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**Promoting the Rule of Law Abroad:**
*Towards a Multi-Dimensional Approach*

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Executive Summary

Few if any issues are as crucial in ensuring sustainable development as the promotion and consolidation of the Rule of Law (henceforth RoL). In fact, RoL has become a major ingredient in analyses of what is missing in countries struggling for political and economic development. Yet, this objective remains elusive, as there is limited knowledge of what policies work in promoting the Rule of Law. With this in mind, this paper analyzes CIDA’s approach to RoL promotion, tracking how different programs promoted by CIDA addressed RoL concerns. Overall, and despite the term having been left out of CIDA’s priorities for some time, the organization shows interest and investment in RoL related projects. Yet, CIDA’s approach has lacked a clear and explicit direction, and has emphasized projects dealing with capacity building.

After analysing the pattern of CIDA spending on RoL, this paper draws on academic literature dealing with the RoL to bring three issues to the table that should be addressed in order to design a conscious and explicit approach. First, this paper deals with complex definitional issues. While remaining a contested concept, there is overall agreement in the literature regarding the need for a multi-dimensional concept of the RoL. As argued in this paper, CIDA would benefit from a more explicit definition that clarifies the different dimensions of the concept in a way that allows projects to be clear regarding their contribution to one or more aspects of the RoL. Second, this paper addresses policy objectives when it comes to the RoL, which are often overly ambitious. Is it really useful to promote objectives that are far-fetched at best, and perhaps even implausible? This paper argues that such approach may actually hinder the effectiveness of RoL projects and programs. The attainment of higher levels of Rule of Law is undoubtedly a long-term objective. Yet, RoL projects should establish special strategies and reporting requirements that emphasize mid- and low-level objectives that would serve as stepping-stones towards more long-term goals. Third, this paper looks at the limited learning process that underlies RoL promotion. Many of the debates and lessons discussed today closely mirror the insights on the RoL that had already been formed by the end of the 1990s, suggesting that the process of learning from past experiences has been rather slow and limited. In light of this, this paper suggests a stronger emphasis on learning from past experiences in RoL promotion, which in turn may require an assessment of not only successful projects, but also of failures and shortcomings.

Although related to the RoL, this paper distinguishes CIDA’s approach to Anti-Corruption projects as a potential model that could help inform future spending on RoL promotion. While the level of CIDA spending on Anti-Corruption (AC) programs has been far lower than on the RoL, we highlight a few aspects of CIDA’s approach to AC policies that have resulted in a more consistent, explicit, and theoretically informed approach to this issue.

The paper closes with a set of conclusions and recommendations that generally propose a more explicit emphasis on RoL promotion over even more all-encompassing concepts such as Governance. In doing so, the paper highlights the need for achievable goals addressing specific aspects of a multi-dimensional concept of the RoL, while also promoting both innovation in a field with no silver bullets and a more explicit learning process that builds on past experiences—both successes and failures—in the field.
Introduction

In the 2007-08 edition of CIDA’s Report on Plans and Priorities, governance held a prominent place, and constituted one of CIDA’s first priorities (CIDA, 2008a). This prominence was not to last, however, as 2008 witnessed the beginning of the decline of ‘governance’ as one of CIDA’s priority themes, starting with the closure of the ‘Office for Democratic Governance’ after a brief two-year existence. In 2009, Canada introduced five thematic priorities, eliminating the focus on governance, with the “advancing democracy” priority being its closest replacement (CIDA, 2013:5). Since then, ‘advancing democracy’ has itself been demoted, leaving CIDA to focus on three key priorities: food security, children and youth, and sustainable economic growth.

At the same time, Canada’s spending on governance suffered significant cuts starting in 2007-08, falling 35% within five years. As a consequence, Canada’s total ODA spending on governance for 2011-12 reached its lowest point since 2005-06, at less than $C460m/year. Given the significant increase in total ODA spending over the same time period, the percentage of ODA spent on governance was more than halved, from 19% in 2006-07 to 8% in 2011-12. However, governance did not completely disappear from CIDA’s agenda (or budget, for that matter). Instead, it was promoted to a list of three “cross-cutting themes,” meaning that governance considerations are expected to infuse all of CIDA’s plans and projects, with the aim of “helping to strengthen governance institutions and practices.”

By governance we generally mean the institutional underpinnings of public authority and decision-making. It therefore encompasses the institutions, systems, “rules of the game”, and other factors that determine how political and economic interactions are structured and how decisions are made and resources allocated. Implicit in the concept is the notion that good governance is a positive feature of political systems and bad governance is a problem that countries need to overcome. Yet, governance is made up of a number of concerns, which are not necessarily agreed upon (Grindle, 2010). Despite alternative conceptions of governance, most definitions and uses of the term coincide in pointing to the RoL as a key component and requirement of the diffuse idea of good governance (Grindle, 2010).

What is CIDA’s approach to RoL? Despite a general lack of explicit attention to the issue, the promotion of the RoL continues to form a part of CIDA’s agenda, under the heading of “governance”. However, due to its status as a sub-topic to a former priority, CIDA has invested little in research which analyses what does and does not work in the RoL-field, how progress can be effectively promoted, or even what progress might mean, which in turn constitutes a key shortcoming in advancing good governance practices. This “problem of knowledge” is characteristic of RoL-promotion in general (Carothers, 2003), and is also in line with a 2008 review of CIDA’s governance programming, which noted that “very limited resources have been made available for front-end analysis” (CIDA, 2008b:25).

In the following, we purport to fill or at least inform part of that gap, by “bringing political scientists back in” and “promoting a dialogue between practitioners and academics” (Faundez, 2007). This is important because, despite a reduced emphasis on governance, CIDA continues to outlay significant

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3 Note: all references are to CIDA, although CIDA has recently been made part of DFAIT (now DFATD).
4 Authors’ calculations, based on CIDA’s “Statistical Reports on International Assistance”, from 2006 to 2012. OECD statistics (http://stats.oecd.org) also indicate a drastic reduction in Canada’s governance spending since 2007, although different coding and data collection practices preclude a precise comparison.
amounts for RoL-promotion – currently around $C351m. Therefore, we take a closer look at CIDA’s approach to RoL-promotion, and put Canada’s thinking and action in the field in the context of recent academic work on the issue, of studies and evaluations led by other donors, and of CIDA’s own activity in the related field of anti-corruption.

This paper is not the site of definitive answers, if only because of its brevity, but also because—as is widely recognized—there are no silver bullets in the field of good governance. Nevertheless, the brief aims to draw attention to the strengths and deficiencies of CIDA’s current approach to RoL-promotion, and ushers in a number of recommendations.

**Promoting the Rule of Law: CIDA’s approach**

How does CIDA approach the Rule of Law? This overarching question can be divided into two sub-questions: what are the theoretical underpinnings of CIDA’s approach to the Rule of Law? And what kinds of projects does CIDA carry out in the field? We start by looking at CIDA’s strategic frameworks.

**Strategic Frameworks**

In terms of strategic frameworks, we delve into three documents that CIDA’s Rule of Law programmers can draw upon. Although not the only pieces available, the three studies analysed include one of the earliest and one of the latest documents on the matter, as well as a key analytical framework.

The upshot from the analysis can be summarised in two points.

1. There are a number of documents that elaborate on CIDA’s RoL-activities. However, none of these documents amount to a comprehensive strategy, a programming handbook, or an exhaustive analysis of issues in RoL-promotion. CIDA thus lacks an equivalent to USAID’s (2010) “Guide to Rule of Law Analysis”.
2. CIDA’s RoL documents carry important lessons. However, these have not always been learned. Recommendations have changed little over the years, advice has often not been heeded, and entire policy documents (e.g. the HRDGG) seem to have been forgotten.

The earliest document, CIDA’s Human Rights, Democracy and Good Governance (HRDGG) Policy, comes closest to an official policy outline. The document touches upon the Rule of Law, which is identified as a “Canadian Value” whose promotion is included among CIDA’s “objectives.” Unfortunately, the HRDGG document offers no precise definition of the Rule of Law beyond associating it with judicial matters, and does not offer advice on concrete RoL-programming beyond an “indicative list of CIDA interventions”. On the judicial/legal (J/L) side, this list includes training for judges, equipment-provision, legal reform, and the provision of paralegal services.

The HRDGG policy further gives a number of guidelines that frame CIDA’s general approach to governance, and which *ipso facto* apply to RoL-promotion. These include:

- a) The commitment to a “results-oriented” approach;
- b) The awareness that results are better measured over decades rather than years;

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6 Authors’ own calculations. For more detail, see footnote 12, below.

7 The three documents drawn upon are CIDA (1996), CIDA (1997), and CIDA (2007a). Other documents not addressed here, but which also discuss RoL-programming, include CIDA (2000a), CIDA (2002), and CIDA (2005).
c) The assurance that CIDA does not seek to export Canadian practices and institutions; and,
d) The recognition of the importance of local ownership, agency, and responsibility.

However, the HRDGG policy dates back over 15 years, to 1996. Its current impact is thus unclear, and CIDA employees interviewed in 2008 were surprised to find out it was still in effect (CIDA, 2008b:12).

Though not much more recent, the 1997 study “Programming in Legal and Judicial Reform: an Analytical Framework for CIDA engagement” evaluates how J/L reform fits within CIDA’s mandate. Like the HRDGG policy, the Analytical Framework suggests a number of initiatives which may promote CIDA’s aims, including the reform of legal systems, capacity-building, institution-building, judicial training, legal reform, legal aid, and assistance to relevant NGOs. The Framework further emphasises a number of key lessons, specifically geared towards J/L reform programming:

a) The need for effective local demand and political will for reforms to succeed;
b) The importance of clear, realistic, and identifiable (if not measurable) program goals;
c) The necessary long term nature of legal and judicial reform endeavours;
d) The fact that priority-setting and the order of sequencing will vary from case to case;
e) The desirability of cooperation and joint planning with other donors; and,
f) The need to assess Canadian strengths in the field before engaging in J/L reform.

Moreover, the framework rejects the terminology of “the rule of law”, on the grounds that “it is simply not possible to develop an inclusively supported definition of the rule of law”. Instead, it prefers to “provide a list of factors which may be said to collectively define a sound and effective legal system.” Factors include freedom of the media, judicial accountability, absence of corruption, efficacy in the use of resources, equality of access to the law, and a number of other desiderata.²

Though an ambitious proposal, the legacy of this document is unclear. As we will see below, CIDA has not adopted a multi-dimensional definition of the RoL.

More recently, the 2007 study “Partnering with the Canadian Justice Sector for Effective ‘Rule of Law’ Programming” concentrates on how to improve Canada’s RoL-promotion, which it sees threatened by “serious sustainability issues”. In doing so, it reflects, like the two previous documents, on general principles for RoL-promotion, and suggests a number of tentative lessons:

a) The importance of projects’ local ownership and of aid that responds to local needs;
b) The need for Canada to move from piecemeal to comprehensive and systemic planning;
c) The avoidance of ‘hyped up’ expected results, and the need to review reporting practices;
d) The benefits of more front-end research to inform better programming;
e) The desirability of supporting the Office for Democratic Governance and its research; and,
f) The strengthening of CIDA’s expertise in legal and judicial reform.

² These are: equality before the law; the upholding of certain values (openness, transparency, fairness, consistency, predictability); the absence of retroactive rulings; toleration of legal pluralism; judicial independence; systemic stability, yet flexibility to adapt; the timeliness of judgments; and reasonable parameters for the legal system, so that not every policy preference becomes ‘law’ (CIDA, 1997:12-13).
Unfortunately, these calls have often not been heeded. No substantial RoL-document has been produced since 2007; the Office for Democratic Governance has been disbanded; and, according to a 2008 evaluation of its governance planning, CIDA then—and most likely still—did not have a single member of staff specialised in RoL, but merely “0.5 time of one analyst spent on supporting Rule of Law, Civil Society, [and] Public Sector Reform.” (CIDA, 2008b:18).

As a consequence, more than a decade after the HRDGG policy, CIDA’s RoL-documents continue to highlight “the real need to invest in knowledge building” (CIDA, 2007a:6). Whether such investment will be forthcoming is unclear, for despite being one of CIDA’s “key development challenges”, RoL does not earn a single mention in CIDA’s most recent report on plans and priorities (CIDA, 2013).

**CIDA’s Current Practice and Projects**

Today, as in the past, CIDA understands the Rule of Law to be mainly about judicial/legal (J/L) institutions, and RoL-promotion to be mainly about J/L reform (CIDA, 2007a:15). Indeed, under the heading “Rule of Law”, CIDA’s website notes that “assistance will encompass support for legal/judicial reform with a focus on institutions”, and in particular “the judiciary, bar associations, and legal aid systems”.  

In order to better understand CIDA’s current RoL programming, we briefly look into its current portfolio of projects. As of August 2013, CIDA’s project database lists 98 projects which are currently involved in “Legal and Judicial Development” (LJD), which is CIDA’s coding for RoL matters. Not all of these projects are entirely devoted to LJD: the involvement, as measured by CIDA’s sector codings, varies from a hundred to a few percentage points, with an average of 40%, meaning that most of CIDA’s RoL-projects also touch upon other thematic areas. However, if projects’ budgets are weighed only by their LJD component, it appears that CIDA currently has $C351m tied up exclusively in LJD.

We classify CIDA’s projects along two dimensions: what they seek to improve, and how they seek to improve it. With regard to the former criterion, projects can either target (a) laws and regulations, which they seek to reform, publicise, or streamline; (b) institutions, which they seek to strengthen or develop; or (c) civil society and legal services to citizens, which they seek to expand and strengthen. Previous research on CIDA projects (CIDA, 2000a; 2007a) suggests that CIDA used to concentrate its resources in the second category (institutions), followed by the third dimension (civil society /

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9 Although internal CIDA discussions and notes produced after this 2007 document are likely to have touched on RoL in some form or another, no major recent RoL document was found among those available to the public.


12 This figure exceeds CIDA’s annual LJD spending because it includes spending for multi-year projects. The figure also exceeds CIDA’s *actual* spending on these projects, as $351m is the *maximum authorised expenditure*. In practice, CIDA may well spend less than that. Indeed, there is some evidence that this frequently occurs, as CIDA (2007a:15) notes that “of all the democratic governance areas, rule of law programming [...] has the lowest proportion (53%) of actual budget spent relative to original budget allocated”.

13 Because not all projects are equally relevant to LJD, the following figures ignore projects that merely constitute institutional support grants (e.g. to the Commonwealth, the Francophonie, etc.), projects that sponsor Canadian interns or volunteers, and projects that only minimally focus on LJD. The 45 remaining projects can be said to be ‘focussed’ on LJD in the sense that they explicitly seek to promote it.

14 This taxonomy is based on an amended version of the taxonomy used in CIDA (1997). However, the labels have been changed, and categories (c) and (d) of the original taxonomy have been grouped together as one.
services), with legal reform receiving far less attention. A review of the current portfolio (see Graph 1) suggests that ‘bottom-up’-oriented projects have caught up with institutionally oriented ones.

In turn, projects geared towards legal reform or law-drafting have lost ground. This pattern is confirmed by the second means of classification, which tags LJD projects based on their main ‘activities’, grouped thematically. Graph 2 displays the most common activity tags.\(^\text{15}\)

Although the above activities are not mutually exclusive (say, ‘training’ may contribute to ‘capacity-building’), it emerges from the classification that CIDA projects most frequently attempt to promote LJD by means of direct ‘training’. Moreover, CIDA also invests efforts in ‘train-the-trainer’ projects. This emphasis on training activities is not new: a commentator on projects in the 1996-2006 decade had noted that “[t]he dominant activities remain skills transfer and training” (CIDA, 2007a:16).

The classification also confirms that few projects pursue the reform and drafting of laws and regulations. In turn, the relative frequency of projects engaged in promoting access to justice,

\(^{15}\text{Multiple tags per project possible.}\)
delivering legal aid, and supporting relevant civil society organisations confirms that many CIDA projects nowadays focus on bottom-up LJD capacities.\textsuperscript{16}

To complete this overview of CIDA’s RoL-projects, it is also worth noting that projects last 5 years on average. The median project lasts less than that, meaning that more than half of CIDA’s LJD projects continue to be shorter than half a decade, whilst the longest one has an 11-year schedule. With that, the stage is set for assessing the reality of CIDA’s RoL-engagement in the face of current scholarship.

\textbf{Promoting the Rule of Law: Insights from the Literature}

A substantial academic literature has developed not only on RoL, but also specifically on the issue of promoting it through foreign assistance. Although there is no silver bullet, no universal agreement, and a strong feeling that too little is still known about how RoL should be approached and promoted, this—usually critical—literature does convey a number of insights. Although some of these have already been integrated into CIDA policy, a number of issues merit special attention:

- The definition of the Rule of Law
- Realistic expectations in RoL-promotion
- Institutional obstacles to the learning of lessons

We look at these in turn, starting with the definition of the Rule of Law.

\textbf{Defining the Rule of Law}

There is a trend towards a multi-dimensional definition of the Rule of Law (Agrast et al., 2013, Belton, 2005; Carothers, 1998; Chavez, 2008; Magen and Morlino, 2009; Piana, 2011; Roseveare, 2013; UN OSG, 2004; US AID 2010; World Bank, 2002), and towards greater disaggregation of analytic concepts more generally (Coppedge, 2012; Mazzuca, 2010). Having failed to settle on a single RoL-definition, the literature acknowledges that the concept encompasses a number of connected but distinct elements. This shift derives from the realisation that talk of the ‘Rule of Law’ as ‘one big thing’ results either in unduly general definitions, or in excessively narrow definitions that equate the Rule of Law with only one of its dimensions. As Stephen J. Toope noted for CIDA in 1997, “[the ‘Rule of Law’ shorthand] masks more than it reveals. It is simply not possible to develop an inclusively supported definition of the rule of law. It seems more helpful to programme planners to provide a list of factors” (CIDA, 1997:1).

Although such multi-dimensionality carries the risk of stretching the concept until it becomes meaningless, it also conveys an important analytical insight. As Rachel Kleinfeld Belton (2005) emphasises in her review of definitions of the Rule of Law, different RoL-elements react to different kinds of interventions, improve at different speeds, and may come into tension with each other during the development process. Without explicit multi-dimensionality in their definitions, donors may not notice their unacknowledged focus on one sub-element of the Rule of Law, and may label improvement in one domain as a ‘strengthening of the Rule of Law’, despite the absence of progress – or even deterioration – in the other domains.

\textsuperscript{16} This is partly due to CIDA’s second “priority area” (Children and Youth), as a number of recent LJD projects focus on providing legal services to children and youth.
A multi-dimensional approach to RoL can also extend the understanding of the concept beyond J/L issues. This matters insofar as the widespread focus on J/L issues overlooks two common understandings of the RoL.

- On the one hand, popular parlance associates RoL with law and order and limited crime. Indeed, such concerns are paramount in certain countries. According to surveys of Latin America, the issue most frequently identified as “the most important problem in the country” is “crime / delinquency”. 17
- On the other hand, economists associate the Rule of Law with property rights and contract enforcement. In that logic, the Rule of Law is crucial because investors are unlikely to focus their investment in a specific country if they lack assurance that they will be able to keep their profits or trust their business partners.

Of course, J/L issues matter to both of the above dimensions: Magaloni and Zepeda (2004:195) argue in a study of Mexico that crime rates “are extremely sensitive to variations in the character of local judicial institutions”, and Haggard et al. (2008) reflect on the relationship between property rights and judicial institutions. However, crime rates also depend on other factors, such as inequality, and property rights can be stable in countries where judiciaries are not independent, such as China. The integration of dimensions such as law and order or property rights into the understanding of the RoL result in multidimensional definitions that not only identify a wider set of problems, but also point to different directions for solutions. The appendix illustrates a number of multi-dimensional definitions.

Relevance to CIDA: CIDA does not currently have a refined definition of the Rule of Law. Instead, it defines the RoL somewhat simplistically as “Rule of Law means that rulers don’t rule – laws do.”18 Although most RoL-definitions include the requirement that governments be bound by the law (see table A1, appendix), this is far from the only important element. CIDA’s current definition is thus unduly narrow, and doubly so because few of CIDA’s projects actually focus on the ‘checking government’ aspect of the RoL, preferring to operate in the J/L realm. In turn, this unrelenting focus on J/L issues means that other dimensions of the Rule of Law have garnered little attention, or have been tackled as a separate issue. CIDA could thus gain from a multi-dimensional understanding of RoL which acknowledges the multiplicity of dimensions and challenges relevant to RoL-promotion. One potential problem is that CIDA is committed to OECD-DAC sector codings, which offer no distinct RoL category aside from ‘Legal and Judicial Development’. However, USAID’s (2010) RoL-definition—which is multi-pronged, includes ‘law and order,’ and reflects on the distinct yet connected nature of different issues—shows that a multidimensional understanding of RoL is possible.

Aiming for the moon, hoping to reach the stars?
Overly ambitious aims do a disservice to the ‘governance agenda’ (Grindle, 2004). They generate false expectations, and lead to disappointment in the face of the failure to meet unrealistic goals. Yet donors often set standards not only above what could realistically be attained in the near future, but also above the standards of Western countries. In his attack on “mythmaking in the Rule of Law orthodoxy”, Frank Upham (2002) notes that many Western countries, including the United States, hardly have a judiciary that is free from political influence, or one where wealth does not provide

17 Based on the Barómetro de las Américas (five surveys, merged sample, 2004-2012), a region-wide survey. The Latinobarómetro, another survey of the region, broadly confirms this pattern.
18 http://www.acdi-cida.gc.ca/acdi-cida/acdi-cida.nsf/En/JUD-121135230-Q5V#toc4
advantages to litigating parties (even within the bounds of legality). Donors should thus hold back their expectations of improvement, and be realistic about what can be achieved in difficult environments. In particular, the three following considerations constrain progress in RoL-promotion.

**Complexity.** Dubbed by Thomas Carothers (2003) as “the problem of knowledge,” little is still known in the field of RoL-promotion, partly because “relatively little analytical work has been done on transitions to the Rule of Law” (Fukuyama, 2010:33). Given the challenges and multiple failures encountered by donors in activities as seemingly simple as the building of wells, successes in the promotion of the ‘Rule of Law’ or of certain of its elements are bound to remain difficult and limited for the time to come.

**Cost.** A formalised, fair, and efficient legal system is presumably a desirable achievement, but it does require significant funds for infrastructure and salaries (Upham, 2002:13). Such systems cannot always be afforded by poor countries which are financially strained and face many other priorities. After all, per capita spending on all government services approaches $US 17,000 in the United States, but only $19 in Afghanistan (Fukuyama, 2011:470). This is another reason to moderate expectations of rapid judicial strengthening. While foreign donors can make contributions to the system, having an exclusively donor-funded legal system is unsustainable and, many would argue, undesirable.

**Time.** Substantial improvements in the Rule of Law take decades to materialise. Using measures of governance (if not directly of RoL), Pritchett et al. (2011) estimate how long ‘low-capacity’ countries such as Haiti will require to achieve a median level of ‘capacity’. They find that if Haiti’s capacity continues to progress at its current pace, it will reach Bangladesh’s level of capacity in 68 years. In fact, even if Haiti progresses at the fastest historically recorded pace of capacity-improvement (South Korea) from today on, catching up with today’s Bangladesh will still require at least a quarter-century.

The habit of “Asking Too Much of Too Little Too Soon Too Often”, as Pritchett et al. (2011) call it, is not only unproductive—the set goals cannot be achieved—but it can also be actively harmful. Tasking institutions with functions which they do not yet have the capacity to accomplish risks putting them under undue stress, and may stretch or divert already thin resources. Instead of pulling institutions up to the task, such ‘premature load-bearing’ can thus lead to a reduction in organizational capability (Pritchett et al., 2010).

**Relevance to CIDA:** In view of the above, CIDA already pursues a number of commendable practices: it distinguishes between crisis, low-income, and middle-income countries, and recognises the differences in their needs and their capacities for improvement. Moreover, CIDA’s evaluation of its Ukraine country programme (CIDA, 2011) notes that Canada stands out for its willingness to support multi-phase projects and to grant extensions. Finally, Canada’s focus on twenty ‘core’ countries should form a good basis for long-term engagement.

Nevertheless, CIDA has occasionally encountered troubles with over-ambitious programming. By its own evaluation, its ten-year “Programme de Développement de la Justice” in Mali was “at a standstill” and “at risk of not producing the sustainable results expected”, partly because of overly optimistic expectations about the context at hand. Shortcomings in the Malian public administration generated “serious constraints”, and the evaluation noted that “[i]nstitutional reform will have little chance of succeeding if there is not a genuine strengthening of the civil service” (CIDA, 2007b).
An interesting question, raised by CIDA’s (2008) review of its governance planning, is whether CIDA’s ‘standard project vehicle’ is appropriate to deliver long-term RoL-improvements. Given difficulties in RoL measurement, ten-year projects to strengthen the ‘Rule of Law’ cannot be run, monitored, and reported in the same way as two-year school-building projects. RoL-promotion may thus require the design of special strategies and reporting requirements for particularly long projects, or for maintaining support even after then end of projects (CIDA, 2007b).

Institutional obstacles to the learning process

In the wake of decades of RoL-promotion abroad, and given the substantial amount of ink spilt on the matter, a number of authors have begun to wonder whether the problem with RoL-reform is really about the lack of knowledge, or rather about problems in the learning process. In “Lessons not Learned” (2005:4), Wade Channell notes that the same debates (and lessons) as today have been making their way around since the 1990s:

“Earlier critics were concerned with overemphasis on top-down, state-centered approaches, the use of ‘transplanted’ laws, and reliance on the adoption of laws to drive change in the culture and habits of the local marketplace. [...] Messick describes a number of debates in the early to mid-1990s on whether the new movement was likely to repeat the mistakes of the earlier one. It has.”

As a consequence, scholars have begun to turn to the question of why donors have struggled with learning from past experiences. Donors conduct regular evaluations, and as Carothers (2003) notes, each report tends to conclude with ‘lessons’ for the next time. Unfortunately, these lessons are, according to Carothers, (a) often self-evident, and (b) usually not learnt anyway.

Channell (2005) identifies a series of institutional obstacles to knowledge in the aid industry. First, donors (as well as NGOs which propose projects to donors) tend to stick to projects they know, because these are easier to justify, easier to run, and less risky to take on. Yet the re-utilisation of past project formats does not ensure present success, as Carothers (2003:14) notes:

“Experienced practitioners have consistently pointed, for example, to the fact that judicial training, while understandably appealing to aid agencies, is usually rife with shortcomings and rarely does much good. Yet addicted to the relative ease of creating such programs and their common sense appeal, aid organisations persist in making judicial training one of the most common forms of rule-of-law assistance.”

Second, Channell cites a (presumably natural) disinclination to report failure, because the reporting of failure may lead to the discontinuation or reduction of funding in certain areas, which is usually against the interest of the report-writer. This is less problematic with external, contracted evaluators, but here Channell notes a third problem: many studies and analyses are not widely available, or else difficult to find. Although evaluations usually pertain to the public domain, they are not easily accessible, and occasionally actively withheld due to political sensibilities. 19

Relevance to CIDA: as discussed above, a number of CIDA documents, running back more than fifteen years, have drawn lessons and made recommendations on the conduct of RoL- and LJD- programs. However, these lessons have not always been heard. The mere publication of reports is

19 Indeed, some of the authors’ own concerted searches for CIDA documents turned out to be unsuccessful.
not sufficient to learn lessons: because CIDA’s RoL-documents are mostly written by outside consultants, their content does not necessarily reflect CIDA’s in-house expertise.

In an attempt to improve the assimilation of knowledge, CIDA published its first-ever “CIDA learns – lessons from evaluations” report in 2012. However, due the general nature of the document (the report was written for the whole agency) the conclusions are abstract and provide little concrete advice. By way of contrast, other donors have evaluated the influence, effectiveness and relevance of their Rule of Law “guidance documents” (e.g., SDC, 2003).

Finally, CIDA is also not always upfront about failure: the ‘results’ section of CIDA’s project database systematically fails to mention ways in which a project may have fallen short. Although the reticence to report failure is not unique to CIDA, the example of Engineers without Borders Canada, which publishes an annual failure report, shows that such transparency heightens rather than dampens organisational credibility. At the least, CIDA and external actors would both gain from ensuring that CIDA evaluations and reports are easily and openly accessible.

**CIDA’s Anti-Corruption engagement: Insights for RoL-planning**

So far, we have drawn from the academic literature to inform our analysis of CIDA’s RoL-promotion. This analysis has, like much of the scholarly writing, been largely critical of donor activities. In a more constructive spirit, this section illustrates good practice (to an extent) in governance programming by offering a brief analysis of CIDA’s Anti-Corruption (AC) efforts. Although AC and RoL are interrelated—corruption necessarily involves the breaking of a rule, if not necessarily of a law—we here analyse them in the same way that CIDA does – that is, as largely distinct issues, but whose treatment can inform each other. In particular, CIDA’s AC programming stands out in three respects.

First of all, CIDA’s AC spending goes against the trend of general spending cuts in the governance sector. Canada’s international assistance spending on AC organisations / institutions has rocketed in recent years, from below $1 million in 2008 and 2009 to more than $11 million in 2012. Of course, rising spending is no guarantee of better programming, and the sums involved remain much smaller than what CIDA spends on RoL. Nevertheless, several authors have indicated that substantial resources are – unsurprisingly perhaps – one condition for the success of AC initiatives (Klitgaard, 1988:121; Spector et al., 2005:225).

Secondly, CIDA’s AC planners can draw upon a comprehensive study that the agency commissioned in 2000, and which yielded two documents: a ‘primer’ on AC programming (CIDA, 2000b) and a ‘Questions and Strategies’ paper (CIDA, 2000c). Together, the documents explicitly aim to inform CIDA’s thinking and actions in the AC field, and do so by reflecting at length on the definition, measurement, causes, consequences, and possible responses to corruption:

> “This framework provides a general starting point for thinking about the causes and nature of corruption - and possible reform approaches. Other programming issues, such as what type of analysis CIDA should invest in, how much effort should go into it, and what, realistically, a small bilateral agency such as CIDA can hope to achieve are discussed in the sections that follow.” (CIDA, 2000c:14).

Although the documents’ conclusions are worth studying in more detail—some may even be relevant to RoL-promotion—the more general point is the importance of having such programming guides.
Indeed, CIDA’s review of its governance programming praises the ‘primer’ on AC as a welcome exception to the dearth of CIDA front-end analysis in the governance sector (CIDA, 2008b:13).

Third and finally, CIDA’s key projects in the AC sector are at least partially in line with what some research has identified as fruitful strategies. According to a multi-donor evaluation of AC projects in 5 countries, interventions “that were more likely to contribute positively to AC” (NORAD, 2011: xv) are:

(a) Donor support in research and evidence-gathering, as well as its subsequent dissemination;
(b) Promotion of inter-agency partnerships: AC agencies with CSOs, CSOs with parliament, etc.;
(c) Strengthening capacity and systems to promote staff integrity and prevent corruption;
(d) Investments in community-monitoring and grassroots initiatives to improve local services.

Although CIDA is not active on (b) – inter-agency partnerships – it does work in the other domains:

(a) **Research:** CIDA projects support the setting up of local corruption indicators in Vietnam, research on corruption in Ukraine, and the launch of Vulnerability to Corruption Assessments in Afghanistan. Less emphasis is placed on dissemination, with some exceptions.
(b) **Prevention:** CIDA sponsors AC training programs in South Africa, lends expertise on asset declarations in Tanzania, and supports the drafting of ‘corruption-proof’ legislation in Ukraine. It also supports the development of national AC strategies in a number of countries.
(c) **Civil society work:** CIDA-supported projects aim to empower Cameroon’s civil society to fight corruption, support a Tanzanian network of 80 NGOs, and have held country-wide information sessions with Ukrainian CSOs.

CIDA’s projects more generally provide technical assistance and aim to build institutional capacity. Although the specifics of these projects vary as much as their success, Spector et al. (2005:228) conclude from their meta-analysis of 35 AC interventions across the globe that “external donors can play an important role in producing anti-corruption results […]. Providing resources for reform programs and technical assistance in designing well-conceived initiatives were shown to be important factors that yield enduring outcomes.”

Overall, Canada’s AC activities thus enjoy growing funds, solid supporting documents, and indirect scholarly support. In each of these respects, CIDA’s AC activities contrast with its RoL interventions. However, and despite its positive features, AC programming also has clear limitations. First, despite growing attention and funds on the topic, the largest project on AC lasts seven years and has a budget of below $CAD10m, much less time and money than some of the more ambitious RoL-projects. Secondly, the supporting documents—although solid—date back over a decade to 2000, and there is a distinct scarcity of *ex post* monitoring and evaluation. This suggests that, despite its positive features, it may be time to update some of the documents and provide more recent information on the outcomes of the ongoing projects. Thirdly, the literature does not unequivocally support donors’ work on Anti-Corruption – far from it. Indeed, a recent multi-donor review of the AC literature starkly concludes that, “the literature can identify few success stories when it comes to the impact of donor-supported anti-corruption efforts” (NORAD, 2008:9). While this contrasts with more positive evaluations of specific AC projects (Spector et al., 2005; NORAD, 2011), this discrepancy is not paradoxical. While a certain AC initiative – launching a national plan, training civil servants, strengthening a unit – may well be successful in the short- (or even long-) run, it is unlikely to make a dent in systems of favours, nepotism, and collusion which can, in various ways and degrees, be integral parts of some countries’ current economic and political functioning. Controlling systemic
corruption is possible, but it will take more than donor’s efforts: it will require genuine competition in the political and economic realms (Johnston, 2000; 2005), and/or the commitment of domestic political will and resources (Klitgaard, 1988). In this sense, a recommendation that applies both to AC projects as well as to RoL promotion initiatives is that they should recognize not only the difficulties in achieving some of the end goals they promote, but also the fact that achieving them is not entirely up to donors. Rather, internal factors that lie beyond donors’ control are key in shaping the final outcomes in terms of corruption prevention and RoL promotion.

Conclusion / Policy Recommendations

Throughout this paper we have emphasized the need for a more concise and explicit approach to Rule of Law promotion. The focus on RoL as a key and agreed-upon ingredient of an overall governance agenda is purposeful. We believe that by pointing to the definitional and logistical difficulties in addressing RoL, we are also shedding light on the even more acute problems associated with a focus on broader concepts such as good governance. While some of the insights advanced in this brief may be applicable to Good Governance promotion, we concur with prior research (Grindle 2010) that has analyzed governance’s incapacity to deliver and the conflicting impact this concept has had on advancing development processes.

In terms of the RoL, from a more explicit and concrete definition to the design of achievable and multi-stage goals and a more conscious learning process, the overarching objective of this paper was to advance some ideas on how to improve potential approaches to projects related to the RoL. Overall, we argue that the difficulty in achieving observable goals does not take away from the importance of promoting the RoL. Yet, we argue that there are a number of improvements that could help produce a more effective approach to this complex issue.

1. A more explicit and multi-dimensional definition of the Rule of Law. We argue that CIDA should come up with the dimensions to be included in this definition. That said, we are including an Appendix with how the concept is defined in the literature, so as to hopefully inform this process.
2. Short-, mid-, and long-term objectives that set project-specific achievable benchmarks so as to promote new ways to address RoL promotion.
3. A conscious learning process that is aware of institutional obstacles to knowledge, such as the replication of past projects, the disinclination to report failure, and the dearth of in-house RoL-expertise.

Moreover, we argue that the focus on achievable goals should be combined with an emphasis on innovation in a field characterized by the absence of silver bullets. In concrete terms, this means moving away from spending on programs that emphasize capacity building and training, which is easily measurable but has proven somewhat ineffective, and towards more complex and potentially more impactful goals. These may prove to be more difficult to achieve, and as such they may take more time to produce final results. Yet this emphasis on harder targets should be coupled with the design of partial benchmarks to assess the effectiveness of different stages of complex long-term projects. This approach can be coined as one that looks for “conscious creativity,” in that it promotes new and “off the beaten path” programs that fall within a more clearly delimited and explicit Rule of Law project.
Appendix: Examples of RoL-dimensions from scholars and donors

Below are listed, by alphabetical order, a number of multi-dimensional definitions of the rule of law, drawn both from donors and scholars. Dimensions are listed in the order of appearance in the original texts, though no hierarchy of dimensions is usually implied. Table A1 allows for comparisons.

- **Belton (2005):**
  - Government also bound by law
  - Equality before the law
  - Law and order
  - Predictable, efficient justice
  - Human rights

- **Carothers (1998):**
  - Equality before the law
  - Human rights
  - Right to fair trial
  - Impartial and competent judiciary
  - Government also bound by law

- **Chavez (2008):**
  - Independent judiciary
  - Access to justice
  - Human rights
  - Property rights
  - Equality before the law
  - Predictability in the application of rules & regulations

- **Magen & Morlino (2009):**
  - Human rights
  - Independent and modern judiciary
  - Capacity to formulate, implement and enforce law
  - Low corruption, illegality, and abuse of power by state agencies
  - Security forces that are respectful of citizens

- **Piana (2011):**
  - The rule of law is a “method of government”. It satisfies three ‘principles’:
    - Equality before the law
    - Government is also bound by law
    - Compliance with law rooted in legal and political culture
  - Additionally, Piana also talks of the rule of law having five ‘dimensions’:
    - Law and order
    - Independent judiciary
    - Capacity to formulate, implement and enforce law
    - Low corruption, illegality, and abuse of power by state agencies
    - Security forces that are respectful of citizens

- **Haggard, MacIntyre and Tiede (2008) – appendix**
  - Security of property
  - Security of persons
  - Independent judiciary
  - Effective judiciary
• **UN OSG (2004):**
  - Equality before the law
  - Accountability to the law
  - Independent judiciary
  - Human rights
  - Separation of powers
  - Participation in decision-making
  - Legal certainty and avoidance of arbitrariness
  - Procedural and legal transparency

• **USAID (2010):**
  - Law and order
  - Compliance with law rooted in legal and political culture
  - Checks and balances
  - Capacity to formulate, implement and enforce law
  - Equality before the law
  - Access to justice
  - Human Rights

• **World Bank (2002)**
  - Government is also bound by law
  - Equality before the law
  - Human rights
  - Access to justice

• **World Governance Indicators: “Rule of Law” (Kaufmann et al., 2009)**
  - Contract enforcement and property rights
  - Quality of police and courts
  - Likelihood of crime and violence

• **World Justice Project (Agrast et al., 2013):**
  - Definition (based on four ‘principles’)
    - Government and its officials are accountable to the law
    - Laws are clear, public, stable, and fair, and protect human rights, including:
      - Security of persons
      - Security of property
    - Laws are administered and enforced in accessible, fair, and efficient ways
    - Justice is delivered by competent, independent and well-resourced officials
  - Measurement (split into nine ‘dimensions’)
    - Limited government powers
    - Absence of corruption
    - Order and security
    - Fundamental rights
    - Open government
    - Regulatory framework
    - Access to civil justice
    - Effective criminal justice
    - Informal justice
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