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Corporate Governance and Economic Development in Less Developed and Developing Countries

An Appraisal of Country-level and International Measures

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"Corporate Governance and Economic Development in Less Developed and Developing Countries An Appraisal of Country-level and International Measures"

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ABSTRACT

Corporate governance (CG) international measures have continued to receive much discourse in leading journals and corporate magazines, also more attention on the national and international levels. During the last couple of years, CG mechanisms for local and international firms in corporate ownership have promoted an array of inquisitive research aimed at identifying successful corporate mechanisms for institutions in both less developed and developing countries. To that extent, this dissertation seeks to critically examine well known international measures in furthering CG mechanisms for development. And whether pursuing CG standards and incorporating them in firms' strategies or nation's policies will enhance prospects for achieving targeted economic development for LDCs and developing countries.

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I would like to extend my acknowledgement to my supervisor professor Dr. Mahmood Bagheri for his guidance, his cooperation, and providing useful academic advice through the whole course, and scholarly information on corporate governance and developing countries reflected in this dissertation. All the gratitude to my husband Anas , who encouraged and supported me and my lovely daughter Judi who always inspires me.

"Anas".. I Would Not Have Done It Without You ,and "Judi".. I Did It For You.

STATEMENT OF AUTHENTICITY

This is to certify that the Dissertation "Corporate Governance and Economic Development in Less Developed and Developing Countries: An Appraisal of Country Level and International Measures" submitted by me for the partial fulfillment of the LL.M in International Corporate Governance, Financial Regulation and Economic Law, offered by the Institute of Advanced Legal Studies, during the academic year 2011/2012 is an original work carried out by me under the supervision of Dr. Mahmood Bagheri, and this work has not formed the basis for the award of any Degree, Diploma or such other titles.

Date: 03 Sep 2012

Signature of the Student

Name: Rania Darwish

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LIST OF ABBREVIATIONS

ACs	advanced countries
BPoA	Brussels Programme of Action for the Least Developed Countries for the Decade
CCGG	Canadian Coalition for Good Governance
CG	corporate governance
CSOs	civil society organizations
CSR	corporate social responsibility
ECA	Economic Commission for Africa
ECGF	European Corporate Governance Forum
ECGI	European Corporate Governance Institute
GDP	Gross Domestic Product
GCGF	Global Corporate Governance Forum
GEP	Group of Eminent Persons
GNI	Gross National Income
HAI	Human Assets Index
ICAP	The Institute of Chartered Accountants of Pakistan
ICGN	International Corporate Governance Network
IMF	International Monetary Fund
IOD	Institute of Directors Zambia
IPoA	Istanbul Programme of Action
LDCs	Less/Least-Developed Countries
LLSV	LaPorta, Lopez-de-Silanes, Shleifer, and Vishny
LuSE	Lusaka Stock Exchange
MENA	Middle East and North Africa
NYSE	New York Stock Exchange

OECD	Organization for Economic Cooperation and Development
ROSC	Report on the Observance of Standards and Codes
SMEs	Small and Medium Enterprises
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
WB	World Bank
WCFCG	World Council for Corporate Governance
WTO	World Trade Organization

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CHAPTER 1: INTRODUCTION: RESEARCH OBJECTIVES, RESEARCH METHOD AND DEVELOPING COUNTRIES

1.1 Introduction

The scholarly treatise of Berle and Means[1] has extremely influenced the stature of corporate governance (CG)[2] theoretically in various divergences whose premises have shaped the conceptualization of CG from the perspectives of shareholders and proprietors in corporation ownership. This perspective has a connection with Jensen and Meckling[3] view that corporations are nexus of contracts that bring the various principal participants in harmonious transactions which allow the shareholders much power over corporation assets. With the influxes of the various treatises on CG from researchers and scholars[4], CG appears to be on high priority on agendas of many developed countries including the less-developed countries (LDCs) and the developing countries. Some of these treatises are engrossed in various attempts to provide the state of CG using models and variations and to that extent, it has accounted for the way CG have changed across different boundaries and values over time[5]. This is why the findings of the McKinsey Global Investor Opinion Survey on CG in 2002 clearly points out that out of the countries tested, 21 percent in Asia and 40 percent in Eastern Europe and Africa of institutional investors regard CG as more important than a firm's

[1] See generally A A Berle and G C Means, "The Modern Corporation and the Private Property", (1932), New York: Harcourt Brace.
[2] The words 'firms', 'corporates,' 'corporation(s)', and 'companies' are used interchangeably in this dissertation
[3] See generally M. Jensen, and M. Meckling, "The Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure", (1976), JFE, 3: 305-360
[4] These studies include Berle and Means (1932), Coase (1937, 1960), Alchian (1965), Demsetz (1964), Cheung (1970, 1983), North (1981, 1990),La Porta and others (1997, 1998), Becht, Bolton, and Röell (2003), Claessens and Fan (2003), Denis and McConnell (2003), and Holmstrom and Kaplan (2001).
[5] See Gourevitch and Shinn (2005) pp.57-64, pp.277-284

financial issues such as profit, performance or growth potential[6]. In other words, CG is the basis for accelerating profit maximization of firms, better firm performance and economic growth of a nation. Thus, poor CG environments with the wake of corporate debacles have plagued reputed corporations across the world such as the Enron, WorldCom including the East Asian financial crisis of 1997–1998 that appear a 'vogue outlook' to the field of CG, have prompted much concerns because of their 'economic corporate woes'[7]. One of such concerns lies with international and country measures to review compliance mechanisms in corporations in LDCs that have wider business networks and business reputations. To that extent, while previous scholarly studies[8] have extensively widened the scope of CG with various paradigms, most of these paradigms are not attuned with the nature of laws, norms and traditions characterizing corporations in developing countries.

The fact that corporations cannot work without good governance frameworks is strongly canvassed. As Adrian Cadbury rightly pointed out, corporations' operations are confined with a governance framework that is defined by law, regulations, corporation's constitutions [ethical practice], including by shareholders who own and provide fund to meet their expectations by agents [managers][9]. In most cases, governance framework is varied from country to country with respect to history and culture including rules and institutions. Hence,

[6]McKinsey and Company, McKinsey Global Investor Opinion Survey on Corporate Governance 2002: Key Findings, available electronically at <http://www.mckinsey.com/clientservice/organization leadership/service/corpgovernance/pdf/globalinvestoropinionsurvey2002.pdf> accessed on 10 July 2012

[7] By this phrase, it depicts corporate crisis and CG failures amid the financial crisis

[8] See Jensen and Meckling, (n.2); Becht, *et al*, (2002); Denis and McConnell, (2003); Hermalin (2005); GCGF (2005, 2009); and Jaffer, *et al.(* 2007)

[9] In a foreword to Claessens (2003) study, Adrian Cadbury averred that corporations are managed adopting internationally accepted governance standards that would help agents meet the economic and social goals, individual and society goals of corporations and of which these goals are targeted at attracting investment through a governance framework that encourages the efficient use of resources and the accountability of those resources used. For a critique, see Claessens(2003) p. vii

this governance framework changes shape and strengthens over time, whose effectiveness lies with its coherence and reliance on other constituent areas[10].

1.2 Research Objectives

Certainly CG in developed countries has comparatively triumphed with various impacts from leading CG institutions such as European Corporate Governance Institute (ECGI) in cooperation with International Corporate Governance Network (ICGN) and the Global Corporate Governance Forum (GCGF)[11] and other institutions like Organization for Economic Co-operation and Development (OECD)[12] working to strengthen CG in member states. One issue that has continued to elicit debate and intense discussions is the adoption of best CG codes for institutions in ACs, developing countries and LDCs[13]. These codes appear significantly relevant to the solidification of governance frameworks to shape shareholders and stakeholders models of CG in such a way that the goals of corporations are met. Against this background, the much discussed lack of sufficient enforcement and institutions in the LDCs are obvious obstacles to good CG for corporations and as such weak enforcement is incapable of attracting

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[10] Ibid

[11] The GCGF was co-founded by the World Bank (WB) and the OECD as an advocate and disseminator of high standards and practices of CG across the globe especially in developing countries. GCGF supports initiatives at reducing the vulnerability of developing and emerging markets to financial crisis, and also provide incentives for corporations to invest and perform efficiently in a manner that is transparent, sustainable, and socially responsible. See GCGF's activities at<http://www.gcgf.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Global+Corporate+Governance+Forum> accessed on 1 July 2012

[12] OECD has continued to strengthen corporations' CG which appears to be widely acclaimed. In 2004, OECD adopted four principles of CG which include fairness, transparency, accountability, and responsibility. These principles represent the widely acceptable basis on which CG practice can be assessed. For a review, see OECD Principles of Corporate Governance (Paris: OECD) Available at<http://www.oecd.org/dataoecd/32/18/31557724.pdf> accessed on 29 June 2012

[13] CG codes have remained the basis for enhancing business activities and CG reforms through efficient legal frameworks for corporations. However, implementation and enforcement remain parts of the challenges to institutionalization of these CG codes in domestic laws. See Wong (2008) and GCGF (2005) for critiques.

external financing and investment [14] which makes it difficult for firms to honor financial contracts.[15] To that extent, this LL.M dissertation critically addresses the following research questions within the LDCs environs, which include:

- What are the challenges facing LDCs and corporations to good CG;
- What are the measures, both at the national and international levels, put in place in enhancing CG for development; and
- Are there any successful CG mechanisms for any LDC?

The need to investigate these research questions is relevant to augment the bodies of research towards CG and development for LDCs in order to garner useful contributions to improving the support for good CG in LDCs. Thus, this study aligns with models of shareholders and stakeholders' CG mechanisms in which the success of any corporation depends on the corporation owners and the rest agents [managers, employers, etc] whose actions are endogenously integrated aimed at furthering goals of the corporation.

1.3 Research Method

Since this dissertation is mainly structured to look at CG and economic development in LDCs and developing countries, descriptive approach is employed in the research. Descriptive research is concerned with the relationships and practices that exist, beliefs and processes that are still ongoing, effects that are being felt, or trends that are developing or advancing[16], reflecting on the development of CG and developing countries including the LDCs. Therefore, the

[14] External finance has strongly been pointed out as an index for stimulating high CG performance and financial development of firms for growth. See Carlin and Mayer (2000) and Mayer (2000). For investment, the in-flow of investment is an indicator for improved corporate performance for firms. For a discussion, see WB, "World Development Report 2005: A Better Investment Climate for Everyone" (New York 2004), Chapter 4.

[15] Cf. E Berglöf, and S Claessens, "Corporate Governance and Enforcement" in, I M Millstein et al., "Enforcement and Corporate Governance: Three Views Global Corporate Governance ", (2005), GCGF, Focus 3, Washington, DC: The World Bank p. 53

[16] W Trochim, "Research Methods Knowledge Base" 2nd edition.(Cincinnati, OH: Atomic Dog Publishing, 2001)

methodology of the present study is qualitative, based on historical recognition, and uses the results of scientific foundations which are on the basis of library study. The goal of the study is to present a framework for the explanation of a theoretical model and the development of CG codes for best practices in LDCs and developing countries.

1.4 LDCs and Developing Countries and Development Per Capita Growth Rates

The LDCs nations[17] are often regarded as least developed by United Nations (UN) classification which describes the LDCs as impoverished in terms of low gross national income (GNI), weak human assets and high degree of economic vulnerability. There are forty-eight countries designated by the UN as LDCs while developing countries are those not specified in the list of LDCs which are geographically spread across Africa, Oceania, Europe, Asia and America.[18] It has been established that around 12 percent of the population of the world lives in the LDCs, leaving more than half of the world's population in the extreme-poor category with less than 2 percent of the LDCs making the world's GDP, and

[17] A substantial number of developing countries have been classified accordingly into low-income criterion, human resource weakness criterion and economic vulnerability criterion. By low-income criterion, developing countries are gauged on a three-year average estimate of the gross national income (GNI) per capita (under $750 for inclusion, above $900 for graduation), by human resource weakness criterion, they are measured on composite Human Assets Index (HAI) based on indicators such as (a) nutrition; (b) health; (c) education; and (d) adult literacy; and while by economic vulnerability criterion, indicators of the instability of agricultural production; the instability of exports of goods and services; the economic importance of non-traditional activities (share of manufacturing and modern services in GDP); merchandise export concentration; and the handicap of economic smallness are applied. For a list of developing countries into these criteria, see Nation Online, "Least Developed Countries (LDCs)" available at<http://www.nationsonline.org/oneworld/least_developed_countries.htm> accessed on 26 June 2012. There are vast challenges of development facing these LDCs that forced many of LDCs governments to adopt various measures toward industrializing their economies. For critiques of these development challenges, see generally J Y Lin and M Liu, "Development Strategy, Viability and Challenges of Development in Lagging Regions", (2003) A Paper presented at the 15th World Bank's Annual Bank Conference on Development Economics held in Bangalore and India in May 2003.

[18] For a review on LDCs and developing countries, see United Nations Conference on Trade and Development(UNCTAD), "The Least Developed Countries Report 2011: The Potential Role of South-South Cooperation for Inclusive and Sustainable Development", (2011) UNCTAD, p.XI

around 1 per cent and 0.5 per cent record in world trade involving goods and services[19].

As a study pointed out, the LDCs grew by 5.7 percent in 2010 comparable to 2009 when it was lower that saw Asian LDCs slightly fared well than African and island LDCs in the global economic crisis and its aftermaths were occasioned by their sophisticated regional trading partners and a resilient diversified export pattern[20]. While it is clear that the LDCs as a group did not encounter any contraction of economic activity, a fifth of them did not enter into a recession during the global economy meltdown in which 18 LDCs in 2009 saw their growth rate on a per capita basis negative and only 9 LDCs in 2010 leaving six LDCs experienced a contraction of economic activity in per capita terms between 2009 and 2010 consecutively[21]. Thus, as it has been projected based on the indications on growth rates, the LDCs are likely to experience on average almost 5.8 percent growth rates from 2009 to 2016, which means LDCs as a group are not likely to reach the target of 7 percent growth rate which is one of the fundamental goals of the Istanbul Programme of Action (IPoA)[22] for periods between 2011 and 2020. However, on country level, only 10 LDCs out of the 48 listed LDCs are likely to

[19] See D Bhattacharya and S. Hossain, "Least Developed Countries in the Next Decade What is there in the Istanbul Programme of Action?", (2011) International Policy Analysis | FES Geneva, p.3

[20] See "Recent Economic Trends and Long-Term Outlook and Development Perspective" in Ibid, pp. II-III and p.5

[21] Ibid

[22] The IPoA was developed "to "to overcome the structural challenges faced by least developed countries in order to eradicate poverty, achieve internationally agreed development goals and enable graduation from the least developed country category" through encouraging national policy actions and international support, that focus on fundamental issues such as (a) achieving sustained, equitable and inclusive economic growth in LDCs of at least 7 per cent per annum; (b) building human capacities; (c) reducing the vulnerability of LDCs to economic shocks and disasters, as well as climate change, and strengthening their resilience; (d) ensuring enhanced financial resources and their effective use; and (e) ensuring good governance at all levels. The IPoA action plan is initiated to help half of the LDCs to reach the criteria for graduation by 2020. For a review, see "Introduction" to Ibid, p.II. It is also understood that there are substantial measures in form of global partnership taken to fast-track the development of the LDCs from various angles pursued by the Group of Eminent Persons (GEP) created by the UN, Brussels Programme of Action for the Least Developed Countries for the Decade 2001‐2010 (BPoA), and civil society organizations (CSOs) from Europe, Africa, Asia and the Pacific highlighting a number of concerns to the LDCs. For a detailed critique of these concerns, see D. Bhattacharya and S. Hossain (n.19) pp. 4-18.

reach the target rate[23]. Continuing the development growth rates in the LDCs and developing countries, based on the higher growth rate in 2010 for LDC economies, a standard of that was higher in 2011 that saw LDCs economies grew by 4.9 percent in comparison to 2009 figure on the average annual real gross domestic product (GDP) per capita growth rate during the boom period, which was one of the forecasts of the International Monetary Fund (IMF) that LDCs would experience a slower economic growth in 2011, in which it appears, comparatively, that developing countries and emerging economies outperformed than the LDCs by average growth rate of 7.3 percent in 2010 and 6.4 percent in 2011 respectively as illustrated in the table 1 below[24].

Table 1: Real GDP and real GDP per capita growth rates of LDCs, developing economies and advanced economies, 2008–2011

Table1. Real GDP and real GDP per capita growth rates of LDCs, developing economies and advance economies, 2008-2011 (Annual weighted averages, percentage)								
	Real GDP				Real GDP per capita			
	2008	2009	2010	2011	2008	2009	2010	2011
Total LDCs	**6.5**	**4.6**	**5.7**	**4.9**	**4.1**	**2.3**	**3.4**	**2.6**
African LDCs and Haiti	7.3	4.5	5.2	4.7	4.6	1.8	2.6	2.1
Asian LDCs	5.4	5.1	6.3	5.2	3.5	3.3	4.5	3.4
Island LDCs	8.1	-1.9	5.1	5.4	5.9	-3.9	3.0	3.2
Memo items:								
Emerging and developing economies	6.0	2.8	7.3	6.4	4.5	0.8	5.8	4.6
Advanced economies	0.1	-3.7	3.1	1.6	-0.7	-4.5	2.5	0.9

Source: UNCTAD, "The Least Developed Countries Report 2011: The Potential Role of South-South Cooperation for Inclusive and Sustainable Development", (2011) UNCTAD, p. 3

[23] See Ibid, p.III and p. 5
[24] See Ibid, pp.2-3

As it has been projected by the IMF, the LDCs economies would not be able to reach the targeted growth rate of 7 percent in next five years as put in the IPoA compared with the average of the previous eight years which saw 7.4 per cent in growth rate[25]. Hence, The Asian LDCs economies are likely to experience slower growth rate from 2009 to 2016 in comparison with previous period of 5.9 percent and 6.8 percent respectively. However, the African LDCs are projected to stimulate the economic recovery of the region in the middle-term range which will exert a positive influence on their economic prospects[26]. For an illustration, see the table 2 and chart 1 below:

[25] Ibid
[26] See Ibid, p.5

Table 2: Real GDP and real GDP per capita growth rates in LDCs, and forecasts until 2016(Annual average growth rates, percentage)

Table 2. Real GDP and real GDP per capita growth rates in LDCs, and forecasts until 2016
(Annual average growth rates, percentage)

	Real GDP						Real GDP per capita					
	2008	2009	2010	2011	2001–2008	2009–2016	2008	2009	2010	2011	2001–2008	2009–2016
Angola	13.8	2.4	3.4	3.7	15.5	6.6	10.9	-0.2	0.4	0.7	12.3	3.5
Bangladesh	6.0	5.9	6.4	6.3	6.1	6.6	4.5	4.5	4.9	4.9	4.4	5.1
Benin	5.0	2.7	2.6	3.8	3.8	4.4	2.2	-0.1	-0.2	0.9	0.7	1.6
Bhutan	4.7	6.7	8.3	8.1	8.5	8.9	3.0	5.2	7.1	7.0	5.8	7.7
Burkina Faso	5.2	3.2	7.9	4.9	5.8	6.1	2.8	0.8	5.5	2.5	3.1	3.7
Burundi	4.5	3.5	3.9	4.2	3.0	4.8	2.5	1.4	1.8	2.2	0.7	2.7
Cambodia	6.7	-2.0	6.0	6.7	10.1	7.0	5.6	-2.9	5.0	5.6	8.8	5.9
Central African Republic	2.0	1.7	3.3	4.1	0.9	5.1	0.0	-1.9	0.8	1.5	-1.1	2.5
Chad	1.7	-1.2	13.0	2.5	9.9	4.6	-0.8	-3.6	10.3	0.0	6.2	2.0
Comoros	1.0	1.8	2.1	2.2	1.8	3.5	-1.1	-0.2	0.0	0.1	-0.3	1.4
Dem. Rep. of the Congo	6.2	2.8	7.2	6.5	6.2	6.6	3.1	-0.2	4.1	3.4	3.1	3.5
Djibouti	5.8	5.0	3.5	4.8	3.9	5.3	3.3	2.4	1.0	2.2	1.8	2.8
Equatorial Guinea	10.7	5.7	-0.8	7.1	15.9	2.8	7.6	2.8	-3.6	4.1	12.6	-0.1
Eritrea	-9.8	3.9	2.2	8.2	-0.2	4.2	-12.6	0.7	-0.9	4.9	-3.9	1.2
Ethiopia	11.2	10.0	8.0	7.5	8.9	6.5	8.3	7.2	5.5	5.0	6.1	4.1
Gambia	6.3	6.7	6.1	5.5	3.9	5.6	2.7	3.1	2.6	2.0	0.6	2.1
Guinea	4.9	-0.3	1.9	4.0	2.6	4.7	2.6	-2.7	-0.5	1.4	0.6	2.1
Guinea-Bissau	3.2	3.0	3.5	4.8	2.4	4.6	1.0	0.7	1.3	2.5	0.0	2.4
Haiti	0.8	2.9	-5.4	6.1	0.7	5.5	-0.8	1.2	-4.8	4.5	-0.9	4.1
Kiribati	-0.7	-0.7	1.4	3.4	2.3	2.5	-2.7	-3.6	-0.6	1.5	0.3	0.8
Lao People's Dem. Rep.	7.8	7.6	7.9	8.3	7.3	7.8	5.8	5.6	6.0	6.3	5.5	5.8
Lesotho	4.3	3.1	3.6	5.2	3.5	4.9	2.4	1.3	1.8	3.3	1.6	3.0
Liberia	7.2	4.5	5.6	7.0	-0.4	7.5	2.0	-0.3	1.3	3.2	-3.3	4.2
Madagascar	7.1	-3.7	0.6	1.0	4.4	4.0	4.3	-6.2	-2.0	-1.6	1.6	1.5
Malawi	8.3	9.0	6.5	4.6	4.8	4.2	5.4	6.0	3.5	1.7	2.2	1.3
Maldives	10.9	-7.5	7.1	6.5	8.5	4.5	9.1	-8.9	5.4	4.8	6.7	2.8
Mali	5.0	4.5	5.8	5.3	5.0	5.3	2.5	2.0	2.8	2.2	2.5	2.3
Mauritania	3.5	-1.2	5.2	5.1	5.3	5.7	1.1	-3.5	2.7	2.6	2.8	3.2
Mozambique	6.8	6.3	6.8	7.2	7.9	7.6	4.7	4.2	4.7	5.1	5.8	5.5
Myanmar	3.6	5.1	5.5	5.5	12.3	5.6	1.6	3.1	3.4	3.5	9.9	3.5
Nepal	6.1	4.4	4.6	3.5	3.7	3.8	5.1	3.4	3.5	2.5	2.2	2.8
Niger	9.6	-0.9	8.0	5.5	5.1	7.5	6.3	-3.9	4.7	2.3	2.0	4.3
Rwanda	11.2	4.1	7.5	7.0	7.9	6.9	8.9	2.0	5.3	4.8	5.9	4.7
Samoa	4.9	-5.1	-0.2	2.0	4.2	2.1	4.3	-5.1	-0.7	1.4	3.9	1.8
Sao Tome and Principe	5.8	4.0	4.5	5.0	6.5	8.7	3.8	2.1	3.2	2.5	4.9	6.6
Senegal	3.2	2.2	4.2	4.0	4.5	4.8	0.8	-0.2	1.8	1.6	2.1	2.3
Sierra Leone	5.5	3.2	5.0	5.1	8.9	12.7	2.9	0.7	2.3	2.4	5.1	9.8
Solomon Islands	7.3	-1.2	6.5	5.6	5.9	5.8	5.0	-3.5	4.1	3.1	3.7	3.4
Sudan	3.7	4.6	6.5	-0.2	7.1	2.9	1.1	1.9	3.8	-2.6	4.4	0.5
Timor-Leste	10.9	12.9	6.0	7.4	3.2	8.5	8.3	10.2	3.4	5.0	0.6	5.9
Togo	2.4	3.2	3.7	3.8	2.5	4.4	-0.1	0.7	1.1	1.3	-0.1	1.8
Tuvalu	6.5	0.0	0.0	0.0	0.9	1.0	6.2	-0.2	-0.2	-0.2	0.4	0.7
Uganda	8.7	7.2	5.2	6.4	7.9	6.5	5.2	3.5	1.5	2.7	4.5	2.8
United Rep. of Tanzania	7.3	6.7	6.4	6.1	7.2	6.8	5.2	4.6	4.4	4.0	5.1	4.8
Vanuatu	6.2	3.5	2.2	3.8	4.7	3.9	3.9	1.2	0.1	1.2	2.3	1.5
Republic of Yemen	3.6	3.9	8.0	-2.5	4.0	2.5	0.5	0.8	4.9	-5.3	0.8	-0.5
Zambia	5.7	6.4	7.6	6.7	5.5	7.4	3.1	3.8	5.0	4.1	3.0	4.8
Total LDCs	**6.5**	**4.6**	**5.7**	**4.9**	**7.1**	**5.8**	**4.1**	**2.3**	**3.4**	**2.6**	**4.4**	**3.5**
African LDCs and Haiti	*7.3*	*4.5*	*5.2*	*4.7*	*7.4*	*5.8*	*4.6*	*1.8*	*2.6*	*2.1*	*4.6*	*3.1*
Asian LDCs	*5.4*	*5.1*	*6.3*	*5.2*	*6.8*	*5.9*	*3.5*	*3.3*	*4.5*	*3.4*	*4.1*	*4.1*
Island LDCs	*8.1*	*-1.9*	*5.1*	*5.4*	*5.9*	*5.0*	*5.9*	*-3.9*	*3.0*	*3.2*	*3.7*	*2.9*

Source: UNCTAD, "The Least Developed Countries Report 2011: The Potential Role of South-South Cooperation for Inclusive and Sustainable Development", (2011) UNCTAD, p. 6

Chart 1: LDCs' real GDP growth and mid-term forecasts compared with the IPoA growth rate target, 2002–2016

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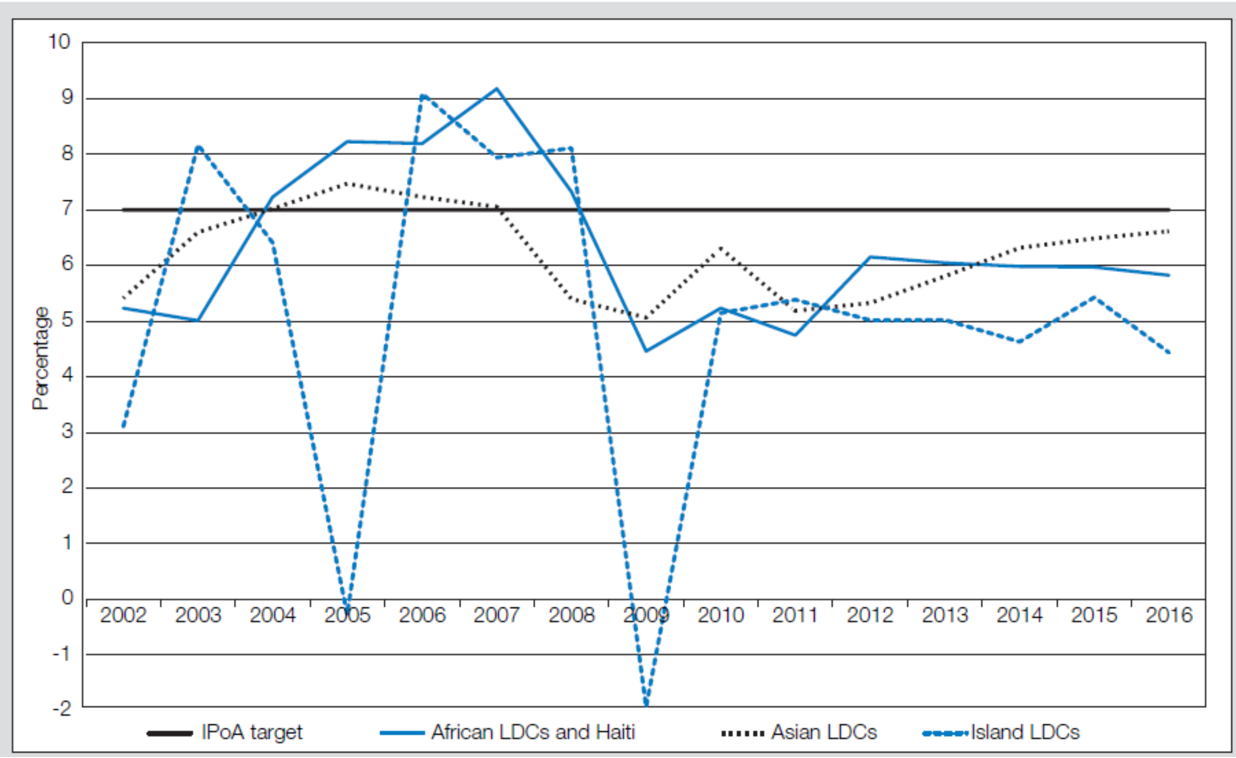

Source: UNCTAD, "The Least Developed Countries Report 2011: The Potential Role of South-South Cooperation for Inclusive and Sustainable Development", (2011) UNCTAD, p. 7

It is obvious that the much discussed economic growth volatility has continued to shape the economies of the LDCs over time as the 1980s and 1990s periods were more volatile than ACs economies leaving Island LDCs as the most vulnerable as a result of their specialized and narrow economic structure as shown in the[27]. Indeed, on graduation status, it is pleasing that 11 LDCs show signs of high probability of reaching the graduation criteria toward the end of the current

[27] Ibid

decade while 30 LDCs lack the probability of meeting the graduation criteria by 2020[28]. For an illustration, see appendix 1.

Corporations play relevant role to economic development of a country, and to a larger extent, the relevance of corporations rely on enhancing economic growth and economic development. Corporations at country level are often seen as a more efficient solution to local development, particularly micro and small incentives that do not require large investments that support economic growth by creating jobs and supporting community through their corporate social responsibility (CSR)[29] for economic and social development. They also play an important role on environmental levels, because of the benefits that may result from their actions towards the environment as a result of their business activities[30]. Thus, it is important that firms sustain their social, economic and environmental roles as measures for sustainable development in developing countries with strong strives in employment because it is the key to prosperity, as Professor Aneel Karnani succinctly argues that it is “the key link between growth output and poverty alleviation”[31]. However, the emergence of corporations in developing countries and LDCs is constrained by the presence of corruptions, lack of framework conditions for regulating corporations and attracting finance to

[28] See Ibid, p.9. There are arguments that the exposure of economies of the LDCs and developing economies to trade have left them to external shock and less vulnerable to internally generated shocks. For a critique, see generally W Easterly, R Islam and J E Stiglitz, "Macroeconomic Paradigms for Less Developed Countries Shaken and Stirred: Explaining Growth Volatility", (2002) The World Bank electronically available at <http://www.worldbank.org/research/growth/growth%20volatility%20jan%202000.html> accessed 10 July 2012. Trades to LDCs have seen much impact. For a detailed discussion, see World Trade Organization/OECD, "AidforTrade and LDCs: Starting to show Results", (2011) OECD/WTO

[29] For studies regarding corporations support local development and economic growth, see N J Duarte and F J Diniz, The Role of Firms and Entrepreneurship on Local Development in the Region of Vale Do Sousa; C M Vargas, "Community Development and Micro-enterprises: Fostering Sustainable Development", (2000) , 11-26; P Mccann, "On the supply-side Determinants of Regional Growth" (2006) Construction Management and Economics, 681-693; and S M Islam, M Munasinghe, and M Clarke, "Making Long-term Economic Growth more Sustainable: Evaluating the Costs and the Benefits" (2003) Ecological Economics, 149-166.

[30] See N J Duarte and F J Diniz “The Role of Firms and Entrepreneurship on Local Development ", (2011) RJRS 5, 1: 54 - 69

[31] Cited in B Jenkins(2007) p.8

firms, including the dearth of economic growth determinants that encourage corporations to contribute to social and economic spheres of a nation[32].

1.5 Significance of the Study

This LL.M study is important in a number of ways. Firstly, it contributes to growing literature on CG and development, including economic development for developing countries and the LDCs. Secondly; it highlights the factors associated with weak CG and good CG measures. And, thirdly, for policy makers, political institutions [governments] and corporations in the LDCs and developing countries, it provides them with the appropriate measures to withstand 'shocks' to their system of CG and best ways to improve their CG.

[32] A number of studies have advanced various barriers to the emergence of sound CG measures in developing countries. For example, see S F Chowdhury and C A Mallin, "Barriers to Good Governance in Developing Countries: The Case of Bangladesh", (2012) International Centre for Financial Regulation (ICFR) Series on Corporate Governance in Emerging Markets – Conference Proceedings 2012.

CHAPTER 2: METHODOLOGY AND THEORETICAL FRAMEWORKS OF CORPORATIONS

2.1 Introduction

As country-level evidence suggests, countries with weak CG regimes are likely to suffer collapse in larger proportions hit by intense adverse shocks due to ineffective legal institutions to enforce good CG measures[33]. In view of this, it thus appears that LDCs and developing countries including international organizations are greatly pursing for the advancement of good CG by institutionalizing best practices for local and international firms in order to increase their access to capital and investments. Therefore, the aim of this study is to investigate measures put together both at country level and international level from evidences seen in one African LDCs and one developing country. It also provides an analysis of the shareholder and stakeholders models of CG.

2.2 Empirical Evidences

2.2.1 Zambia

Zambia falls within the LDC category that made it first attempt to introduce effective CG after the Institute of Directors (IOD)[34] in Zambia started plans to strengthen CG in small and medium enterprises (SMEs) and enlighten public governmentals on the concept of CG. For the SMEs in Zambia, the IODS's plan provided a suitable system of CG that led to the development of a model of CG for better firm performance, which provided shareholders with maximum profits thus eliminating existing shortcomings in CG after the model has been extensively discussed by private and public shareholders. As it has been observed, one of the successes of the model was when it gained acceptance in Zambian stock exchange market paving way for SMEs to adopt the system of CG introduced after the 150

[33] Johnson et al present that weak legal institutions to ensure minority protection consequently affect the way exchange rate depreciates and stock market declines that was typical in the Asian financial crisis For a reference, see S Johnson et al., “Corporate Governance in the Asian Financial Crisis (2000), 58 JFE, p.141

members of Zambian parliament were educated of the rules and methods governing how CG is effectively performed[35].

It has been pointed out that in the WB country assessment report for Zambia that Lusaka Stock Exchange Corporate Governance Code by Lusaka Stock Exchange (LuSE) and the IOD have shaped the CG practice by ensuring that Zambia's legal framework work to protect shareholder rights and boards conform to international good practices. However, Zambian existing laws and regulations would need to be harmonized and updated through continued reforms[36].

2.2.2 The Philippines

The Philippines as a developing country is seen as one of the 'newly-appearing economies' whose economy has been stirred up towards creating and developing CG in two approaches[37]. The first approach is a scoring system of CG that was created in order to develop the standards of CG for the country's companies[38]. This scorecard serves as basis for evaluating firm's performance depending on public disclosure of firm's information, and how those disclosures of information are published. As it has been pointed out, this scoring system approach has saw firms identifying their own stand in respect to the criteria of CG and also comparing their stands with other firms in the Philippines, and indeed the world[39]. Thus, apart from this system allowing corporations to evaluate their own performance, it gave them the chance to identify the areas to reach to maintain an improved system of CG. On the other hand, the second approach was

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[34] The IOD was launched in 2000 by the then Minister of Commerce, Trade and Industry, Mr. William. Harrington to promote high standards of CG in both the private and public sectors in Zambia through education and workshops. For a background of IOD, see "Brief on the Institute of Directors of Zambia" at <http://iodzambia.org/about%20us.aspx> accessed on 10 July 2012

[35] See Ma'atoofi and Ahmadian (2011) p.242

[36] See WB, "Corporate Governance Country Assessment Zambia" (2006) Report on the Observance of Standards and Codes (ROSC) World Bank Available at < http://www.worldbank.org/ifa/rosc_cg_zam.pdf > accessed on 20 July 2012

[37] See Ma'atoofi and Ahmadian(n.35), p.243

[38] Ibid

[39] Ibid

pronounced after the scoring system was accepted by Philippine's stock exchange that 'coerced' all companies present in stock exchange use a CG scorecard. This activity saw an improved transparency and information disclosure in the country's capital market[40]. The Philippines has also been identified for insider trading where is impractical to obtain evidence to prosecute those involved in insider trading[41].

The WB[42] country assessment report for the Philippines has observed that the Philippines have significant reforms to establish good CG with large legal and regulatory framework for CG, but its implementation and enforcement need to be strengthened in order to achieve a more transparent, accountable, and efficient corporate sector including a more robust stock market, through the following steps, such as:

- “Strengthening the enforcement of the existing laws and regulations by the SEC and PSE, particularly those involving insider trading, tender offer rules, and disclosure;
- Improving the protection of minority shareholder rights through better enforcement;
- Strengthening monitoring of compliance with IAS/IFRS and requiring additional disclosure of internal controls and governance issues by listed firms;
- Enhancing Philippines Stock Exchange’s surveillance system for monitoring of unusual trading activities; and
- Encouraging the development of advocacy institutions to promote

[40] Ibid

[41] Insider trading is an expropriation self-dealing technique used to achieve profitable trading by listed companies based on insider information. See T Nenova, "A Corporate Governance Agenda for Developing Countries", (2005) World Bank Group No. 217, p.194

[42] The WB conducts country assessments under the Reports on the Observance of Standards and Codes (ROSC) initiative with a view to strengthening the country’s corporate governance framework. For a number of countries assessed, see Report on the Observance of Standards and Codes (ROSC) electronically available at< http://www.worldbank.org/ifa/rosc_cg.html>accessed on 20 July 2012

minority shareholders rights"[43].

2.3 Practical Evidences

Corporations and CG development in advanced countries especially in the United States appear to have gained a larger discourse as a result of development of corporate law and theories that reflect a broader portion of regulation of corporate organization, management, and finance[44]. This reflection was occasioned by the court and judgements especially in Delaware. However, comparatively, there are no practical evidences in developing countries supporting the emergence of CG development because of weakened legal frameworks which do not encourage firm growth and firm performance necessary for economic development[45].There are factors that can encourage the emergence of firms such as better legal framework conditions[46], including the presence of (1) high quality of human capital; (2) high technology, innovation and R&D; (3) stable political environment; (4) high degree of openness (networks, links) as presented by Arvanitidis *et al*[47]. As it has been evidently pointed out, the Portuguese region of Vale Do Sousa and firms in Finland witnessed growth that encourages the striving of sound CG through entrepreneurship[48].

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[43] See WB, "Corporate Governance Country Assessment Philippines" (2006) Report on the Observance of Standards and Codes (ROSC) World Bank Available at < http://www.worldbank.org/ifa/rosc_cg_phl_07.pdf > accessed on 20 July 2012

[44] See generally L E Mitchell, The Relevance of Corporate Theory to Corporate and Economic Development: Comment on The Transplantation of the Legal Discourse on Corporate Personality Theories, 63 Wash. & Lee L. Rev. 1489 (2006) <http://scholarlycommons.law.wlu.edu/wlulr/vol63/iss4/9> accessed on 11 August 2012

[45] There are practical evidences supporting corporation growth in advanced countries against developing countries. For example in Finland, there are the presence of legal determinants and innovation and knowledge that encourage firm growth and emergence of new firms. For a detailed discussion of these determinants for Finnish firms, see generally A Rantala, "Growth of New Firms: Evidence From Finland 1996-2003", (2006) Pellervo Economic Research Institute Reports No. 197, 1-120

[46] See N Brandt, "Business Dynamics in Europe", (2004) STI Working Paper 1/2004, OECD, Paris.

[47] See P Arvanitidis, G Petrakos, and S Pavleas, "Determinants of Economic Growth: the Experts' View", (2007) Congress of European Regional Science Association. Paris.

[48] For a detailed account of these factors, see Rantala (n.45) and for the Portuguese region of Vale Do Sousa, see N J Duarte and F J Diniz (n.30)

2.4 Theoretical Frameworks of Corporations

CG in LDCs and developing countries as well as developed countries has traditionally been associated with the "principal-agent" or "agency" problem. As it has been established, a "principal-agent" relationship arises when the person [shareholder] who owns a firm is not the same as the person [manager] who manages or controls it. Therefore, investors or financiers (principals) usually hire managers (agents) to run the firm on their behalf with the aim of maximizing shareholder's returns on their investment[49]. Managers on the other hand, are expected to judiciously use investors' funds to manage the company. Based on this orientation, there is a separation between the financing and the management of the corporation, in such a way that it provides a separation between ownership and control as evidenced in Berle and Means's[50]. While we cannot ignore the term, CG has been used in many different ways and patterns; the term varies widely connoting the widely held frameworks of shareholders and stakeholders mechanisms of CG which are often associated with economics aspect concerning the impact of CG on performance[51]. Shareholder model in its narrowest sense suggests that CG is often used to describe the formal system of accountability of senior management to shareholders while stakeholder model in its widest sense suggests that CG describes the network of formal and informal relations involving the firm[52]. As it has pointed out, the stakeholder approach of CG, in recent times, dwells on contributions made by stakeholders leading to long term performance of the firm and also able to stimulate shareholder value, while the shareholder approach recognizes that business ethics and stakeholder relations can also have an impact on the reputation and long term success of the corporation[53].

[49] Kiel and Nicholson (2003); Blair superficially argues that the onus of corporations exist to maximize shareholders' wealth and make actions of hired managers accountable. See Blair (1995)
[50] Berle and Means observe that the availability of superior information to hired professional managers appears succinctly to have overpowered the right of control from firm financiers over hired managers. See Berle and Means (n.1)
[51] See Maher and Anderson (1999) p.6
[52] Ibid
[53] Ibid

Therefore, the two models are interchangeably linked with enhancing corporation's CG for firm performance with emphasis on disclosure.

There are theoretical underpinnings of corporations provided by Professor Harris[54]. The grant theory of corporation has intensely been discoursed and argued. It is the theory that assumes that corporations are the creation of the state and as such they possess some state features that started to make waves before the end of the Civil War in the United States. The collapse of the grant theory gave room to the enactment of general incorporation laws that provide the state the alternative opportunity to create corporations. However, Professor Harris's postulations of the grant theory have been critiqued by Mitchell[55]. While corporations are created by laws, the shareholder model of CG and stakeholders' model of CG offer a deeper theoretical based insight into the concept of CG for corporations.

2.4.1 The Shareholder Model

For corporations in LDCs and developing countries, the core objective of shareholder model of the firm is to maximize shareholder wealth through allocative, productive and dynamic efficiency by which investor's investments are managed by managers with particular emphasis on shareholder value. To ensure this sole interest of shareholder value is induced into the workings of corporation governance of the firm, managers are bound to run the corporation in the sole interests of shareholders who hired them. In a narrow sense, the principal-agent relationship whose premises have fostered the operations of CG by shareholders and hired managers and directors, the separation of beneficial ownership are often aligned to shareholders while executive decision making lies with the managers. This has often created loggerheads in which shareholders expect firm

[54] See R Harris, The Transplantation of the Legal Discourse on Corporate Personality Theories: From German Codification to British Political Pluralism and American Big Business, 63 WASH. & LEE L. REV. 1421, 1424-25 (2006) (indicating normative qualities of a "real entity" theory).
[55] Mitchell(n.44)

behaviour to align its actions through effective executive making with the interest of profit maximization of shareholders against the interest of managers who are often pre-occupied with maximizing their executive pays, market share or any other particular interest different from investors[firm owners]. Therefore since managers are not the investors, they do not bear any outcome of investment lost, full agency cost or reap the benefits of good firm performance, thus resonating separation of ownership and control that leaves the agents and principals'' interests unaligned. As result of this unaligned interests of firm owners and managers, one of the central critiques of the shareholder model of the firm remains implicitly the ensuing conflict of interests leading to dispersed shareholders which often within falls as one of the main CG problems in the principal-agent context with dispersed ownership[56] affecting the place of institutional investors, shareholder protection, and executive compensation etc.

As it has been argued, the principal-agent CG problem is a vital aspect of "incomplete contracts"[57] and as such, there is the tendency that the principal-agent problem would not have arose should there be a possible way of writing a "complete contract", which will allow the investor state in a contract signed by managers specifying how funds should be used and how the returns are shared[58]. Thus, this would have given the investor the grounds to align his interests with his manager on basis of trust, accountability and transparency. However, complete

[56]Dispersed ownership in CG depicts either an individual or an institution [stakeholder] does not hold a large stake in a single corporation. Mayer describes this as "outsider system". A dispersed ownership encourages the adoption of new technologies which can attract resistance from other stakeholders. Concentrated ownership on the other hand, is highly used in Europe and it is associated with activities that entail investments by other stakeholders. See Mayer (2000) p.74 for reference. It is also observed that concentrated ownership is the rule for largest listed companies especially in developing countries where the average firm is predominantly majority controlled and significant corporate assets are controlled by small families in Asia, Middle East and North Africa (MENA) region and other developing countries. For a reference, see T Nenova, (n.41) p.183; see also The Institute of Chartered Accountants of Pakistan(ICAP), "Instituting Corporate Governance in Developing, Emerging and Transitional Economies", (2006) p.11

[57] The "incomplete contract" context remains a strong view in Coase (1937), Jensen and Meckling (n.3), Fama and Jensen (1983a, b), Williamson (1975, 1985), Aghion and Bolton (1992), and Hart (1995) which has often been identified the reason for conflict of interest arising in agency cost between managers and investors.

[58] See Maher and Anderson (n.51) p.6

contracts are unfeasible because of unforeseen situations or impossibilities in the future[59]. But managers can exercise their "residual control rights" which allow them to control such situations by making decisions which are not covered in the contract[60].

2.4.2 Stakeholder Model

The stakeholder model of CG is often primarily concerned with how effective different governance systems work in advancing long term investment and commitment amongst the various stakeholders[61]. But devising the means by which a long term investment and commitments by all players can be entrenched for business relationship continuity has continued to pose threats to the survival of stakeholders who owe undue allegiances or obligations to the corporation. As a result of the place of stakeholders in CG, Blair contends that CG is an array of institutional arrangements that work as a system for governing relationships existing among all stakeholders working together to contribute to the growth of the corporation[62].

As the traditional stakeholder model has it, firms are considered as a wider 'parliament' of stakeholders cooperating for the general wellbeing of all, in other word stakeholder model takes a wider view of the firm. This engages stakeholders such as employees, suppliers, customers, creditors, and social constituents such as members of the community into a contractual agreement that allows them to act in an unselfish ways and socially responsible parts of the corporation. Thus, to the society at large, corporations' wider objectives are seem working towards being responsible institutions engage in public interest and are accessed according to their deeds in market share, growth in trading relations with suppliers and purchasers including their overall financial performance. However this traditional stakeholder model has been criticized because it is almost impossible for firms to

[59] Ibid
[60] Ibid
[61] Williamson (1985)
[62] Blair(n.49)

fulfil these wider objectives, in which Blair has pointed out that the traditional stakeholder model idea obviously does not provide a clear guidance to assist managers and directors on how to set priorities especially how corporate resources are beneficially used and as such there is no clear-cut mandate on enforcement mechanism towards ensuring that stakeholders live up to their responsive roles to the corporation[63]**.**

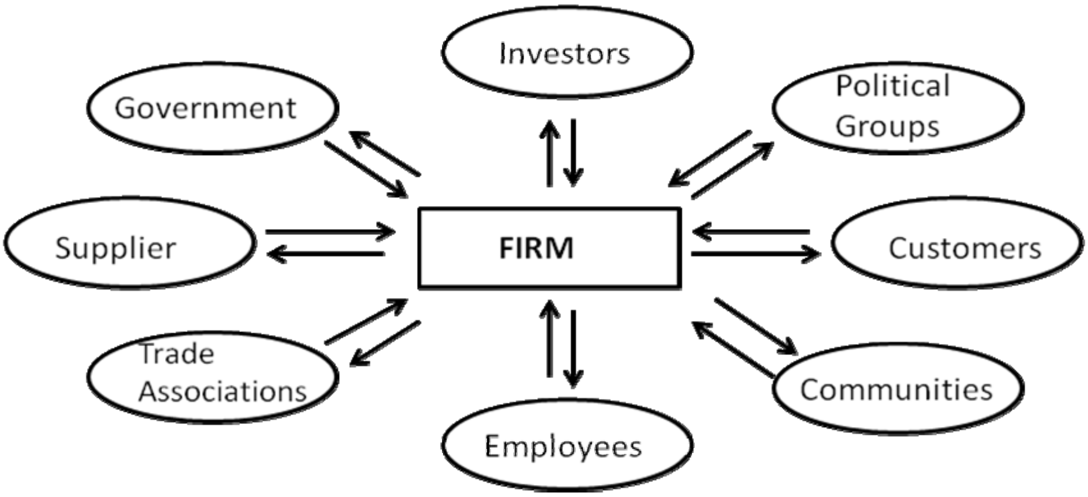
On the other hand, a modern [new] stakeholder model appears to have been espoused widely which give credence to firms whose stakeholders such as suppliers, customers and employers work vigorously in commitments to firm's goals and objectives. This new approach sees contributions to corporation's success as a result of teamwork and collective efforts from various resource providers of human and capital. Therefore, CG serves to encourage cooperation amongst stakeholders in creating wealth, jobs and sustainability of financial systems which are often the basis upon which firm performance is judged. Hence, for firms in developing countries and LDCs to put into effect a greater firm performance, stakeholders must work hand-in-hand by developing a long term relations among themselves incorporating both trust and commitments[64]. The entrenchment of commitment by all stakeholders in a developing environment like the LDCs' Bangladesh will invariably depend on how effective corporations in such economies can sustain their corporation objectives and goals for the benefit of all stakeholders.

While the stakeholder model is strongly supported due to the enshrined cooperation among all stakeholders in the corporation, there are still enormous hurdles working against evolving a socially efficient investment levels in corporation governance process by all stakeholders. The lack of frameworks and mechanisms that entails efficient levels of investment is a strong hurdle to ensuring stakeholder investment and harmonious cooperation by all stakeholders. However the absence of a formidable clear-cut stakeholder objective should not

[63] See Ibid, p. 203
[64] See Mayer (1996)

prevent clear guidance on how the companies' objectives and priorities are set out. Illustrating the stakeholder model in any typical corporation, Abdullah and Valentine observe that all stakeholders amply work towards affecting corporation's objectives through achievement, and as such stakeholders' actions are often an embedment of social, legal, political, cultural and economic norms[65].

Figure 1: Stakeholder Model



Source: **Abdullah and Valentine (2009)[66], p.92**

2.5 Conclusion

It is clear that the evidences provided for Zambia and the Philippines are indications that CG practice in developing countries is taking new shapes. However, a more practicable measure is needed through effective reforms for enforcement and implementation of sound CG measures that would bring about economic prosperity to the citizenry. Thus, tangible development to LDCs and developing countries can be achieved as long as all stakeholders and shareholders of a corporation understand their roles to the economy in a way that their roles contribute effectively and positively to the national economy through a strong CG measure.

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[65] See Abdullah and Valentine (2009) p.92

[66] Abdullah and Valentine study is characteristically influenced by Donaldson and Preston (1995) work.

CHAPTER 3: LITERATURE REVIEW

3.1 Introduction

CG has continued to be 'traded' with a variety of meanings and definitions with broader perspectives. It has gained an intensive study from economics, business [law], finance and accounting perspectives. However, there is no consensus on what the term really means from both legal and economic perspectives considering the fact that countries differ from each other in terms of culture, legal systems and historical developments[67] and as such, there are varying differences in company law rules as well as criminal law sanctions.

This chapter looks at the concept of CG, CG and development, and CG issues in developing countries.

3.2 CG and Development

Construing a consensus definition of CG is inconsequential. As one paper observes CG does not serve an abstract goal, but in existence serves corporate purposes by providing a structure by which stockholders, directors and management would be able to pursue effectively corporation objectives that shape corporate goals[68]. Thus, studies[69] have focused on considerably on what CG development tend to substantiate using different CG models related to issues especially issue of cooperatives in developing and developed countries[70].

There are many perspectives conceptualizing the meaning of CG. The first perspective with legal orientations, views CG as:

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[67] See generally V R Ramon, "Corporate Governance as Competitive Advantage in Asia: Managing Corporate Governance in Asia", (2001) Asian Institute of Management, Philippines.

[68] US Business Round Table White Paper (1997) on CG: this paper categorically in explicit terms espouses what CG system seeks to accomplish in line with corporation objectives.

[69] See Wong (2008) and Bebchuk and Hamdani (2009) classical works

[70] Shaw (2006)

> "As a set of processes, customs, policies, and laws governing a corporation in terms of direction, administration or control"[71].

As argued by Macey, CG decisions follow a process culture in typical American CG in which the law is evolved to strengthen the role of process and process culture is considered important by judges, which was effectuated in the landmark decision of the Delaware Supreme Court in *Smith v. Van Gorkom*[72]. The customs in CG are often viewed as norms which guide the way and manners judges interpret contracts especially corporate contracts where they have to decide what constitute a 'commercially reasonable' and 'customary and ordinary' contracts. As Macey pointed out, the application of norms in judicial decision making process is relevant because it provides a clear interpretation of contracts, and also provides a wider interpretation of shareholder primacy which is considered a norm in US CG system[73]. Therefore, CG encompasses the combination of laws, regulations, listing rules that form the corporate behaviors of board and guide their actions as to how to run a corporation in order to attract capital, perform efficiently, maximize shareholders returns, and whose decisions are geared towards meeting corporation's legal obligations including its general societal expectations. As it has been argued, these laws and regulations are provided in a corporate law that serve as framework for decision making process in a corporation to minimize CG

[71] See US Legal, "Corporate Governance Law and Legal Definition", electronically available at < http://definitions.uslegal.com/c/corporate-governance/> accessed on 20 July 2012

[72] For a critique regarding the Smith v. Van Gorkom, see D Honabach, "Smith v. Van Gorkom: Managerial Liability and Exculpatory Clauses—A Proposal to Fill the Gap of the Missing Officer Protection", (2006) WLR 45. Macey increasingly argues that process plays a big role in American CG. It allows judges and lawyers a comparative advantage to construct and evaluate process. However they err on how these processes can be injected into the realities of CG due to the huge economic costs of process in terms of income and status. Thus a process-based approach to CG is a challenging task to lawyers. For a detailed review, see J Macey, "Corporate Governance: Promises Kept, Promises Broken", New Jersey: Princeton University Press 2008. Pp.30-2.

[73] The place of norms for CG cannot be overstressed as it serves as actual sources for legal rules, and they evolve over time without any resort to market intervention. Macey provided intense critiques on the importance of norms. For a review, see Macey (n.72) pp. 33-44

problems in firms which are highly complex and contextual in varying degrees, often which these problems result to 'inevitable judicial rhetoric'[74].

Attempting to provide a narrow perspective of CG suggesting the stakeholder's model is very obvious in many CG definitions. In the viewpoint of Jaffer, CG as a phrase lies as, thus:

> "… a relatively new term that describes a process that has been practiced for as long as there have been corporate entities. This process seeks to ensure that the business and management of corporate entities is conducted in accordance with the highest standards of ethics and efficacy, assuming that this is the best way to safeguard and promote the interests of all corporate stakeholders"[75]

In other words, CG exist to fulfill the tenets of corporate stakeholders who deploy much equity finance into the activities of hired managers expecting them to act for the sole interests that govern the aspirations of stakeholders working cooperatively for the good purpose of the corporation. This is why the study of LaPorta, Lopez-de-Silanes, Shleifer, and Vishny[LLSV] views CG in terms of the ways in which suppliers of finance to a firm assures themselves of a good returns to their investment[76]. However, this view does not support a relationship built-up between stakeholders and hired managers of the firm[77].

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[74] See J Macey, "The Nature of Conflicts of Interest within the Firm", (2006) Journal of Corporation Law 31, p.616. It is important to note that regulations as to how the firm is run are codified in firm's bylaws and charters which govern relationship between shareholders and managers, on the basis that a mandatory rule is favored because it supports investor protection by lowering the agency cost in securing new capital by managers. For a review, see generally J Macey, "Corporate Law and Corporate Governance: A Contractual Perspective", (1993). Faculty Scholarship Series. Paper1607. Available at<http://digitalcommons.law.yale.edu/fss_papers/1607> accessed on 14 July 2012

[75] See Jaffer, et al. (2007) p.2

[76] LLSV (1997)

[77] This is because as Monks and Minow argue that CG is a relationship among various players [participants] whose actions are geared toward determining the direction and performance of corporations. These participants include the shareholders, the management and the board of directors. For a review, see generally R A Monks and N Minow, "Corporate Governance", (2001)2nd ed, Blackwell Publishing

Understanding CG from two perspectives, the World Bank defines CG from a corporation perspective which dwells on the relations between the owners, management board and other stakeholders[the employees, suppliers, investors, customers and communities] thus obliging the board of director with the task of balancing the interests of all stakeholders to sustained long term values. This perspective has been reinforced in many definitions of CG especially in the definition offered by Professor Akinboade in which he referred CG as:

> “the manner in which the power of a corporation is exercised in the stewardship of a corporation’s total portfolio of assets and resources with the objective of maintaining and increasing shareholder value and satisfaction of other stakeholders in the context of its corporate mission"[78]

On the other hand, from a policy perspective, it refers CG as those measures providing for the survival, growth and development of the corporation and as well as providing for board’s accountability in the exercise of power and control over corporations[79].

In an attempt to widen the scope and meaning of CG, Oman refers to “CG” as:

> "the private and public institutions, including laws, regulations and accepted business practices, which together govern the relationship, in a market economy, between corporate managers and entrepreneurs

[78] Cited in Economic Commission for Africa (ECA) workshop on Economic and Corporate Governance and Accountability in Southern Africa, 2005, Ethiopia, p.6. The workshop highlights CG challenges facing state-owned enterprises and including the financial sector in Southern Africa such as lack of political will in the implementation of CG in the financial sector, ethical/profit maximization dilemma, Lack of human and financial capacity, weak/Inadequate governance framework, inadequate/Inappropriate legal framework, inadequate capitalization/resource. See ECA (2005) pp.33-6 for recommendations to these challenges.

[79] See WB, “Corporate Governance: Framework for Implementation, Overview”, 1999, www.worldbank.org

("corporate insiders") on one hand, and those who invest resources in corporations, on the other".[80]

This definition provides two impacts on CG development. First, it establishes that CG is bounded with regulations and acceptable business practices, which are often associated with ethical standards in disclosure of information and auditing committee. These business practices are established in company's corporate laws specifying ways and manners managers and directors manage the corporation on behalf of investors and suppliers [shareholders]. Second, it tends to suggest authoritatively that CG success lies with the amount of investment and resources provided for the economic growth of corporation and the community it serves. Hence, CG in corporation exists to stimulate economic growth of the residual country. These investment drives and resource capitals are strengthened by institutions in CG that provide the premises on which the purpose of CG is understood. As Oman pointed out, these institutions serve two fundamental objectives[81]. Firstly, as key stimulators of economic wealth and growth, they contribute to the overall performance and conformance of firms, by ensuring that managers and entrepreneurs have the right business environment that leads to greater firms' operational efficiency, which can stimulate returns on investment and productivity growth on a long-term basis[82]. Secondly, by corporate conformance, they ensure that every activity of managers conforms with investors' and society's interests ,by creating a ground that encourages limits on abuse of power, funds mismanagement, significant moral hazards occasioned by wastage of corporate resources to the detriment of investors' investments who often result to agency problems[83]. Thus, to minimize the preponderance of agency problems, investors establish means to monitor managers' behavior by ensuring that hired managers' behavior conform to corporate accountability and corporate established standards to fulfill shareholder's interest.

[80] See Oman(2001) p.13
[81] Ibid
[82] Ibid
[83] Ibid

The importance of CG for development is very fundamental as it is the pre-condition for economic growth and development with a strong inter-link of property right, enforcement of contracts and presence of rule of law as antidotes to economic development[84]. As it has been argued extensively, improved CG potentially contribute to increased flow of capital and also lower the cost of domestic and foreign financial resources to firms to a significant point[85]. It also reduces the amount of wastage occasioned by misallocation of investment resources which are major constraints to sustained productivity growth and national development in developing countries[86]. Hence, improved CG is an antidote to growth and development, as performance of firms depends on the governance practices of board[87]. In addition, effective CG has indicated that it has the ability to impact upon development at a macro level by enabling corporations access to finance and as such, it induces global and local flows of capital which in no way lowers the cost of capital, leading to better corporate performance and higher corporate valuation. Hence, this creates financial stability, enhances both economic growth and development that eventually lead to a favorable treatment of all stakeholders[88]. In contrast, the absence of effective CG structure at country and firm level, including the absence of firm legal determinants for external finance to corporations can significantly constrain the flow of external capital and resources and hamper the willingness of financiers to investment[89].

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84 Property rights, enforcement of contracts, and rule of law are significant factors for economic development. For a discussion, see generally H De Soto, "The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else" (Transworld London 2001); WB, "World Development Report 2005: A Better Investment Climate for Everyone" (New York 2004), Chapter 4; R Messick, "What Governments Can Do to Facilitate the Enforcement of Contracts "(2005), Public Sector Group World Bank, electronically available at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/ContractEnforcementCairo.pdf> accessed on 10 July 2012; K Dam, "The Law-Growth Nexus: The Rule of Law and Economic Development" (Brookings Institution Press Washington DC 2006).

85 See Oman(n. 80) p.18

86 Ibid

87 See Clarke (2004); Kiel and Nicholson (2002); OECD (1998)

88 See S Claessens, Focus 1: "Corporate Governance and Development" (GCGF-World Bank Washington DC 2003), p.1.

89 There are greater emphases for finance, because it contributes to economic growth of a nation in an environment where there are good CG environments. See T Beck, R Levine

3.3 CG Issues in Developing Countries and LDCs

Having accounted significantly in this dissertation that CG is of great importance for national development, in helping to increase the flow of financial capital to firms in developing countries and equally its potential benefits of improved CG, understanding CG issues in developing economies is complex. Many developing countries specifically African states started to give attention to good governance in the onset of 1980s that appeared to have evolved the concept of CG in their domains[90]. As Rwegasira argues, the concept of CG does not appear to be the best solution for developing countries because of the number of problems faced by them such as political instability of regimes, low per capita incomes and diseases[91]. Thus, these problems require an elaborate solution before adopting concepts of CG[92]. Furthermore, a number of studies have argued that the Anglo-American model type of theoretical propositions of a strong legal system and a strong capital market are not compatible with the traditional cultures, values, corporate and legal infrastructures that exist in developing countries[93]. Thus, this fallout has resulted to a non-compliance status for developing countries in terms of best practices of CG. The vast weight of collapse of relationship-based financial

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and N Loayza, Finance and Sources of Growth (2000), 58 JFE, p.261; R Levine, Finance and Growth: Theory, Evidence and Mechanisms, in P Aghion and S Durlauf (eds.), Handbook of Economic Growth (North-Holland Elsevier Publishers Amsterdam 2004). See also T Beck, A Demirguc-Kunt and R Levine, Law and Firms' Access to Finance (2004), World Bank Policy Research Working Paper 3194, available at <http://ssrn.com/abstract=570365> accessed on 10 July 2012; A Demirguc-Kunt, Finance and Economic Development: Policy Choices for Developing Countries (2006), World Bank Policy Research Working Paper 3955, Available at <http://ssrn.com/abstract=923262> accessed 10 July 2012; and LLSV, Legal Determinants of External Finance (1997), 52 JF, p.1131.

90 See generally J Solomon and A Solomon, "Corporate Governance and Accountability", (2004). Chichester: Wiley.

91 See K Rwegasira, "Corporate Governance in Emerging Capital Markets: Whither Africa?" (2000) CGAIR, 8(3), 258-67. Available at <http://dx.doi.org/10.1111/1467-8683.00203> accessed on 20 July 2012

92 See B M Mulili and P Wong, "Corporate Governance Practices in Developing Countries: The Case for Kenya", (2011) IJBA Vol. 2, No. 1, p.19

93 These studies view that the 'patternization' of the local legal systems after the Anglo American's is one of the reasons why the local legal systems in developing countries have not yet evolved a strong CG system compatible with local values but rather suggested that the stakeholder model of CG is appropriate for developing countries. For a review, see Black et al., 2010; Ogbechie et al., 2009; Ogbuozobe, 2009

system in both developing and developed economies is a constraint explaining poor and weak CG as 'un-antidote slips' to investment finance to local corporations[94]. One special treatise that is widespread in CG literature between the developing and developed countries is models of CG in which there are questions that arise on model that would be appropriate for developing countries[95]. However, according to Paredes, one of these models is market-oriented model, which is predominately concerned with both formal and informal mechanisms such as incentive-based [executive] compensation and hostile takeovers to hold agents accountable for their corporate actions and decisions. On the other hand, mandatory corporate law as a model, according to Paredes, is concerned with protecting shareholders' rights by opting for rules that obligate the protection of shareholder property rights into a corporate law, which bores down to normative framework [legal] of CG.[96] As Paredes suggests, for developing countries, if the target-goal is geared towards protecting shareholders' interests from abuses and mismanagement of directors and managers [insiders] in a corporation, then countries in the developing world should resolve to mandatory model of corporate law instead of relying on market-oriented model, because shareholders are seem to be concerned that corporate practices of insiders are not ill-treated against them. Continuing Paredes, he pointed out that market-oriented model of CG cannot be practicable for developing countries for a number of reasons such as (1) dearth of institutions and expertise knowledge (2) difficulty of private ordering and (3) uncertainties in legal mandates[97]. In addition, absence of corporate culture is another issue for developing countries.

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[94] Oman x-rays from an economic angle the unsound CG for developing and emerging countries struggling to maintain a sound financial system as a result of weak judicial system, poor enforcement of rules and undemocratic political systems. All of these factors are hindrances to long term development. See Oman(n.80), pp. 15-20

[95] See Mulili and Wong(n. 92) p.19

[96] See Paredes(2005) p.34

[97] See Paredes (n.96) pp.36-7

3.3.1 Dearth of Institutions and Expertise Knowledge

One of the main issues in CG literature finds that developing economies lack executive institutions and trained personnel to enforce corporate laws as it relates to shareholders, management, employees, and boards of directors and the general implementation of these laws[98]. Another case for institutions in the developing economies is that financial institutions lack the effective framework rules and appropriate financial regulations including infrastructure on how to make their financial participants conform to those rules within the objective of maintaining efficiency in the financial sector[99]. Thus, the failure of these mechanisms in place does not encourage good CG for local corporations for firm performance. On the other hand, on market oriented model in developing countries, as the observations of Paredes point out, one of the reasons why market-oriented model cannot be feasible for most developing countries is that they lack both formal and informal institutions that can push for an effective market-based CG system that is characterized by an enabling corporate law to safeguard mandatory shareholder protections[100]. In other words, with the absence of advanced markets in developing countries, the mechanisms as seen in most developed countries like the United States, Canada, France and Germany for a market-based governance system cannot work out because these developed economies have reputable and strong institutions such as the ECGI, European Corporate Governance Forum (ECGF) and Canadian Coalition for Good Governance (CCGG), and to that extent, achieving best standards of CG might be seemingly slow in terms of adoption and implementation.

Focusing on Berglöf and Claessens view, as a result of weaker environments on market-oriented based approach in terms of strict laws and regulations,

[98] See IFC (2010) p.12

[99] As it has been observed, rules for sustaining an incentive-based financial system is paramount for effective supervision and regulation that can be ensured through enforcement. As Bossone and Promisel contend, these rules are capable of strengthening the financial system in developing countries and that only an efficient institution can create the environment. See Bossone and Promisel (1998) pp.2-27

[100] See Paredes (n.96) pp.36-7

governments in developing economies are faced with lower standards to enforce market regulations that is geared towards reducing market failures and transactions costs and also achieving social objectives.[101] law and regulation are necessary for the protection and prudent management of shareholders assets in any country in the LDCs and developing countries including ACs, which as Millstein points out that, an effective enforcement ensures that clear violations of law are remedied through a fiduciary duty process, and as such enforcement should cover those ambiguities and gaps that the law leaves behind, which can be covered [filled] through a judgment or a case by case basis.[102] Millstein further observers that law and regulation do not overtly foresee future contingencies [eventualities], and as such there are tendencies that managers and directors could engage in unwholesome practices that are against the interests of investors [shareholders] like mishandling the company's assets and defrauding shareholders.

The presence of highly concentrated oligopolistic local power structures is a constraint to improving CG in developing countries. These local power structures are often made up of oligopolistic coalitions with vested political interests to stir public policy in their favor[103]. Furthermore, judicial institutions like the courts in the developing economies lack the will to enforce laws and contract as a result of their being under-financed, unmotivated, or corrupt which do not provide them hindsight into the law applicable to 'refix' a failed CG system[104]. Hence, the presence of public institutions cannot be neglected in speeding up the place of

[101] Cf. E Berglöf, and S Claessens (n.15) p. 53
[102] Ibid., p. 3
[103] Oman describes the oligopolistic coalitions as 'distribution cartels' because of the enormous powers they command as a result of their role in country wealth [market share] and significant investment in both corporate-controlled and government resources which is possible to amount to strategic rivalry among the distribution cartels. As it has been argued, the actions of distribution cartels are more or less destructive from any economy-wide spectra whose behaviours are capable of hindering healthy inter-firm price competition and reducing aggregate country wealth but also at the same time help in resolving certain clear 'paradoxes' of the development process involving large investments undertaken by corporations in highly capital-intensive production facilities. See Oman (n.80) pp.20-1
[104] See O Fremond and M Capaul (2002) p.27

good CG as they are antidotes to economic development as presented by Rodik[105].

3.3.2 Difficulty of Private Ordering

Although private ordering is not a CG legal measure, it is important that it is legally enforced. As noted by Berglöf and Claessens, private ordering has a role in influencing the overall effectiveness of CG systems because it dwells on mechanisms to enforce contracts, which are critical to the functioning of any economy [market] and which are often enforced outside the judicial system process.[106] There is difficulty of having private ordering in developing economies. As Parades points out, for developing economies, private ordering is not easy because in effect one cannot turn an economy 'loose' and 'instruct' the parties[companies] to organize their affairs in such a way that they deem it fit albeit it is provided by the formal corporate law on general governance framework. In contrast, for developed countries like the United States, Delaware, private ordering is already possible[107]. Thus, as Paredes concludes, most successful private ordering in developed economies overtly depends on a variety of important preconditions, which are not often the case for most developing economies[108]. These conditions are provided in byelaws that make it easy for shareholders in exercising their corporate proxy access. In some ways, we can have private ordering enforced in corporate law with implications, however enforcement of private ordering for corporations in developing countries and LDCs through greater enforcement could result expediently create a better way for shareholders to maintain a right decision process of the corporation.

[105] See D Rodik, “Institutions for High-Quality Growth: What They Are and How to Acquire Them” (2000), 35 Studies in Comparative International Development, p.59

[106]These mechanisms range from unilateral, bilateral and multilateral arrangements, for details, see Cf. E Berglöf and S Claessens (n.15) pp. 22-58

[107] Rose (2010)

[108] Paredes (n.96)

3.3.3 Legal Mandates Uncertainties

All corporate institutions depend on public law, and by public law, it deals with legal relationships of insiders and outsiders in specific forms such as agency and contract, which are enforceable through a legal mandate[109]. Legal mandates are vested with the judicial apparatus of the state and how those mandates are carried out depends on the stability of the state towards ensuring an effective CG system. As Paredes accounts, there is much skepticism for the market model of CG to be practicable for developing countries because of the relatively few legal mandates to work it out, but rather the future has to matter if this could be feasible[110]. As a result of social, political and economic instability that predominant in most developing economies, the future prospects of those developing countries are likely to be 'heavily discounted' and 'worth less' than the "immediate benefits of shirking, looting, self-dealing, and other disloyal behavior". Paredes suggests that, the long-term payoff for insiders engaged in cooperating and refraining from exploiting shareholders must surpass the short-term payoff insiders receive when they act discretionally especially when their reputation for cooperation and honesty is essential in a series of transactions.

By and large, the presence of strong legal institutions in developing countries are necessary measures to create the level and environment for instituting a sound CG especially in the financial sector where these institutions are required to play potential roles in channeling investment finance to firms from investors as suppliers of investment funds. Thus, as it pointed out, stock markets are potential source of corporate funds for firms in developing countries because funds can be raised on equity issues sold at stock markets, but not necessarily a fundamental source of financing but it bolsters CG, stimulates the emergence of new industrial

[109] For a critique of private laws on corporations and legal relationships concepts, see Smith, K and Keenan, D (1975) English Law 5th edition (London: Pitman Publishing Limited) p. 115

[110] Paredes (n.96)

firms and create new production capabilities as in the case of the US's stock market New York Stock Exchange (NYSE) in the 18th century[111].

3.3.4 Absence of Corporate Culture

Company culture is a key component of the CG process for any corporation. It is the way companies carry out their corporate goals and objectives, and as such it is an embodiment of mindset, attitudes, experiences, beliefs, and shared values of a company. As Hladio observes, company owners and business leaders often believe that their company's stated vision, mission, and core values are synonymous with their company's culture[112]. However, this is not the case for most developing countries' corporations often because of weakened corporation laws and codes, which could prevent agents from effectively working out their CSR obligations to the society. Thus, it is important that stronger CG measures are encoded into corporation laws, legally enforceable to encourage managers, contriving them towards enhancing economic and social development for the benefit of the society.

3.4 Conclusion

The issues concerning CG in developing countries are very enormous, but an enhanced legal framework adopted can positively reshape the CG practice wholly, for economic growth. To achieve, more steps need to be taken to look at ways on country to country basis on how best to improve their CG aspirations.

[111] See Oman(n.80) pp. 22-4

[112] Hladio further mention some steps to improve company culture by identifying the present company's culture, providing an employee feedback loop and leadership, addressing conflicts quickly, and defining ownership of company culture. For a detailed discussion of these steps at improving company culture, see M Hladio, "Tips for Developing Corporate Culture and Preventing Workplace Clashes", (2011) electronically available at <http://www.howtolearn.com/2011/04/tips-for-developing-corporate-culture-and-preventing-workplace-clashes> accessed 11 August 2012

CHAPTER 4: STATEMENT OF THE PROBLEMS

4.1 Introduction

Having examined the CG issues in developing counties, this chapter discusses the statement of the problems of this dissertation, which highlights three specific areas. These include:

4.2 What are the challenges facing LDCs and corporations to good CG

It can be established that there are a number of challenges facing LDCs and corporations in the developing countries that have been identified. The issues of finance and external investments are very important factors affecting firms in developing countries. Finance and external investments as a form of investment flows are pre-conditions to be met to accelerate country development and economic growth. Poor regulatory and legal environments cannot support firms and minority protection[113]. Hence, for corporations in the LDCs and developing countries alike, a good CG measure should encourage external finance to firms regardless of the fact that legal environments where corporations operate tend to be complex as a result of the conflicting nature of local laws and regulations[114], which to some extent are not in cognizance with international standards. Therefore, corporations cannot emerge if there is absence of legal framework conditions for economic development to support firms to perform their CSR obligations.

[113] There are evidences supporting credits to corporations in developing countries and also evidences supporting weak regulatory legal systems as challenges to firms for the developing countries explaining why firms remain inactive. For a reference, see S M Cooper, “Corporate Governance in Developing Countries: Shortcomings, Challenges & Impact on Credit", (2007) Modern Law for Global Commerce. A paper delivered at the fortieth annual session of UNCITRAL in Vienna, on 9-12 July 2007; see also ICAP (n.49) p.18

[114] Regulations in many developing countries are a key challenge as a result of conflicting regulations which make it difficult for enforcement and as such, a lot of developing countries consider CG less important because of shortage of firms with widely traded shares. See C Oman and D Blume, “Corporate Governance: A Development Challenge”, (2005). Policy Insights No. 3, OECD Development Centre. pp.1 and 3

4.3 What Are the Measures, both at national and international levels, to Put in Place for Enhancing CG for Development?

Good CG measures are often associated with improved legal and regulatory frameworks which are the basis for exchanging CG at country level including firm level. Some developing countries and LDCs appear to have in place legal and regulatory framework but require some bolstering steps like the case of Zambia. On the other hand, weak CG system in developing countries is often associated with lack of public governance, absence of rule of law occasioned by political instability. While there are international and country CG measures for development, enforcement and implementation appear to be weak as in the case of the Philippines.

4.4 Are There Any Successful CG Mechanisms for Any LDC?

Although CG literature dwelling on CG development in LDCs and developing countries suggest that countries such as Zambia and the Philippines have introduced various CG measures in form of best codes of practice, their success depends on enforcement and implementation. Therefore, a CG mechanism that encourages all stakeholders' commitment to company's objective can help to enhance its CSR to the state, as long as there is a better CG system and rules requiring more socially responsible behavior of corporations.

4.5 Conclusion

Successful CG mechanisms depend on good legal frameworks which is the bedrock for entrenching good CG measures in any country. Therefore, developing countries should incorporate measures that allow for good CG practice for corporations. By so doing, it will create room for better external finance that can help for economic growth of firms.

CHAPTER 5: INTERNATIONAL MEASURES OF CG FOR DEVELOPING COUNTRIES AND LDCS

Having argued extensively that corruption and poor local governance are obstacles to economic development in developing countries[115], the thrusts of good CG cannot be accentuated in an environment riddled with corrupt or unethical practices which cannot encourage the institutions of CG for local corporations. Hence, the need to pursue measures both at domestic and international levels for CG in developing and LDCs economies cannot be overemphasized. For most LDCs and developing countries in Africa, the ECA has articulated some measures of CG development which form the basis for promoting sound macroeconomic plans including strengthening accounting and auditing systems as a key factor for economic policy objective. These measures represent the codes and standards for accelerating economic development and CG to bolster public and private corporations in maintaining financial flows. These measures include:

> "Code of Good Practices on Transparency in Monetary and Financial Policies;
>
> • Code of Good Practices on Fiscal Transparency;
>
> • Best Practices for Budget Transparency;
>
> • Guidelines for Public Debt Management;
>
> • Principles of Corporate Governance;
>
> • International Accounting Standards;
>
> • International Standards on Auditing; and the
>
> • Core Principles for Effective Banking Supervision."[116]

It is important to point out these codes and standards for CG in Africa cannot make much impact due to the conflicting regulations that exist in African

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[115] See generally C P Oman and C Arndt, "Measuring Governance", (2010). Policy Brief No. 39, OECD Development Centre

[116] See ECA, "Codes and Standards for Good Economic and Corporate Governance in Africa: Summary of Key Issues and Declaration of Principles", (2002) Economic Commission for Africa pp.8-10

regulatory bodies and the continued spate of corruption, which will make it difficult to enforce these measures of CG codes. By and large, however, pursing these measures as a target for policy tools at country level is an effective way for developing countries to drive their 'lagging economies' into prosperous CG standards for better standards of living of people since the WB has undertaken measures in form of governance and anticorruption (GAC) strategy plans to address concerns of corruption in developing countries[117]. While it appears there are no broad specific principles of CG for LDCs and developing countries, the OCED principles of CG has continued to make impacts and recognition by corporations around the world and indeed corporations in developing countries[118]. Furthermore, the WB, WCFCG[119], Center for International Private Enterprise (CIPE)[120] and GCGF appear to be supporting initiatives to improve CG practices in developing countries and LDCs through sensitizations, workshops and conferences including supporting local firms with good measures to improve quality of their CG practices. As it has been observed, there are some strategies to be considered before initiating CG measures, these include:

- "Is the government interested in reform?

[117] See generally WB/IFC/MIGA, "World Bank Country-Level Engagement on Governance and Anticorruption: An Evaluation of the 2007 Strategy and Implementation Plan", (2007) World Bank

[118] For a view of the OECD principles and their connotations, see OECD (n.12). The ICAP has contended that the OECD principles of CG do not apply to all corporations wholly to address CG issues. See ICAP, (n.56) p.11. The ICAP was established under The Chartered Accountants Ordinance of 1961 to regulate the fields of accounting and auditing professions in Pakistan for standard setting, quality control and investigation. For a review, see "About ICAP", electronically available at <http://www.icap.org.pk/web/links/0/abouticap.php> accessed on 20 July 2012

[119] The World Council for Corporate Governance (WCFCG) was formed in 2001 in New Delhi as an independent, not for profit international network aimed at galvanizing good governance practices worldwide by improving quality of CG in national economies. For an important about WCFCG, see "About us", electronically available at" <http://www.wcfcg.net/about.htm> accessed on 20 July 2012

[120] Since 1983, the Center for International Private Enterprise (CIPE) has been supporting local efforts worldwide aimed at promoting corporate governance by strengthening democracy through private enterprise and market-oriented reform. See "About us" electronically available at <http://www.cipe.org/about/overview-history> accessed on 20 July 2012

- Is the government aware of the issues?
- Are there independent centers of power (outside the government)?
- Are there existing levers for reform, such as a stock market, banks' published risk assessments, and legal code and so on?
- What is the level of public awareness?"[121]

If governments of LDCs and developing countries are not interested in reform and not consequently aware of impending issues, it would be very daunting to institute CG measures and have them succeed where there is an absence of independent institutions of power. Therefore, the presence of a strong institution, independently run, suggests that CG measures can go far to stimulate economic development and growth of that country. However, instituting any CG measures for any developing countries and LDCs, political institutions, corporations and policy makers must take into cognizance the place of customs, norms, legal and regulatory 'interactive factors' in order to reach a better CG measures that conform to the realms of these factors.

Since legal orientations of CG for corporations include binding contracts, rules and criminal procedures, the conceptualization of corporation is a legal relationship between the shareholders and the managers, and this legal relationship should be enforced by state laws, corporations' charters and bylaws to strengthen the obligations of the agent in a contract. Therefore, the law should seek to clarify wholly the nuances regarding:

- Property rights, powers, and privileges of ownership, including the right to vote; and
- Firm valuation including firm performance in both concentrated ownership and dispersed ownership

[121] See ICAP (n.56) p.29

However, it does not appear that developing countries and LDCs have these measures in place and as such, weakened state infrastructures like the judiciary explains the slow preparedness why shareholders find it complex and difficult to enforce legal actions against erring agent.

CHAPTER 6: RESULTS AND DISCUSSION

Having espoused critically CG and development including CG issues in the LDCs and developing countries, it is important to identify clear results that have culminated so far in the discourse.

6.1. Paucity of Regulatory Institutions for CG

Regulatory institutions whose objectives are to foster better regulatory measures to enhance sound CG do not appear to be a viable 'obvious scene' for developing economies and LDCs especially poorest developing countries where there is a huge constraint to investment and external finance due to poorly equipped local structures and absence of regulatory institutions for CG. Efficient regulatory institutions for capital and stock markets, and institutions encouraging both privately and publicly held corporations to increase their mechanisms for transparency and disclosure of information including shareholder returns can help to build strong measures that can lead to better CG in a country.

6.2 Absence of Rule of Law and Minority Protection

Certainly, the absence of rule of law and low minority protection for shareholders is one of the reasons why CG is not effective in the LDCs and developing countries alike. An established rule of law mechanism is capable of ensuring that firms strictly follow laid down rules and regulations for CG. These laid out rules can be made possible by a stable political regime with democratic norms and values that allow corporates to access finance externally including investment for national growth.

6.3 Lack of Sound Regulatory Framework and Public Governance

The absence of sound regulatory frameworks and a lack of public governance is another reason why developing countries and LDCs must adopt sound regulatory framework and sound public governance and have it incorporated into their local laws. As it has been noted succinctly, lack of sound regulatory framework and lack of public governance are major challenges facing developing African countries. However, some countries in Africa such as Zimbabwe, Ghana, Uganda and South Africa have already created national institutional mechanisms that promote good CG, other African countries such as Botswana, Senegal, Tunisia, Mali, Mauritania, Cameroon, Gambia, Mozambique, Mauritius, Sierra Leone and Zambia are still yet to create the appropriate mechanisms for good CG[122]. Well functional public governance can entrench measures to support anti-corruption through sound regulatory frameworks for public corporations in the LDCs and developing countries.

[122] See ECA(n.116) p.6

CHAPTER 7: SUMMARY AND CONCLUSIONS

While we cannot generalize the CG findings in some LDCs and developing countries with other LDCs and developing countries due to the different corporate values, customs and legal formations, it is certainly clear that a sound CG can be effectuated as long as there is an existence of good governance, better legal and regulatory environments which are the basis on which the measures of good CG, by both international bodies and governments of LDCs and developing economies, can strive to increase access to finance for SMEs and other local institutions created to support economic growth and economic development[123]. Since legal frameworks are necessary for firm performance[124] especially its CSR obligations to the society, there must be proper functioning of business processes that are linked with transparency and disclosure through appropriate institutional, legal and administrative framework conditions.

Since corporations can contribute economically to a country's economic growth, it is advisable that LDCs and developing economies push for better integration with the stakeholder-agency theory because it puts less emphasis on the rights of shareholders and instead gives recognition to several groups, which have an arguably legitimate claim on the firm. To that extent, it compels every participant to augment individual efforts aimed at effectively contributing to corporation's objectives for increased firm performance and valuation. In 2006, the WB pointed out that developing countries are where globalization, economic growth, investment, and business activity were likely to experience the most dramatic

[123] A study has contended that country environment such as legal, political, historical and cultural factors interlinks can help determine ownership structures, stakeholder priorities and including fundamental attitudes towards the role of the company in the economy. See generally P Cornelius, "Corporate Practices and National Governance Systems: What do Country Rankings Tell Us?",(2005) GLJ Vol 06 No. 03, pp. 584-604

[124] Schreyer provides an account for legal frameworks. For a full discussion, see P Schreyer, “High-Growth Firms and Employment", (2000) STI Working Papers 2000/3, OECD, Paris.

social and environmental impacts (both positive and negative)[125], these impacts are one of the reasons investors' confidence must be strengthened hence attaining a strong economic growth is obviously connected with good CG measures for sustainable development. In this case, a strong holistic reform both economic and social reforms would address such developing countries like Bangladesh wholly[126].

It is very important that LDCs and developing countries establish appropriate institutions and capacity building through supports from GCGF and World Bank, including local and international CSOs whose roles are crucial and important in ensuring that governments and corporate follow ethical governance practices for CG improvement in their different domains, putting into consideration local customs and values. This kind of step is necessary for strengthening economic development for their citizens and local infrastructures. Importantly, policy makers in developing countries and LDCs must work out appropriate frameworks to enhance strong environmental standards that would create conducive environments for business sustainability that would attract the capital flows[127]. This is because economies prosper when it can maintain a high environmental standard for investment flows. And to that extent, it supports better CG that will enhance the interests and fulfil the aspirations of all stakeholders of a corporation towards wealth creation.

We cannot generalize the CG initiatives and measures based on that evidences from Zambia and the Philippines is the same as pointed out in the dissertation, it is very paramount that policy makers in developing countries and LDCs strengthen their country's legal and regulatory frameworks by best codes that fit into their values and corporate systems. Enforcement and implementation must be taken

[125] WB, World Development Report 2007: Development and the Next Generation. Washington: World Bank.

[126] See footnote 32

[127] Waller-Hunter and Jones have argued strong environmental standards encourage sustainable development for development countries. For a review, see generally J Waller-Hunter T Jones, "Globalization and Sustainable Development", (2002) IGES, Vol 3, No 1, pp.53-62

seriously with appropriate funding to raise, enforce and implement codes of best practices and standards especially disclosure and transparency codes which are the thrusts for good CG measures to withstand any external shocks to any developing economy. Indeed, this is why corporations, policy makers and governments of LDCs and developing countries must pursue sustainable measures of CG to bring about the change needed for economic transformations for its citizenry. Corporations in developing countries and LDCs must incorporate corporate behaviour into their CG experiment to enhance better performance to stakeholders and shareholders including the society. This is why Estanislao has succinctly presented his thought that:

> "Corporate governance is about performance. Corporations must deliver good results not only to the shareholders, but also to all of the stakeholders, the community, the society and the economy as a whole"[128]

Therefore, the ability of corporations to deliver good results to all stakeholders, society and economy depends on the economic growth determinants and it is the duty of the state [government] to strengthen these determinants in order to create the environment for corporations to deliver their CSR obligations. On the other hand, since corporations are viewed as legal persons, legal perspective of CG should define the extent to which legal measures can be enforced against erring agents—found to have breached the contract relationship between shareholders and agents. Consequently, it can be established that CG problems in developing countries and the LDCs are the key factors militating against the growth and the functional roles expected of corporations to the economy including the spring up of new corporations for economic development.

[128] Cited at Development Institute's website. Jesus Estanislao is the President of the Institute of Corporate Directors, Philippines. See "Importance of Corporate Governance" at < http://developmentinstitute.org/topics/corpgovernance/> accessed on 11 August 2012

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APPENDIX 1

Estimation of the number of years needed to meet the GNI graduation threshold for LDCs, by country

Table 3. Estimation of the number of years needed to meet the GNI graduation threshold for LDCs, by country			
	GNI per capita[a] 2010	Average annual growth rate[b] 2010–2016	Number of years[c]
Countries that have reached the income threshold			
Equatorial Guinea	14,680	-0.2	Achieved
Angola	3,960	3.9	Achieved
Samoa	2,930	2.0	Achieved
Vanuatu	2,760	1.7	Achieved
Tuvalu	2,749	0.9	Achieved
Timor-Leste	2,220	6.2	Achieved
Kiribati	2,010	0.9	Achieved
Bhutan	1,920	7.9	Achieved
Djibouti	1,280	3.0	Achieved
Sudan	1,270	0.5	Achieved
Sao Tome and Principe	1,200	7.4	Achieved
Countries that should reach the income threshold ($1,086) by 2020[d]			
Lesotho	1,080	3.1	0.2
Zambia	1,070	4.8	0.3
Mauritania	1,060	3.3	0.7
Lao People's Dem. Rep.	1,000	5.7	1.4
Senegal	1,050	2.5	1.4
Solomon Islands	1,030	3.3	1.6
Cambodia	760	6.1	5.9
Countries that should reach the income threshold in the long term[d]			
Bangladesh	640	5.2	10.2
Haiti	650	4.9	10.4
Sierra Leone	340	9.8	11.8
United Rep. of Tanzania	530	4.9	14.6
Rwanda	540	4.6	15.2
Mozambique	440	5.6	16.1
Comoros	820	1.6	17.9
Burkina Faso	550	3.6	18.8
Benin	750	1.8	20.1
Niger	360	4.2	26.4
Uganda	490	3.0	26.9
Ethiopia	380	3.9	27.0
Mali	600	2.2	27.0
Guinea-Bissau	540	2.4	28.5
Nepal	490	2.8	28.8
Myanmar	380	3.5	29.8
Central African Republic	460	2.8	31.1
Liberia	190	4.4	39.2
Guinea	380	2.5	41.8
Gambia	440	2.0	45.1
Madagascar	440	2.0	45.3
Togo	440	1.9	46.5
Chad	600	1.3	46.8
Dem. Rep. of the Congo	180	3.4	52.9
Burundi	160	2.8	67.6
Eritrea	340	1.1	102.4
Malawi	330	1.1	112.1
Yemen	1060	-0.6	..
Afghanistan[e]	457	..	..
Somalia[e]	211	..	..

Source: UNCTAD, "The Least Developed Countries Report 2011: The Potential Role of South-South Cooperation for Inclusive and Sustainable Development", (2011) UNCTAD, p. 8