strengthen development thinking among legal and judicial stakeholders by introducing them to key concepts related to risk management. It sets out some simple and

effective ways that legal pro bono providers can assess and mitigate the three categories of risk. In doing so, the guide covers four key phases of risk management. These involve *analysing* the context, *identifying* any risks, *evaluating* the risk, and *treating* the risk.

Legal experts must continuously monitor and review risks, as well as communicate the risks with all relevant partners and stakeholders. This will not only reduce harm but will also help to strengthen the rule of law and lead to the success of an intervention.

**YASMIN BATLIWALA**

**Chief Executive**

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# INTRODUCTION

Legal and judicial experts play a vital role in assisting and sustaining efforts to strengthen the rule of law and access to justice in international development settings. When doing this in a pro bono capacity, these experts provide an important and valued pool of resources for governments and civil society. Despite the wealth, breadth of experience and expertise legal actors bring to international pro bono projects, the complex contexts they are working in and the differing needs of recipients mean that the delivery of pro bono work may – often unintentionally – give rise to various risks. Occasionally, these risks can exacerbate situations on-the-ground to such a degree that it cancels out the hard work that providers do. It is, therefore, important that all legal experts undertaking pro bono projects are mindful of potential risks. Even very small changes to an outlook and strategy throughout all stages of a project can help in mitigating such risks.

This guide aims to equip such legal and judicial experts with an overall understanding of risk and why it is important in international development projects. It will also provide simple tips and tools for mitigating risks, which, in turn, will enhance

the effectiveness and sustainability of their work. This guide is not aimed at turning legal pro bono providers into risk management experts. It will therefore not provide an all-encompassing detailed guide to risk management. Rather, it will serve as an introductory document to key risk concepts. It will allow legal experts to tweak their approaches in order to become better at identifying and managing risk, whilst still staying true to the aims and objectives of their rule of law project. Information about further risk management resources is available at the end of the guide for those experts interested in gaining a more in-depth understanding of the topic.

## A GENERAL APPROACH TO RISK MANAGEMENT

Viewed negatively, risk is understood as ‘the potential for a defined adverse event or result’ to take place. It is usually assessed against the likelihood of the risk occurring and the impact of the perceived result. A risk assessment involves looking at risk factors and risk outcomes. Risk factors are factors that affect the likelihood and impact of risks, such as a risk source, and risk outcomes are the result of a risk occurring.

These terms will become clearer as you read the guide.

Risk management is a 'systematic approach to setting the best course of action under uncertainty by identifying, assessing, understanding, making decisions on and communicating risk issues'. A strong understanding of risk management principles allows legal experts to reduce the likelihood of negative risks and balance the risks against opportunities. Good risk management should be at the heart of every process within an organisation.

Whilst this section will help you to think about risk management more generally, it must be emphasised that every risk management strategy should always be tailored towards a particular situation, project and organisation. A blanket approach to risk should be avoided in all instances, as this can lead to a box-ticking exercise, as opposed to a meaningful way of tackling of risk. As a starting point, however, a risk management framework should look at three foundational (and overlapping) risk categories, based on The Copenhagen Circles.\* These three categories are contextual risk, programmatic risk and institutional risk.

**A strong understanding of risk management principles allows legal experts to reduce the likelihood of negative risks and balance the risks against opportunities.**



**Contextual risk** concerns a number of possible adverse outcomes that could occur in a specific context. Examples include the risk of a humanitarian crisis; a renewal of historical conflict; an economic crisis; the weakening of governance, etc. The context is often identified as a particular country or geographical region. However, if appropriate for a certain programme of work, the context could also be a specific area of development, such as education, poverty or migration etc.

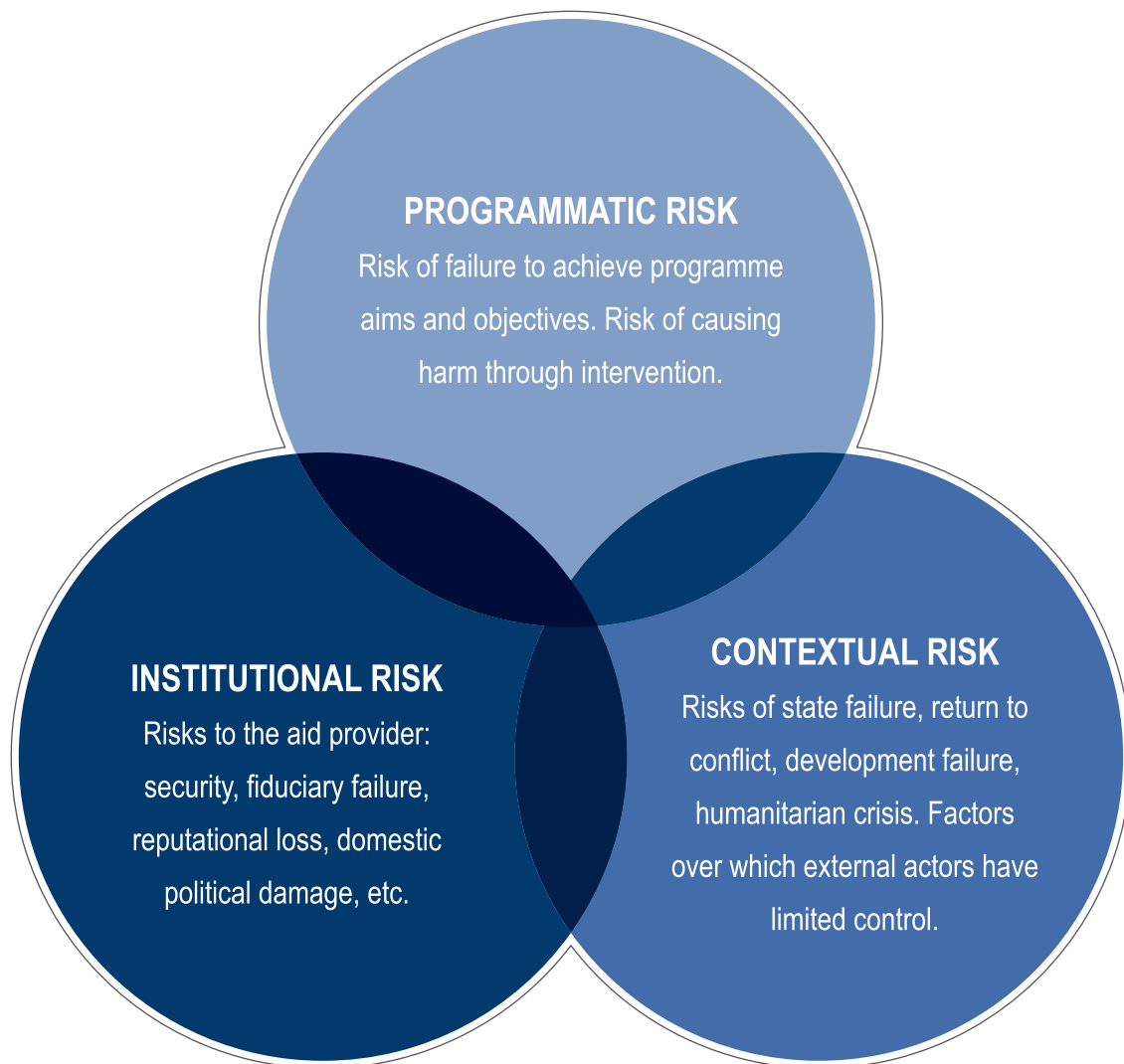
**Programmatic risk** is two-fold. Firstly, it involves the possibility of a programme of work failing to achieve its objectives. Alternatively, it is the risk of a programme inadvertently causing harm in the external environment, for example, through aggravating social or political tensions. This

category of risk highlights flaws in programme design and implementation, as well as weak cooperation and coordination between agencies and programme partners. Risk factors for programme failure and harm to environments also include many from the first category of contextual risk.

**Institutional risk** refers to internal and political risk. It includes the potential impact of an intervention for the implementing organisation and its staff, and often relates to reputational or operational issues. Unlike contextual and programmatic risk, which can often be managed jointly with local and partnering institutions, institutional risk is unique for every stakeholder. Perceived impact may therefore vary depending on the type of stakeholder and their viewpoint.



Risk management approaches often only focus on institutional risk, which might be most familiar for users of this guide. However, it is equally important to consider contextual and programmatic risks, due to the overlapping nature of all three categories of risk, as the diagram below indicates.



# RISK MANAGEMENT IN INTERNATIONAL LEGAL PRO BONO PROJECTS

Having covered a general overview of risk management, this section will help you to apply that knowledge to international legal pro bono projects. Whilst the Copenhagen Circles' categories of risk were originally developed for areas such as aid management within international development, they are just as crucial for legal experts when embarking on rule of law projects abroad. This section will dig deeper into the types of risk legal experts might expect in rule of law projects. It will also introduce an important international development concept, namely the 'Do No Harm' principle, and highlight its importance for risk management.

## RISKS AND RULE OF LAW INTERVENTIONS

Experts working on legal pro bono projects have a strong understanding of the rule of law, but often limited experience of international development and the concept of risk in these settings. The rule of law is inherently political. It is not just about the law; it is about the institutions that decide who has power, rights

and resources.<sup>3</sup> Rule of law interventions in conflict-affected countries, or countries with weak institutions, can give rise to risks that differ substantially from the risks arising in countries with more accountable and inclusive institutions. The concept of the rule of law also substantively differs between countries, and legal experts therefore need to adapt their methodologies to be context-specific. It is also vital that, when embarking on any legal pro bono project, legal experts 'do no harm' to the wider environment that they will be working in and continuously think about contextual, programmatic and institutional risks with the 'Do No Harm' principle in mind.

## THE 'DO NO HARM' PRINCIPLE

At the heart of any international development work must be an adherence to the 'Do No Harm' principle. The central message is that actors working in development contexts must be wholeheartedly mindful of the specific context in which they are intervening.<sup>4</sup> This principle rejects the idea that a broad and universal framework can make a valuable contribution to areas such





## The ‘do no harm’ principle rejects the idea that a broad and universal framework can make a valuable contribution to strengthening the rule of law.

as state building, peacebuilding and poverty reduction. For this reason, it is vital that ‘Do No Harm’ is fully integrated into a risk management process. The principle must be applied when assessing contextual, programmatic and institutional risk and continuously considered throughout the entirety of any pro bono work. ‘Do No Harm’ is not a mantra, and it is more than a good principle, it should be viewed as a practical approach and an analytical tool.

The challenges and complexities of the rule of law mean that pro bono providers must develop a refined understanding of political processes,

institutional relationships and societal values in the countries where they are working. This exposes the compromises made amongst differing stakeholder objectives and allows legal experts to implement their work in a way that maximises their positive impact. Not taking this approach could mean that rule of law interventions do more harm than good. Legal services and resources could, for example:

- aggravate as opposed to reduce the risk of conflict
- weaken rather than strengthen the workings of a legislative body
- incorrectly identify the priority areas of rule of law reform in a country
- create training and workshop content not suited for key national and international stakeholders
- provide recommendations on specific rule of law issues that are irrelevant, unrealistic, impractical and/or limit ownership on the part of the partner country

In international development settings, there is often a very thin line between advancing the rule of law to help societies and harming them. When undertaking pro bono work, legal experts must recognise their own biases and understand the impact of their work as applied to a specific

## **In international development settings, there is often a very thin line between advancing the rule of law to help societies and harming them.**

context, with a view to reducing all inadvertent negative consequences. Within any population, there is always a struggle over the development of its legal system and the ability to afford rights for all citizens. In applying the 'Do No Harm'

principle, legal experts must ensure that their work does not place greater obstacles in areas such as access to justice.

There are clear tensions between implementing legal pro bono projects that seek to resolve basic aspects of the rule of law versus aspirations to expand access to justice. In the same vein, rule of law interventions might create tensions between indigenous legal practices and national aspirations to create a constitutional framework. Legal experts must therefore be mindful of such tensions to ensure that no programme of work does harm. Legal actors must prevent and mitigate any negative impacts of their work on local communities and affected populations. To achieve this, the 'Do No Harm' principle, as part of an inclusive mindset, must be directly integrated into every risk management strategy and continuously applied throughout the entire life of any international pro bono project.



# A FRAMEWORK FOR RISK MANAGEMENT

This section is divided into five sections, which reflect the various aspects of a risk management process that legal actors must go through when embarking upon and conducting rule of law interventions abroad. It is very

important to remember that at the centre of a good risk management approach is the principle of 'Do No Harm', which must inherently flow through each of the phases and be at the forefront of your mind.





## PHASE ONE: ANALYSE

The first phase is to *analyse* the context and scope for risk management throughout the entire project. This involves getting to grips with both the internal and external contexts that are relevant for the achievement of project goals. This is an extremely important part of the risk management process, and it is crucial to integrate this phase into any intervention that you undertake.<sup>5</sup>

- **External context** refers to political, social, cultural, environmental, financial, economic, security and technological issues, to name a few. It involves understanding the external stakeholders and their positions, views and expectations.
- **Internal context** refers to the internal values, aims and objectives, internal resources and organisational culture. It also involves understanding the relationships and capabilities of internal stakeholders.

Phase one is a scoping exercise to allow you to familiarise yourself with the specific rule of law area that you will be focusing on. Most importantly, this analysis must be carried out within the context in which you will be working, to

ensure that you ‘do no harm’ to that context.

When a specific rule of law problem is the focus of a pro bono project, legal actors often only look at the problem as it appears on the surface, and they only do so from a legal perspective. However, in analysing the context, you must learn about the bigger picture and other contextual issues underpinning the original problem. To maximise the effectiveness of a rule of law intervention and have the greatest impact, you must be aware of the deep rooted and structural elements of the problem and of the country in focus. This means that you should not just look at the legal framework of a country, but also, for example,

**In analysing the context, you must learn about the bigger picture and other contextual issues underpinning the original problem that you seek to address.**

the social, cultural, and political context. You also need to understand the bigger picture, as far as the organisations you are working with are concerned. Principally, whilst you will be working on a narrow rule of law problem, ensure that you understand the context of the wider programme of work, including the UK government's development strategy and agenda and the organisational context of in-country partners.

Developing sophisticated knowledge of all relevant contexts can help you to design an effective pro bono project and lay strong foundations for phase two in the risk management process.

Below are two fictional scenarios based on a rule of law intervention that demonstrate why the *analyse* phase is important.

## ANALYSE SCENARIO A

A legal practitioner has been asked to provide training to prosecutors in an ODA-eligible country to help to improve interviewing techniques for victims of sexual violence. Victims of sexual violence in this country are often stigmatised, which stems from deep-rooted societal issues. The legal practitioner embarking on this pro bono project has not analysed the context and proceeds to provide training that focuses solely on securing convictions for the prosecution.

They have failed to consider certain societal issues that result in victims being exiled from their communities or the psychological impact that giving evidence can have in such contexts. As a result, there is now a risk that any victim thereafter interviewed by the newly trained prosecutors will suffer further trauma through the interrogative nature of the interviewing techniques learnt and the lack of anonymity for victims. The disregard for the societal issues underpinning how communities treat sexual violence victims, risks depriving victims of their socio-economic rights.





## ANALYSE SCENARIO B

Now consider that in the same scenario as above, the legal practitioner has made an effort to understand the external and internal contexts of the target country, and established relationships with all relevant stakeholders. The legal practitioner has better insight and can create a training that better responds to the range of challenges faced by victims of

sexual violence in that particular society. For example, rather than focusing on convictions and a fact-finding approach, the training provides techniques that local prosecutors can use to allow victims to tell their story, as well as ensure anonymity for them throughout the process. It will do no further harm and allow for a rehabilitative, yet effective means by which prosecutors can do their job in that context.





## ANALYSE: KEY TIPS

- Do background research on the external context in the country and area you will be working on, as it relates to the rule of law issue you intend to address.
- Do not start from scratch, consider the work of others in the field, such as in-country experts, specialists within the thematic and/or geographic area of work etc.
- Identify and engage with key stakeholders from the outset. Stakeholders include direct and indirect beneficiaries of your work, local civil society organisations working in the same area, and local government, amongst others. Communication and participatory consultation are crucial in helping to analyse the context.
- Find out if there have been any recent issues and/or events that could impact your project. News reports from legitimate media sources and press releases from national institutions are one way to identify emerging issues and potential risks for the project. Try to obtain information from three or more independent sources.
- Grasping a general understanding of the history, politics and culture of a society can help. Whilst you may not have time to do this in-depth, reading short articles from academics or even policy reports from international organisations is useful.
- Read background material relating to the in-country partners you will be working with.
- Work closely with the implementing organisation and/or programme to gain access to relevant information and resources, for example:
  - ask A4ID's ROLE UK Programme for background information on their organisation and the broader aims and objectives to help inform the direction of your specific pro bono project
  - read A4ID's Peer-to-Peer Approaches for Pro Bono Rule of Law Support (2018)<sup>6</sup>
  - read A4ID's Maximising Technical Assistance to Improve the Rule of Law: A Guide (2019)<sup>7</sup>
  - read the A4ID Specialist Pre-Deployment Information Pack and ensure you have completed all due diligence forms



## PHASE TWO: *IDENTIFY*

In the previous phase, you should have built up your knowledge of relevant internal and external contexts. In this phase, you will move towards identifying risks more concretely. This involves predicting future scenarios and why these might occur, as well as their impact.

**Identifying risks requires legal actors to have a strong understanding of the context in which they will operate and historic risk patterns.**

Identifying risks requires legal actors to have a strong understanding of the context in which they will operate and historic risk patterns. Legal actors also need the ability to think about possible events, which could impact the

objectives of the pro bono project, the wider programme and partnership, and the expert's own organisation's goals. If phase one is completed well and effectively, then this phase is often very straightforward and does not require too much time.

The risk identification process is often dictated by the amount of time and resources available, which is usually limited. Legal actors therefore do not always do this before they begin a project. However, by identifying risks from the outset, legal actors are able to enhance the relevance and effectiveness of their work.

When identifying risks, it is important to think about factors such as the risk type, the risk source and the risk outcome.

- A **risk type** refers to the overall category of risk. For example, a political risk would be a risk type.
- A **risk source** refers to the nature of the risk that may cause or exacerbate harm and describes where the risk type derives from. A political risk may therefore have a number of risk sources within any given context, such as certain policies, or the administration itself.
- A **risk outcome** is what will happen if the risk comes into fruition. Determining the risk outcome will allow you to think about the

harm that might occur if the risk materialises, thereby triggering you to find ways to prevent potential harm. Identifying the risk outcome will also help you to identify the time and location in which this risk may occur, which could inform your project methodology.

In phase two, it will be useful to identify risks according to the three general categories derived from the Copenhagen Circles, that is: contextual risk, programmatic risk and

institutional risk. Below is a table with some example risk sources and risk outcomes that might arise in an international development project. These outcomes vary depending on whether you are dealing with a contextual, programmatic, or institutional risk. The examples in this table are broad and when you identify your own risks, they will be much more specific and tailored to your rule of law pro bono project.

RISK TYPE AND RISK SOURCE(S)	RISK OUTCOMES FROM CONTEXTUAL RISK	RISK OUTCOMES FROM PROGRAMMATIC RISK	RISK OUTCOMES FROM INSTITUTIONAL RISK
POLITICAL RISK			
<ul style="list-style-type: none"> <li>• Government (and policies).</li> <li>• Administration.</li> <li>• Stakeholders.</li> </ul>	<ul style="list-style-type: none"> <li>• Project will facilitate instability of government.</li> <li>• Project will lower accountability.</li> <li>• Systemic corruption means stakeholders are not reliable.</li> <li>• Limited reform commitment from government.</li> </ul>	<ul style="list-style-type: none"> <li>• Programme objectives cannot be met due to political hurdles.</li> <li>• No long-term implementation of project goals possible due to lack of capacity, corruption, and absence of poverty reduction strategy.</li> </ul>	<ul style="list-style-type: none"> <li>• A risk of reputational damage through association with corrupt regime.</li> <li>• Fiduciary risks in working with state actors.</li> </ul>

RISK TYPE AND RISK SOURCE(S)	RISK OUTCOMES FROM CONTEXTUAL RISK	RISK OUTCOMES FROM PROGRAMMATIC RISK	RISK OUTCOMES FROM INSTITUTIONAL RISK
CONFLICTS			
<ul style="list-style-type: none"> <li>• Ethnic divides.</li> <li>• Class system.</li> <li>• Religious conflicts.</li> </ul>	<ul style="list-style-type: none"> <li>• Exacerbation of tensions reflecting ethnic and religious divides in the area where a project will take place.</li> </ul>	<ul style="list-style-type: none"> <li>• Class system means one ethnic group is systematically denied access to justice. Affects programme goals.</li> </ul>	<ul style="list-style-type: none"> <li>• There may be security issues which affect operations on the ground.</li> </ul>
SOCIAL AND CULTURAL			
<ul style="list-style-type: none"> <li>• Gender Issues.</li> <li>• Existing indigenous laws.</li> </ul>	<ul style="list-style-type: none"> <li>• Restrictions on civil rights.</li> <li>• Significant gender inequality, which is furthered by rule of law project.</li> </ul>	<ul style="list-style-type: none"> <li>• Inherent bias against women and girls means programme objectives cannot be achieved.</li> <li>• Indigenous laws will clash with rule of law reforms proposed by project.</li> </ul>	<ul style="list-style-type: none"> <li>• Reputational damage in implementing project that increases gender inequality and ignores indigenous rights.</li> </ul>

In addition to the examples outlined in the table, you may also wish to consider other risk types – and their risk sources – such as financial, environmental, regulatory, strategic, or other risks

that are relevant to your specific rule of law project. See Annex A for the Programme’s Risk Identification Form, which you can use when identifying all risks relevant to your project.



## **IDENTIFY SCENARIO A**

A legal expert is asked to help in the establishment of a new human rights law as part of wider constitutional reforms in a country that has embedded a particular religion into its legal framework for hundreds of years. The expert does not undertake the identify phase of the risk management process and does not concretely highlight the specific risks that may be involved in undertaking such a project. The new law recognises universal human rights and is drafted by the expert to officially become part of the legal framework. The legal expert's lack of risk identification, however, means there is now a disconnect between the new law and its interpretation by the country's Supreme Court. The new law has also exacerbated tensions between government and religious groups. The contents of the new law have prevented state building, contrary to the programme objectives.



## **IDENTIFY SCENARIO B**

In this scenario, the legal expert from scenario A did in fact list all risk sources and risk outcomes in detail before they commenced the project. They realised that there were social and cultural risk sources that may hinder the implementation of the new law in the long run. To mitigate these risks the legal expert increased their stakeholder engagement and found compromises and a suitable transition into a potential new human rights law. Whilst there were still debates about the new law within society, the severity of the impact was significantly reduced as a result of risk identification.

## IDENTIFY: KEY TIPS

- When considering the risk source, think about both the cause and nature of the risk that has the potential to do harm.
- Writing or saying risk statements out loud may help to identify risks. For example, 'the lack of community involvement (cause) due to social constraints (type/source) means the programme may not be sustainable (risk), which will result in...(impact)'.
- Try using an array of different tools/techniques to identify risks, such as data collection, interviews, document analysis, root cause analysis etc. Whilst you may have limited time, the important point is to not simply rely on your expert judgment.
- When considering the risk outcome, try to foresee what will happen to the context, programme and institution if the risk were to occur.
- Remember that no intervention appears neutral to those in a given context, so be aware of this and your biases when identifying risks.
- Try to identify risks together with local partners to deepen your understanding of the context, reduce biases and to be more accurate in your recognition of risks.
- Think about where a risk might occur and where the direct and indirect effects of the risk might be experienced. Do not just focus on obvious risks. Think about less obvious ones too.
- Think about the timeframe in which a risk outcome will materialise and when the direct and indirect effects of this will also be experienced.



## PHASE THREE: *EVALUATE*

Once you have analysed the context and identified risks relating to your pro bono project, the third phase involves evaluating the risks in order to

**A useful way to evaluate risk is by rating the likelihood and impact of each risk outcome.**



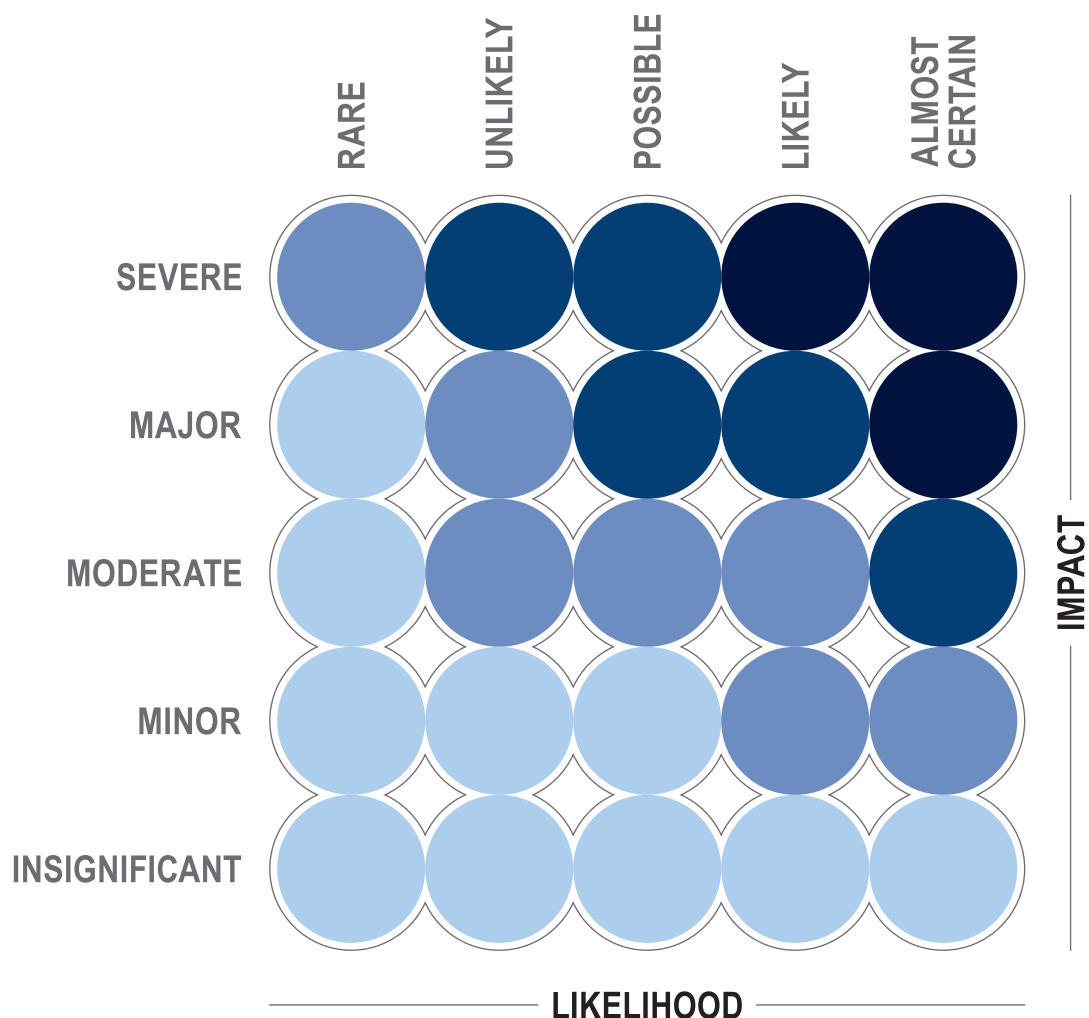
measure their impact. You need to have a clearer view of how much impact the risk outcomes will potentially have on the attainment of project goals.

This phase can easily be combined with phase two, so that you are thinking about the impact

and likelihood of risks whilst you identify each risk outcome.

The following matrix is useful in helping you quickly identify how likely it is that a risk will occur and the degree of impact if it does occur.

## ROLE UK RISK MATRIX



**RISK MATRIX KEY:** ● LOW ● MODERATE ● SUBSTANTIAL ● HIGH

## EVALUATE SCENARIO A

A team of legal experts designed and hosted a workshop on relevant legislation for local land ownership. The workshop was delivered to a Ministry responsible for natural resources, planning and land management. Only officials from the Ministry were invited to attend. The team of experts identified the possibility that focusing the training solely on these officials may result in a low level of implementation, as there had already been an evident lack of political support for local land ownership in the current administration. However, the team did not evaluate and acknowledge the full extent of this risk. As a result, the law was not implemented at all, there was a clear absence of local ownership, which was contrary to programme goals, and there was a loss of trust in the experts (and their organisations) among civil society and local stakeholders.



## EVALUATE SCENARIO B

In the same scenario as above, the team of experts recognised that the contextual, programmatic and institutional risks would be high as a result of only targeting the training towards the Ministry. By evaluating the risk and thinking about its impact, the experts created a knowledge-sharing and lessons-learned training, inviting officials from around the world, as well as local stakeholders. This strengthened implementation due to the political support the Ministry received and opened up a dialogue between local recipients and the Ministry to create local structures to oversee the implementation of legislation.



## EVALUATE: KEY TIPS

- Tick the box in the matrix that is most relevant to the particular risk outcome in question. Once you can see whether an outcome is high, substantial, moderate or low using the risk matrix key, you can add it to the a Risk Identification Form (see Annex A) and move on to phase four of the risk management process.
- Where it is difficult to determine the likelihood or impact of a risk outcome, it is always best to think about the worst-case scenario to ensure risk is treated appropriately and potential harm is averted.
- Always have the 'do no harm' principle in the back of your mind, especially when evaluating risks.



## PHASE FOUR: *TREAT*

Once you have evaluated the level of risk and determined whether a particular risk is high, substantial, moderate or low, you will need to respond to that risk, which forms part of the treat phase.

In this phase, you will choose to do one of the following five things:

**A. AVOID:** you do not commence with the project and halt all activity. A complete avoidance of activities is quite rare, but this could be the appropriate path if there are no other suitable solutions. This measure should be applied when

the advantages do not justify the risk of providing the legal service. A high risk, as per the risk matrix, will often be avoided. A high risk means the harms of the project outweigh the gains, even if you try to take mitigation measures.

**B. MITIGATE:** you take specific actions that mitigate the likelihood and impact of a risk. A substantial, moderate or low risk may be mitigated, if mitigation is the best solution in your particular situation and the harms can be reduced.

**C. SHARE:** you mitigate risk by sharing it amongst various actors. A substantial, moderate or low risk may be shared, if sharing is the best solution in your particular situation.

**D. TRANSFER:** you pay someone else to accept the risk for you. A particular risk

is transferred from one party to another.

Sometimes this is done by purchasing additional insurance to account for special types of risk, for example, kidnap and ransom. A substantial, moderate or low risk may be transferred, but this will also vary depending on the views of the transferee.

**E. ACCEPT:** you accept and tolerate a risk.

You would only think about accepting very low, often residual, risks.

It is important to remember that treating a risk in one of these ways could potentially give rise to another risk. For example, avoiding an activity due to a high contextual risk could result in the loss of an opportunity, which then leads to a programmatic risk. Sometimes, you may have to balance the competing risks and look at the totality of the circumstances.

In most cases, you will always try to mitigate and/or share risks.

A joint risk assessment can concretely contribute to strengthening the rule of law through long-term and strategic peer-to-peer partnerships. It will also ensure that partners understand that the 'do no harm' principle is central to the work that you are doing and will strengthen the effect of any risk responses.

The table below provides some general examples to illustrate how a pro bono provider may respond to a risk related to a rule of law intervention. Note that this is not an exhaustive list of treatment examples. Every legal pro bono project will be different and require differing and more particular responses. Annex B provides a Risk Treatment Form that you can use to outline your risk responses based on the results of your risk identification.



**Conducting a joint risk assessment with local partners will allow you to design and implement a project that reduces all three categories of risk.**

	CONTEXTUAL RISK	PROGRAMMATIC RISK	INSTITUTIONAL RISK
<b>RISK AVOIDANCE</b>	As a result of conflict in the target country, a pro bono project is indefinitely halted.	A programme has been suspended due to the significant harms that have been caused by the programme and the fact that no programmatic aims and objectives have been fulfilled.	<p>All pro bono activities are halted, as they are associated with corrupt parties.</p> <p>Security risks mean that a pro bono provider will not travel in-country to deliver the pro bono project and will instead use a remote system to deliver training instead. Security risks could also be classed as contextual risks.</p>
<b>RISK MITIGATION</b>	<p>A grievance mechanism created by a pro bono provider is delivered in rural areas directly to communities, as opposed to the city in which the partner institution is based. It is also provided by independent experts. This is to reduce the risk of marginalisation and to increase accessibility due to social and cultural obstacles faced by the purported beneficiaries.</p>	<p>The pro bono provider has applied context-sensitive programming tools to design its activities. This includes developing a mechanism to enhance sustainability and facilitate poverty reduction as part of the rule of law programme.</p>	<p>The use of independent local experts to implement the grievance mechanisms reduces the reputational risk and builds institutional trust.</p>

<b>RISK SHARING</b>	The pro bono provider assesses risk with the local partners. This involves information sharing around contextual risk. Through a joint risk assessment, the pro bono provider has better insight into the context and jointly implements that project to reduce contextual risks, which would be present if the provider had implemented that part of the project by themselves.	In order to achieve programme goals, a pro bono project is designed jointly with local in-country partners.	Resources are pooled with other project partners to share reputational, operational and/or fiduciary risks.
<b>RISK TRANSFER</b>	Due to a risk of natural disasters in the area, insurance is taken out to cover the risk.	In order to reduce a programmatic risk of low ownership, full implementation of a project is transferred to a local partner.	Security risks are minimised by transferring the risk to local implementing experts who are familiar with working in conflict zones.
<b>RISK ACCEPTANCE</b>	After evaluating and dealing with most project risks, a pro bono provider accepts that there is some low residual contextual risks that cannot be avoided and are inherent in working within the focus country.	A pro bono provider weighs up the benefits of reducing contextual and institutional risk and finds that this will require a compromise to allow a small degree of short-term failure of one of the programme objectives.	Acceptance of institutional risks is very rare.



## TREAT SCENARIO A

A legal expert was asked to conduct a needs assessment to assist a judicial office in determining the priority areas for justice sector reform in the target country. The expert had evaluated the various contextual, programmatic and institutional risks that existed, but had not thought about what the best response might be to treat these risks. One contextual risk that had been identified was that the country had an all-male judiciary with significant barriers in place for women to enter the higher ranks of the legal profession. This meant that, if only the judiciary were to participate in the assessment,

it would suffer from gender bias and possibly fail to identify necessary reforms. The fact that this risk would not prevent the needs assessment from being carried out, meant that this risk was automatically accepted as part of the treatment and viewed as an unchangeable aspect of the country's judicial culture. The assessment resulted in some positive reforms, but failed to identify other significant needs. Those that were identified also failed to take into account their impact on women and other marginalised groups. As a result, the impact of the reforms were limited and, in some cases, further institutionalised inequalities. This created programmatic and institutional risks.



## TREAT SCENARIO B

In this scenario, the same legal expert allocated some time to assess the impact of the existing risks, including the lack of diversity within the judiciary. The expert thought about effective ways that they could make the needs assessment more participatory, such as through also including the views of women lawyers, women-led civil society organisations and representatives of other marginalised groups. They also recommended, along with the results of the needs assessment, that the judiciary look at

ways to reduce barriers to entering the judiciary for women lawyers. As a result, the needs assessment was more successful in identifying priority areas for justice sector reform. The intervention also identified ways to implement such reforms that would not reinforce barriers to accessing justice for women and marginalised groups. The judicial office also decided to conduct a review into barriers facing women in entering the judiciary, leading to potential improvements in gender balance in the judiciary in the long-term and ultimately improving access to justice for women in the country.



## TREAT: KEY TIPS

- Build trust. The most effective responses to identified risks are ones where legal experts have developed strong relationships with all project stakeholders.
- Always communicate, coordinate and consult with the relevant programme organisers and in-country partners to help you decide on an effective response to specific risks.
- Always think about your contingency plan(s) before you embark on any project. In the same way, make sure you have a copy of the relevant organisation or programme's general contingency plan.
- Use the Risk Treatment Form (Annex B) to record your risk responses, so that you are prepared for all possible scenarios.

## MONITOR, REVIEW AND COMMUNICATE

As a legal pro bono provider your focus will undoubtedly be on project delivery, with limited time and resources for anything else. However, it is important to regularly monitor and review risks to ensure that your work does no harm.

It also inadvertently allows you to check the progress and effectiveness of the project itself by ensuring that no harms are incurred upon the programme, the environment in which you are operating in, and/or your organisation.

To ensure that your assessment of risks is accurate and to inform all stakeholders of any risks that arise, you must constantly communicate with all relevant stakeholders. For

**Monitoring risks allows you to minimise uncertainty and effectively respond to any risks that arise throughout the life of the project.**

this reason, try to take a 'work out loud' approach to ensure transparency and manage risks.

Monitoring, reviewing and communicating risks are important elements to the risk management process and do not necessarily form part of a specific phase. Rather, they must be practiced throughout all four phases of analyse, identify, evaluate and treat, and continue throughout the delivery of a project or programme.

A lessons-learned approach can be used to monitor, review and communicate risks and continuously inform your risk assessment. This requires you to extend your assessment of risks throughout the entire project life. Learning from stakeholders on areas such as political changes, social trends, and insights on successes and failures can aid your risk response. Good monitoring, review and communication of risks strengthens accountability, learning and progress.

## **MONITOR, REVIEW AND COMMUNICATE SCENARIO A**

A legal expert had identified and evaluated a safety and security risk before embarking on training in a country with a history of national conflict. At the time of departure to this country, the FCDO had advised that travel was allowed and the specific geographic area within the country where the training would take place was not deemed a risk area. The legal expert flew

out to the destination without monitoring the situation or communicating with stakeholders on the ground. As a result, the expert was not aware that conflict had ensued in the area, which meant the training was to be cancelled. Time and resources spent on the project were lost and the expert was not in a safe environment.

## **MONITOR, REVIEW AND COMMUNICATE SCENARIO B**

In the same scenario, the legal expert continuously monitored the risk and as a result of ongoing communication with partners on the ground, they were able to respond to the risk effectively. The response changed from undertaking the training in-country to staggering the training process where online delivery and remote project management formed part one of the training and in-country training formed part two of the training when the conflict had eased. This allowed for a more comprehensive programme of work that responded to risks effectively without the loss of security, safety, time or resources.



## **MONITOR, REVIEW AND COMMUNICATE: KEY TIPS**

- Stay flexible. International development settings are complex, and you should be prepared to assess and respond to risk at any given time, not just in line with a rigid monitoring timetable.
- Be open to learning about the context, programme and institutions even after you have commenced your project. Risk assessments often mature when in-country.
- Be open to tweaking your service methodology, project plans and risk responses / treatment once you are in-country and are more aware of the extent and nature of an already predicted risk, or newly emerged risk. By monitoring risks, you can see if you are having a negative impact. If this is the case, make alterations. If you see you have a positive impact, build upon and sustain it.
- Always make a record of any risk issues that arise and write your thoughts down as they occur.
- If there is a significant increase in identified risks or if new risks unexpectedly arise, do not try to deal with them yourself. Always communicate with all relevant team and partner members regularly to find the most effective solutions.
- Ensure that you have the contacts details to hand of all relevant individuals that can help you with risk-related issues when in-country. This includes key persons to contact should an unexpected outcome arise from an anticipated risk during project delivery.



# CONCLUSION

Risk management is often understood as a bureaucratic process that tends to focus only on risks for an institution. Whilst institutional risks are very important, they are only one category of risk, particularly in international development settings. A strong risk management approach requires the consideration of contextual risks and programmatic risks, as well as institutional risks. It also requires the embedding of the principle and practice of 'Do No Harm' throughout the entirety of the project.

This necessity to manage risks is no different for legal experts providing pro bono services as part of international development projects. By allocating a small amount of time to analyse context, identify and evaluate risks and then

treat and monitor them before and during any rule of law intervention, legal experts will be able to reduce – or even eradicate – any potential harms that might arise. The benefits, however, will not just be limited to mitigating risks. Taking these steps will also positively enhance the project outputs.

The risk management process need not be long and arduous. Depending on the project, risk management can often be as simple as having a continuous awareness of risks and making sure these are recorded and dealt with. Taking the steps that this guide has laid out will bolster a sustainable approach to supporting the rule of law and reducing global poverty.



## FURTHER READING

- CDA, Do No Harm Workshop: Participant's Manual, (2016)
- DFID, Policy Approach to Rule of Law, (2013)
- OECD, Development Assistance and Approaches to Risk in Fragile and Conflict Affected States, (2010)
- OECD, Do No Harm: International Support for Statebuilding, (2010)
- A4ID, Maximising Technical Assistance to Improve the Rule of Law: A Guide, (2019)
- A4ID, Peer-to-Peer Approaches for Pro Bono Rule of Law Support, (2018)
- A4ID, Political Economy Analysis – Guidance for Legal Technical Assistance, (2017).

## NOTES

<sup>1</sup> OECD (2014). Development Assistance and Approaches to Risk in Fragile and Conflict Affected States, [online]. Available at: <https://www.oecd.org/dac/conflict-fragility-resilience/docs/2014-10-30%20Approaches%20to%20Risk%20FINAL.pdf>

<sup>2</sup> DANIDA (2013). Guideline to Risk Management, Denmark

<sup>3</sup> AFID (2013). Policy Approach to Rule of Law, [online]. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/306396/policy-approach-rule-of-law.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/306396/policy-approach-rule-of-law.pdf)

<sup>4</sup> OECD (2010). Conflict and Fragility: Do No Harm, [online]. Available at: <https://www.oecd.org/dac/conflict-fragility-resilience/docs/do%20no%20harm.pdf>

<sup>5</sup> For further details on analysing context in rule of law interventions, see: A4ID (2019). Maximising Technical Assistance to Improve the Rule of Law: A Guide. ROLE UK Programme [online]. Available at: <https://www.roleuk.org.uk/resources/maximising-technical-assistance-improve-rule-law-guide>

<sup>6</sup> A4ID (2018). Peer-to-Peer Approaches for Pro Bono Rule of Law Support. ROLE UK Programme [online]. Available at: <https://www.roleuk.org.uk/resources/peer-peer-approaches-pro-bono-rule-law-support><sup>7</sup> Bingham, T. (2011). The Rule of Law. London: Penguin Books.

<sup>7</sup> A4ID (2019). Maximising Technical Assistance to Improve the Rule of Law: A Guide. ROLE UK Programme [online]. Available at: <https://www.roleuk.org.uk/resources/maximising-technical-assistance-improve-rule-law-guide>

# ANNEX A: RISK IDENTIFICATION FORM

	CONTEXTUAL RISK	PROGRAMMATIC RISK	INSTITUTIONAL RISK	RISK EVALUATION
RISK TYPE AND RISK SOURCE	RISK OUTCOMES	RISK OUTCOMES	RISK OUTCOMES	RISK RATING
POLITICAL				
These are risks connected to changes that occur within a country's policies, laws and/or government/ administration.				
CONFLICTS				
These are risk issues relating to the outbreak or exacerbation of conflict, including individual or organisational.				
SOCIAL AND CULTURAL				
Social risk refers to issues impacting communities like human rights. Cultural risk refers to issues relating to the history, language, customs, and norms of a country.				

	CONTEXTUAL RISK	PROGRAMMATIC RISK	INSTITUTIONAL RISK	RISK EVALUATION
RISK TYPE AND RISK SOURCE	RISK OUTCOMES	RISK OUTCOMES	RISK OUTCOMES	RISK RATING
FINANCIAL AND ECONOMIC				
These are risks relating to the economic stability of a project or context, including value-for-money, inflation rates, cost recovery. It can also relate to issues that will be affected by macroeconomic conditions. Fraud and corruption could fall within this risk type.				
ENVIRONMENTAL				
These are environmental risks such as air pollution, sanitation, chemical hazards, disease, and extreme climate, amongst other risks relating to relevant local, national and global environmental issues.				

	CONTEXTUAL RISK	PROGRAMMATIC RISK	INSTITUTIONAL RISK	RISK EVALUATION
RISK TYPE AND RISK SOURCE	RISK OUTCOMES	RISK OUTCOMES	RISK OUTCOMES	RISK RATING
REGULATORY				
These are risks from changes in national or international regulation.				
SAFETY AND SECURITY				
This refers to aspects of safety and security, not only to the pro bono provider, but also to the society at large. Safety concerns could come from civil unrest, crime, armed conflict etc				

## ANNEX B: RISK TREATMENT FORM

RISK CATEGORY	RISK SOURCE AND DESCRIPTION OF RISK	TREATMENT STRATEGY
[Contextual, programmatic, or institutional]		[Determine whether you will avoid, mitigate, share, transfer, or accept the risk, and then provide details of what it will entail, how you will undertake it and why you have chosen this risk response.]

