Remuneration scheme for directors

This ruling concerned the nullity of a resolution to amend the bylaws of a Spanish corporation with reference to directors' remuneration within the framework of litigation between a textile company and two shareholders who challenged a corporate resolution, on the grounds that the article being amended does not establish a compensation system for directors in breach of Art. 217 of the Corporate Enterprises Law.

Articles in question

Article 217.2 of the Corporate Enterprises Law states that "the compensation system established will determine the item(s) of the remuneration to be received by directors in their capacity as such (...)". Article 28 of the corporate bylaws, to which this ruling refers, says that "[t]he board shall be remunerated, said remuneration comprising a fixed amount of money for services rendered, to be determined each year by the General Meeting of shareholders. "

First and second instance

The hearings at first and second instance upheld the application, deeming that Art. 28 of the bylaws violated Article 217 of the Corporate Enterprises Law, as it did not stipulate a specific compensation system and that the reference to the annual determination by the General Meeting was "vague" and "inaccurate".

Civil Chamber of the Supreme Court

The Civil Chamber of the Supreme Court first examined the purpose of the obligation to establish a system of remuneration provided in the Art. 217 of the law. It established that the main purpose is to encourage corporations to give as much information as possible to shareholders in order to help them monitor the actions of directors and prevent those directors' economic interests differing from the interests of the corporation.

It rules that the Corporate Enterprises Law and the latest doctrinal arguments provide ample freedom to establish the remuneration system in the bylaws. It therefore states that although the precept in the bylaws could have been more specific, there is no doubt that a system of compensation is established, as it states that it comprises "a fixed amount of money", and also contains specific procedures for establishing such amount "by a General Meeting resolution each year". It thus allows the appeal and declares the rulings at first and second instance to be null and void.

Modifications of the remuneration system

Law 3/2014, 3rd December, amending the Corporate Enterprises Law for the improvement of corporate governance introduced important developments regarding directors' remuneration.

The Law provides that the remuneration system must be fair and in line with the economic situation of companies as well as the duties assigned to the directors. Such remuneration should strive to promote corporate profitability and sustainability in the long term.

It also states that the corporate bylaws will set forth a system remunerating directors for their management and decision-making duties. The General Meeting is competent to establish the

maximum amount of their annual remuneration, while the Board of Directors has powers to establish the remuneration of each director, thus ensuring that the General Meeting has the final say over such remuneration.

Moreover, the Law obliges listed companies to seek approval from the General Meeting for a remuneration policy that specifies the maximum amount of remuneration. This policy must be adopted and ratified every three years.

Annual corporate governance report for bank foundations

Banking foundations are a new figure in the Spanish legal system, created by Law 26/2013, 27th December, on savings banks and bank foundations. This provision required certain savings banks to assign their financial business to a Bank and manage their community service activities through bank foundations.

The initiative gives a comprehensive description of the content to be included in the annual corporate governance report of the bank foundations. It also establishes that the governing body of the savings banks, the Board of Trustees, will hold maximum responsibility for the preparation of the annual report and for its correct dissemination.

Structure of the annual corporate governance report

The corporate governance report must contain:

Information on the structure, composition and functioning of the governing bodies
Information about appointments policy, with special attention to remuneration policy, providing a comprehensive breakdown of the remuneration of senior staff: fixed and variable remuneration; per diem payments; compensation in kind; bonuses or premiums, and the criteria for their allocation; accrued benefits of services or activities other than those inherent to the position, etc.
Information on the Foundation's policy regarding investment in the savings bank, thus guaranteeing independence of powers between the two entities.
Information about related-party transactions and policy for managing conflicts of interest, with special attention to internal procedures to detect and resolve potential conflicts of interest that might affect the Foundation.
Information regarding the core activities of the Banking Foundation.

The bill includes an annex with the format of the report and instructions and definitions to facilitate and standardize its production.

The order has been drafted taking into account the latest recommendations from the code of corporate governance prepared by the CNMV and the requirements introduced by Law 31/2014, 3rd December, amending the Corporate Enterprises Act for the improvement of corporate governance.

The involvement of the CNMV means that the rules and obligations regarding content and dissemination of the annual corporate governance report for banking foundations are equivalent to those of listed companies and savings banks.

Commitment to enhance relations with users

The Peruvian Association of Banks (ASBANC) is making an effort to improve and consolidate relations with users of the financial system. It has drawn up this code of good practices for relations between financial institutions and users (hereinafter “the Code”) so that its member banks can self-regulate on the principles and guidelines contributing to enhance the relationship.

Principles and commitments

The Code identifies five principles: (i) Financial information, (ii) User information, (iii) Customer care, (iv) Security; and (v) Complaint handling. It establishes a set of commitments for the members of ASBANC that wish to have more lasting relations with their users.

These include: i) having financial education policies and/or procedures, which must be periodically reviewed, ii) training employees in financial education matters, iii) providing users with information on their products and services before, during and after the consumer decides to use them, iv) publicly disclosing transparent, true information that is understandable to users, v) continuously improving their customer care mechanisms and the touchpoints through which the user contacts the banks, vi) giving users access to recommendations on how to use the products and services safely and securely, vii) having mechanisms to foster an equilibrium between the sales targets and the relationship with users.

Self-assessment questionnaire

The Code establishes that companies publish the results of their self-assessment questionnaire in September each year. Starting in 2016, members may voluntarily post these to their websites and the ASBANC website. They may also employ other mechanisms to disseminate and publish the information.

The Code makes the CEO of each ASBANC member responsible for the appointment of an officer to draw up the self-assessment questionnaire to assure that it complies with these principles.

Review of the European Directive on shareholder rights

The draft reform of Directive 2007/36/EC of the European Parliament and the Council created with the main objective of promoting shareholder involvement in the management of listed companies, large corporations and groups of large corporations, and promote their long-term commitment to the company and its strategy.

Among other changes, the text added two new chapters to the Directive: Ia, Ib, governing the

identification of shareholders, providing information and facilitating the exercise of their rights; and regulating the transparency of institutional investors, asset managers and proxy advisors.

Effective and sustainable involvement

The document argues that an effective and sustainable involvement of shareholders in corporate governance helps improve the financial and non-financial performance of corporations. It thus deems it important not only to consider the proper exercise of shareholders' rights, but also to ensure that there is a culture of transparency and dialogue with and between all stakeholders, to improve the transmission of information within organizations.

It provides certain advantages for the shareholders of the company, to encourage more long-term participation and involvement: additional voting rights, tax incentives, and dividends and loyalty; if they are shareholders for more than two years.

On the other hand, it also argues that companies should be able to request identification of shareholders and communicate directly with them, establishing a framework for shareholders to be clearly identified. Information concerning their actions must always be provided on the organisations' websites.

To boost transparency, the regulatory provision requires that companies supply information on their operation regarding profits, taxes paid on benefits and subsidies received in order to ensure confidence and facilitate the involvement of shareholders and other stakeholders in society, considering all as an essential element of corporate social responsibility.

Engagement policy

The culture of transparency is applied equally to the companies' institutional investors and asset managers, which should publish their investment strategies and develop policies of engagement, to determine how they:

– Integrate the engagement of shareholders in their investment strategy,

– Supervise the entities in which they invest,

– Maintain a dialogue with these companies and their stakeholders, and

– Exercise their voting rights.

These policies should also include measures to manage real or potential conflicts of interest in the company. They should be published and sent to customers and institutional investors each year. Should they not apply or not communicate their engagement policy, they must explain why not, offering a clear and reasoned explanation.

Remuneration policy for directors

The new directive uses compensation as a key element to ensure that the interests of the companies are in line with those of their directors. This is why it places such emphasis on ensuring that the remuneration policy be clearly identified.

In order to allow the shareholders to decide on the remuneration policy, they are entitled to vote on it at least once every three years on the basis of a clear, understandable report with a comprehensive description and breakdown of the remuneration received by each director in the last year. Companies must ensure that the policy is in line with their longer term business strategy, objectives, values and

interests, and integrate measures to avoid conflicts of interest.

Also, to ensure adequate protection of the interests of companies, shareholders or the companies' board of directors or oversight bodies should approve transactions with related parties. They must publicly disclose such transactions when they are performed, at the latest, along with a report drafted by an independent third party, assessing whether the transaction was made at arm's-length pricing and is in line with corporate interests.

Next steps

The draft was approved last June, and now Member States are in talks to reach agreement on the final document.

Recovery and resolution of credit entities and investment servicers

The publication of this law regulates recovery and resolution procedures for financial institutions and companies providing investment services (known as ESIs) established in Spain. It also regulates the legal status of the Fund for the Orderly Restructuring of the Banking Sector (FROB) and the guidelines for its activities.

Essentially European dimension

This law brings together the principles reflected in the earlier Law 9/2012, 14th November, on restructuring and resolution of credit entities, which it partially repeals, introducing various new aspects from the transposition onto the Spanish lawbook of Community regulation (Directive 2014/59/EU and 2014/49/EU). These include the following:

It extends the scope of application of the law to investment firms, except those whose share capital is less tan EUR 730,000 or whose scope of operations is limited.
It reinforces the preventative stage of resolution, requiring all entities have a *resolution and recovery plan* (and not just non-feasible entities). This plan must:
Be prepared and approved by the preventative resolution authority (Bank of Spain/European Central Bank or CNMV), following a report from the FROB and the supervisory body responsible for its oversight;
Reflect the resolution actions to be applied should the entity cease to be feasible;
Not presuppose the existence of public financial support or the injection of emergency liquidity.
It incorporates a resolution procedure other than the traditional bankruptcy proceedings. The procedure is to be overseen by the FROB, which means that rather than going through the courts, the general government sector supervises it. This is intended to help companies stay in business and to minimise the impact of their non-feasibility on the economic system and the public coffers.
It increases the scope of the bail-in mechanism to all kinds of creditors (whereas the previous law limited it to subordinated creditors), configuring new ways to recapitalise the company which the FROB may implement: (i) repayment or (ii) conversion of capital instruments and (iii) internal recapitalisation. It also offers a new regime providing maximum protection to depositors in the entities that are moving into the resolution stage.
It creates the Domestic Resolution Fund: a body without legal personality that will pay the resolution

measures, which will be administered by the FROB and financed with contributions from the private sector.
It establishes the legal framework for the FROB: it determines its composition –incorporating a member of the CNMV because of the extension of its scope to apply to investment firms; it increases the number of seats on its Governing Board, and defines the role of its president as the highest level of representation, in charge of ordinary management and direction, with an unextendable term in office of five years.

Additional and final provisions

In the *additional provisions*, the law describes the regime applicable to deposits should the credit entity enter into bankruptcy proceedings. It also includes a modification of the legal regime for the Deposit Guarantee Fund, harmonising the way it works in Spain with the way it works Europe-wide.

Its *final provisions* adapt Spanish legislation, amending earlier laws on the securities market, on bankruptcy proceedings and on corporate enterprises.

Mitigating the impact on financial stability

In all cases, article 6.8 of the law states that the recovery plan must be considered a corporate governance procedure, for the purposes of article 29 of Law 10/2014, 26th June, on planning, supervision and insolvency".

The regulations in this law constitute a mechanism to mitigate the impact caused by the resolution of an entity to the country's financial stability, thereby reinforcing market confidence.

Applicability

The law came into force last June, although the rules on internal recapitalisation will become effective as of 1st January 2016.

Disclosure of information by listed companies

Last June, the Securities and Insurance Supervisor (SVS) in Chile issued Standards 385 and 386 to improve and expand the information to be published by publicly traded companies regarding their corporate governance. They incorporate best practices in corporate social responsibility and sustainable development.

Standard 385 repeals Standard 341, published in 2012, to ensure that the companies:

Implement policies of corporate social responsibility and sustainable development: promoting diversity in the composition of their boards of directors and in the appointment of key executives of the company; and disseminating information to shareholders and other stakeholders
Improve the quality of the information contained in the companies' evaluation of their own board, involving external parties in its preparation

Disclose their management policy regarding conflicts of interest and publish the amendments to the code of conduct for the board.
Promote adoption of principles, guidelines and national and international recommendations from, eg, the Committee of Sponsoring Organizations (COSO), Control Objectives for Information and Related Technology (COBIT) and ISO 31000 and 31004.

Meanwhile, Standard 386 amends General Regulation 30, recommending that companies:

Send a scanned copy of the annual report to the SVS and fill in the electronic form relating to information on corporate social responsibility and sustainable development.
Include information in the annual report concerning:
Diversity of gender, nationality, age and length of tenure of directors, senior managers and other executives reporting directly to the board, and in the organisation as a whole.
Remuneration and gender (providing a comparative breakdown of information on salary by type of position, duties performed and level of responsibility for females relative to males)

With the publication of these standards, the SVS is creating incentives to provide investors with sufficient information to take well-informed investment decisions. However, the legislation merely recommends practices that companies can voluntarily decide to adopt, in the light of their own specific features and peculiarities.

Thus, in line with the “comply or explain” principle of codes such as the Unified Good Governance Code for listed companies (Spain, CNMV), the board of each company must disclose a clear, precise summary, on the SVS website, of how each particular practice is implemented or why it has not been applied.

Statutory exemption of legal entities from criminal liability

On 1st July, Organic Law 1/2015, 30th March, came into force, amending Organic Law 10/1995, 23rd November, on the Criminal Code. One of the main reforms it includes affects the criminal liability of legal entities, introduced in Spain under Organic Law 5/2010, 22nd June.

The most significant changes are:

It considers the adoption of an effective crime prevention scheme, prior to the crime, to be grounds for exemption from criminal liability. Article 31bis details the minimum content of such a scheme, which must:
Identify the activities in which crimes can be committed.
Establish protocols for making and implementing decisions with respect to these crimes.
Establish management models with sufficient funding to prevent these crimes.
Impose reporting obligations to the Supervisors regarding possible risks and breaches.
Establish a disciplinary system to punish breaches of these measures.
Periodically check that the system is suitable for preventing these crimes.

If the prevention scheme only partially meets these minimums or if it is set up after the crime is committed, it will be taken into account as an extenuating circumstance that may reduce the penalties.

It establishes that the scheme should be implemented and monitored by an independent chief compliance officer, legally entrusted with the duty of monitoring the effectiveness of the company's internal controls. For small companies, it includes the possibility of oversight and control activities being conducted by the board.
It increases the number of persons that can trigger the criminal liability of legal entities. Thus, in addition to the company's de facto and official legal proxies and directors, referred to in the previous legislation, it also includes all persons authorized to make decisions on behalf of the legal entity or who hold powers of organisation and control within it.
In order hold legal entities criminally liable, the law requires that they gain a direct or indirect benefit from the actions of their directors.

Although this law does not elaborate on the characteristics, structure and content of prevention model, or determine how to configure the internal supervisory and control body, it is clear that Spanish companies wishing to claim exemption from criminal liability should define their scheme according to what is known as the "effective compliance program" under United States law.

The lack of definition means a wider focus can be given to promoting the values needed to deter unethical actions rather than focussing narrowly on the standards or guidelines of the schemes. Although the reform introduces a defence against charges of criminal liability it is not compulsory so companies are free to adopt its recommendations or not.

Moreover, such schemes have an appreciable advantage as they can become drivers for spreading the uptake of positive business ethics.

Avoid Environmental Risk: a great challenge for all

A new initiative in regulation

On 28 March this year, under Resolution SBS 1928/2015, the Regulations for the Management of Social and Environmental Risk (hereinafter the "Regulation") was adopted for application to companies in the Peruvian Financial System. This is the first regulatory initiative by the Peruvian State through which joint and several liability is assigned to financial entities for environmental damage caused by the projects they finance. This regulation seeks to achieve greater environmental and social protection in Peru.

Within this regulatory framework, the minimum requirements for managing social and environmental risk are established, promoting the implementation of best practices and prudent risk-taking by institutions in the Peruvian financial system. For example, they are required to evaluate social and environmental risk prior to granting any credit or finance. The limits for admissibility of risk must be based on three categories measuring the impact of social and environmental risk: high, medium or low.

Although its regulatory nature is new, as Lorenzo de la Puente Brunke points out, this is not a new concern in international circles, since practically all the large banks worldwide have signed up to the "Ecuador Principles", based on the "Performance Standards on Environmental and Social Sustainability" of the International Finance Corporation, a member of the World Bank Group.

Application Requirements

The Regulations will be applicable when offering advisory services, financing, bridging loans and corporate credit facilities in excess of USD 10m; and services to non-retail customers where the total amount of project-related loans in the financial system account for a minimum of USD 50m and the total amount of credit to projects the company is a minimum of USD 25m.

In such cases, says Lorenzo de la Puente Brunke, financial entities must require a document to describe the background to the current situation, due diligence procedures and evaluation of potential impacts, mitigation measures, engagement and dialogue levels, and grievance settlement mechanisms.

Disclosure of information

Financial companies issue a report to the supervisor and the general public at least once a year, assessing the social and environmental risks associated with all services they provide. And every quarter, they must file a report with the supervisor on each of the clients to whom they have provided services, stating the amount of funding, its category, and the economic sector and geographic location of projects and/or primary suppliers of projects.

That regulation will come into force on 1st February 2016.

Zones of Rural, Economic, and Social Interest (ZIDRES)

The Colombian Congress is studying the possibility of creating Zones of Interest for Rural, Economic and Social Development (ZIDRES, to use their Spanish acronym). In general, ZIDRES are:

Territories that can be used for farming.
Located within Colombia.
Isolated from the larger towns.
Have specific characteristics that impose high costs on making them productive.
Have low population density and high poverty indices.
Lack minimum infrastructure for transport and sale of produce.
Are not suitable for family production units to encourage productive projects benefiting landless agrarian workers and promoting capital investment in farming businesses.

On being declared ZIDRES, the territories will be considered of public utility and general interest, and the following goals will be pursued:

Promote the social inclusion of agrarian workers as productive social agents.
Increase sustainable productivity of the land.
Promote social and economic development in the zone.
Improve the quality of the land for farming.
Incentivise conservation of the environment.
Promote access and regularisation of the agrarian workers ownership rights to the land.
Promote rural employment and food safety.
Create special lines of credit and action plans to raise bank funding for productive projects for

enterprises and for capitalisation.

This last point is of special importance, since microfinance entities have is a sales network especially targeted at potential markets in territories where there is little access to traditional banks. The challenge for such entities, then, will be to design products for entrepreneurs wishing to do business in these newly declared zones of special interest in Colombia.

Excess liquidity in publicly owned entities

The Colombian government presented a draft decree for dealing with the excess liquidity in the general government sector, to establish rules for authorising local and national government entities to invest surplus cash flow from their budgets.

In principle, the decree will offer a growth opportunity to microfinance entities that meet its requirements. Traditionally, the investment rules for public entities were highly restrictive in Colombia. However, this new type of leverage is much more attractive for microfinance entities than other traditional mechanisms such as the issuance of To-Term Deposit Certificates or the opening of retail savings accounts, given the large amounts of money flowing through the Colombian government organisation.

General specifications

It defines excess liquidity as the positive difference left over after subtracting daily cash requirements and short-term obligations. It also establishes how this must be calculated.
It lists the acceptable investments with such excesses, including savings accounts and interest-bearing accounts and CDTs (To-Term Deposit Certificates) issued by financial institutions.
It allows the investments to be made in Colombian legal tender or foreign exchange.
It lays down rules for reciprocity agreements between publicly owned entities and banks, consisting of products and services packaged by the banks for the entities to deposit their funds.
It obliges financial institutions to ensure compliance with the investment rules in the decree.
It obliges the entities covered by the decree to implement due policies and procedures to make these investments.
It lists the investments that are not allowed, such as swaps, repos, borrowing of securities, etc.

Risk rating

The institutions wishing to attract the investments of government bodies must meet the following risk ratings:

For investments of one year or less: highest rating for short term (BRC 1+), and minimum second best rating for long term (AA).
For investments of over one year:Highest rating for short and long term (BRC 1+ and AAA)

Interest rates chargeable on commercial transactions

The Colombian government presented this bill to include limits on the interest rates that can be charged on commercial transactions not carried out by financial institutions.

Thus, it aims to include various types of credit within the list of lending categories already established by Colombian legislation within Decree 1074/ 2015 “Decreto Único Reglamentario del Sector Comercio, Industria y Turismo”. These are:

Microcredit: This is the financing of a specific business unit and is allowed to charge a higher return than is authorised for ordinary retail lending.
Ordinary retail lending: This is the default type of credit, with no specific purpose, subject to the general ceiling on interest rates determined by Colombian law (1.5 times the Current Bank Interest certified by the Colombian financial supervisor, Superintendencia Financiera de Colombia).
Low-volume consumer lending: This is a recently created kind of lending, for no specific purpose and with limits regarding the amount that can be lent. A higher interest rate can be charged than on ordinary retail lending.

Pros and contras

This bill gives greater control to the Industry & Commerce supervisor over retail lenders that may be granting credit with interest rates above those permitted by law. It is intended to increase protection for consumers. However, it may be problematic to apply, since the dynamics of these types of credit are more suited to the financial sector than to the trade and services sector. Moreover, financial institutions are already bound by the additional regulation to which the trade and services sector are not subject, such as provisions against their loanbook, credit risk administration, etc.

The higher rates may be attractive for the non-banking sector, leading merchants to take higher credit risk with their customers without having lending experience or expertise, diverting their focus from their principal economic activity.

Strengthening the Mexican financial system: the Ficrea Law

The Ficrea Law, as it has become known, is an amendment of the Mexican Law on Savings and Credit, 5th June 2001. It is intended to protect the Mexican financial system from frauds such as the “Ficrea scam”. Ficrea was a financial company (SOFIPO) supported and supervised by the National Banking & Securities Commission (CNBV) of Mexico, which managed to defraud over 6,000 Mexican savers in 2014.

The main purpose of the law is to set up a more efficient and more robust system to provide unsecured credit, strengthening the role of the supervisors and offering enhanced protection to users of the Mexican financial system.

It provides for the creation of a relief fund of MDP 1.6 billion from which 80% of Ficrea’s former

depositors can recover their savings, and another fund to pay MDP 1,000 to other creditors of the entity.

The SOFINCOs, as Mexico's rural microfinance institutions are currently called, now have until 31st July 2016 to apply to the CNBV authorized for licences to constitute and operate as SOFIPOs. Since SOFINCOs and SOFIPOs offer the same services to customers for all practical purposes, and the regulations governing the two are the same, it makes sense to unify their structures in order to facilitate their supervision and control by the CNBV.

Principal changes

Direct supervision of SOFIPOs now exclusively tasked to the CNBV, without involving intermediate bodies such as the Federaciones.
The maximum deposit that can be made in these entities by individual depositors is MDP 1m, while the ceiling for corporate depositors is MDP 5m.
The law encourages stronger corporate governance measures for these financial organizations:
At least 25% of seats on corporate boards must be for independent directors.
The requirements regarding the professional honour and suitability of directors are tougher. Directors will now have to demonstrate a satisfactory credit history and extensive experience in the financial sector.
Directors, managers or employees responsible for malpractices in the accounting and reporting of these companies are now liable for tougher fines and disciplinary proceedings.

Opposition and criticism

Although this reform is intended to strengthen the Mexican financial system, some aspects have incited criticism.

Representatives of the Sociedades Financieras Comunitarias and of the Sociedades Financieras Populares [Community Financial Companies and Popular Financial Companies] argue that the reform will limit the number of productive microloans granted to those who need them most. They fear that the law ignores the financial requirements of the most disadvantaged sectors of the population.

Corporate governance

The amendment of the 2001 People's Savings & Loans Law responds to the need for rules on good corporate governance for these financial companies, whose reputation has been tarnished by the Ficrea scandal.

This reform focuses on the importance of independent directors, establishes tougher eligibility requirements for members of the board of directors and provides for more intensive supervision of their activities by the CNBV.

Current legal status

The reform has been approved by the Chamber of Deputies, but is now awaiting its passage through the Senate, as it was not approved in the last session of the upper chamber, held on 30th April 2015.

Greater access to finance for small entrepreneurs

The Fondo Ganadero de Paraguay (FG) is a State-owned financial institution for technical assistance and development. Its main purpose is to provide financial and technical help to the country's livestock farmers.

Purpose

The bill authorises FG to issue bonds in order to reinvest the proceeds in loans exclusively for financing productive activities of micro, small and medium sized enterprises in the private livestock sector.

The redemption date for the bond issue is three years. Microcredit may be granted to micro livestock enterprises that may not be for more than 25 times the prevailing minimum wage (USD 10,400); for small and medium sized enterprises, it may not be more than 2% of the minimum capital for financial institutions (USD 67,000).

Access to the capital markets

This bill gives the FG the possibility of raising low-cost funding on the capital markets at rates below those offered by banks, so that this can be reinvested by placing loans under favourable conditions for microentrepreneurs.

Money laundering prevention

The main regulations brought in under this resolution, adopted by the banking watchdog of the Republic of Panama on 26th May, supplementing Law 23 for the Prevention of Money Laundering, the Financing of Terrorism and the Financing of Proliferation of Weapons of Mass Destruction, adopted by the National Assembly of Panama on 27th April 2015, were already analysed in the third issue of *Progreso*.

The resolution includes various provisions regarding the due diligence that must be carried out on customers before granting credit; the mandatory identification of the ultimate beneficiary of the transaction; and the identification of Politically Exposed Persons (a new concept in Panamanian law). It sets forth details about how these entities' compliance departments must work, and how the chief compliance officer must liaise with the *Unidad de Análisis Financiero*. Entities must maintain appropriate confidentiality and protection for employees who perform this task. Entities are obliged to keep their KYC Policy Manuals up to date at all times. Such manuals, by ensuring financial institutions know their customers and know the final beneficiary of transactions, are vital tools in managing regulatory compliance.

It will be a challenge for regulated financial and non- financial entities to adapt to the new legal framework. However, the legal certainty brought in by having controls based on industry-wide practices and consistent legal standards can only strengthen the financial system and the country's image.

New regulatory AML scheme

The banking supervisor, SBS, published Resolution 2660/2015 on 18th May, approving the regulation for management of money-laundering risk and terrorism-funding risk. It applies to companies in the financial system and private pension-fund managers (hereinafter “the Companies”).

The resolution is intended to establish anti Money Laundering and anti Financing of Terrorism (hereinafter “AML / AFT”) criteria to boost the effectiveness and efficiency of the AML/AFT system, reflecting international standards, industry-wide best practices, as well as specific issues identified in the course of oversight.

In addition to establishing new regulatory requirements and clarifying responsibilities, the regulation also provides for an Adequacy Plan, which the Companies must prepare within ninety days from the date on which it comes into force. The Adequacy Plan must be approved at board-of-directors level, then submitted to the banking, insurance and private pension fund supervisor (“SBS”). At a minimum, it must contain a preliminary diagnosis, scheduled actions, the officials responsible for it and a timeline.

The resolution states that the Companies must implement an AML /A FT system with components including regulatory compliance and management of ML/FT risks.

The final goal of the supervisor is to develop a new regulatory AML /AFT framework. It has placed several new obligations on companies, the most important being: i) an AML / AFT rating to score customers; ii) the issuance of a report assessing the level of ML / FT risk exposure, prior to launching new products or services and before entering into new geographic areas; and iii) the issuance of a ML / FT Risk Assessment report every two years and a review of the associated methodology every four years.

It also regulates a number of obligations intended to strengthen due diligence policies regarding directors, managers and employees, who must also receive training in an AML / AFT programme approved by the Company board of directors.

This resolution came into force from 1st July 2015, repealing the regulations approved under SBS Resolution 838-2008.

Legal framework for the regulation of investment banks

Under SBS Resolution 3544/2015, the Supervisor of Banking, Insurance and Private Pension Fund Administrators (“SBS”) approved the Regulation of Investment Banks (hereinafter, the Regulation).

It seeks to focus the supervision of investment banks more on their specific line of business. Thus, it ensures oversight of issues such as their corporate purpose, requirements on how they must be constituted and their operating licences, permitted transactions, and the prudential measures that

they must report to the supervisor, as well as other matters pertaining to investment banking in the country.

Adapting the existing regulation related to the requirements highlighted in this area, the Resolution amends the Chart of Accounts for Financial Institutions, the Internal and External Audit Guidelines and the SBS Disciplinary Regulation, so that investment banks are now subject to specific standards over and above those governing banking in general.

Access to housing for low income people

This decree establishes a special voluntary scheme for the development and renting of housing, with rules ensuring legal certainty for the parties involved. It aims to encourage investment in real estate and to reduce the shortfall in the supply of rental properties in Peru, while also improving the quality of the housing.

The decree creates mechanisms to facilitate access to housing for people in the low to middle income bracket, through (i) rental, (ii) rental-purchase, and (iii) leasing of buildings intended for housing. It will thus be essential for financial institutions to adapt their lending strategy to these mechanisms, in order to boost the real estate market and the Peruvian economy.

Anti-Money Laundering: a challenge for the European Union

The fourth European directive on the prevention of the use of the financial system for money laundering and terrorist financing was enacted on 20th May this year. The first directive (Directive 91/308/EEC) was adopted in 1991.

What is new in this Directive?

The principal change in European law with this Directive is that henceforth Member States must ensure that the entities incorporated within their jurisdiction provide adequate, accurate and current information on the identity of the real owners of their shares and securities.
Member States must keep this information in an independent, central registry. They are empowered to establish its characteristics and structure.
Oversight of suspicious transactions in financial institutions and banks is toughened. The institutions must identify and monitor:
All cash payments and receipts for entrepreneurs and professionals of over €10,000.
All transactions by any one individual customer of over €1,000.

The Directive indicates that special attention should be paid to customer identification procedures, with more rigorous identification and other requirements for people who hold or have held high public

office, or are in senior positions in international organizations.

Member States have until the 26th June 2017 to incorporate the Directive into their national law.

International cooperation

Money laundering and terrorist financing are crimes that are not usually committed in one country, but take place in an international context. That is why cooperation and coordination between the different members of the European Union is essential if the implementation of these rules is to be effective.

The Directive has been drafted taking into account the recommendations of the Financial Action Task Force (FATF), a worldwide benchmark in the fight against money laundering and terrorist financing, thus ensuring that the rules in the Directive are consistent with the national legislation of each country.

Solidarity Group

The objective of this regulation is to promote access to formal finance for disadvantaged populations traditionally under-served by the financial sector and allow a better analysis of their credit risk, thereby facilitating greater access to basic financial services.

In this context, the regulation defines and regulates one of the main forms of “group lending”, known as “Solidarity Group Credit”. Such loans are granted by an entity in the financial system to a group of people who are then jointly liable for the debt obligations acquired. Thus, the group as a whole is the borrower.

The regulation stipulates that the Solidarity Group must have not less than five (5) or more than thirty (30) members, who must know each other and voluntarily form the group. Their domicile must be in a single geographical area, where they conduct their activities, so that the group can be monitored. However, it allows for two types of solidarity groups according to their ability to manage the loan themselves. Thus, there can be solidarity groups that manage their own credit obligation and others that require external management.

The prudential rules for the proper management of the Solidarity Group loans for entities that grant such funding include:

Establishment of early warning signals to flag Solidarity Groups that are having problems repaying their loans;
Periodic reports on the Solidarity Groups with high credit risk, to monitor their repayment performance and their balances and disclose how they are managing the risks to which they are exposed;
Periodic retrospective analysis of all Solidarity Group loans, determining the causes of non-payment using sampling techniques.

New second chance mechanisms

This law, passed in July, introduces rules on debt relief, providing a mechanism by which borrowers acting in good faith but with outstanding payments could have a second chance under the country's bankruptcy regulations

Extension of the mechanism to individuals

For the first time under Spanish bankruptcy law, debt relief is extended to individuals. This has entailed setting up a more flexible, more effective system to give borrowers a second chance to repay their debts, which becomes applicable after completion of bankruptcy arrangements with creditors.

The law introduces a new alternative payment exemption for retail borrowers. After completing bankruptcy proceedings, borrowers unable to pay outstanding instalments and wishing to benefit from this mechanism must commit to a five-year repayment plan. During this period, no further interest will accrue.

The law extends the possibilities of reaching amicable agreements out of court, and accords the bankruptcy mediator a more important role. The mediator must be appointed by a notary public and after analysis of relevant documents may put a stay on foreclosure proceedings.

Purpose

The main purpose of the Law is to enable individual borrowers who have had problems with their business or personal economy to undertake new initiatives without being burdened for life with a debt they are unable to meet. It establishes tools designed to help such borrowers without prejudicing the interests of creditors and without encouraging borrowers who have acted in bad faith.

Spanish law is thus responding to the demands of international bodies such as the IMF or the OECD, which have demanded better, more effective regulation to mitigate the debt overhang affecting too many Spanish households in the aftermath of the crisis.

While many Spanish citizens are still reeling from the economic recession, this law could provide a much needed boost for entrepreneurs with a feasible business plan.

Rural Microfinance Fund

The Colombian government regulated the *Fondo de Microfinanzas Rurales* (Rural Microfinance Fund, hereinafter "the *Fondo"*), created by Law 1731/2014, as follows:

Defining the purpose of the *Fondo* as promoting access to financial products for small producers and micro, small and medium-sized enterprises (MSMEs) whose business is conducted in a rural environment.
Defining rural microfinance as financial services (eg, microcredit, microinsurance, microleasing, microfactoring, microcollateral and microsavings) granted through microfinance technology to small producers and MSMEs whose business is conducted in a rural environment.
Defining microfinance technology as the special methodology for risk assessment, placement,

management, control and monitoring of transactions, and the main source of access to financial services for the user profiles the Law describes.
Appointing the Fund for Agricultural Financing (Finagro) to manage the *Fondo*. (Finagro is a public entity specialising in rediscount lines for farmers.)
Indicating that the *Fondo* will receive an initial injection of capital from the national government through the Ministry of Agriculture & Rural Development, after which it must be self-funding, placing credit and rediscounting short-term debt.
Establishing rules for agricultural solidarity funds to be capitalised when market prices of agricultural products fall significantly, using strategies such as debt purchases from non-financial entities, land buyback, etc.

Activities eligible for funding

The decree provides for financing activities to help the rural population, promoting (i) access to financial instruments, such as collateral and value chain schemes, credit mechanisms, savings, investment, insurance and risk hedging; (ii) financial education; (iii) mobile technologies.

The law represents an opportunity for growing the portfolio of microfinance institutions operating in rural areas, freeing up mechanisms to enable them to lend to rural entrepreneurs under better conditions with the money they get from the Fondo. It also represents a major opportunity for microentrepreneurs to access finance for their businesses in rural areas of the country.

Responsible regulation for innovation in microfinance

Claudio González-Vega

In faithful reflection of its original aims, this fourth number of the online publication *Progreso* preserves its focus on (i) the evolution of the legal framework of regulation and supervision, with which diverse authorities constrain the undertakings of microfinance institutions, and (ii) the evolution of the structures of corporate governance, with which these organizations define their own course of action and the incentives that motivate the participants in their efforts. Jointly, the legal framework and the structures of governance are a determining factor in the performance of these organizations and in the achievement of the objectives mandated by their mission.

In its fight against financial exclusion, with the aim of promoting the inclusive and sustainable economic and social development of disadvantaged populations, the BBVA Microfinance Foundation has adopted its own approach of a responsible supply of financial services for productive activities. The achievement of this goal requires, however, the existence of an equivalently responsible regulatory framework. In this respect, however, recent years have witnessed, in Latin America, both major advances and relevant reversions. This publication attempts to report on trends that influence the evolution of this framework, to support better-informed decisions and facilitate the debate.

A view of microfinance from a perspective of legal systems will be critical in successfully addressing the challenges emerging both from the increasing maturity, complexity, and competition in the sector and from the risks resulting from varied, fast and unpredictable changes in the environment. In turn, a correct understanding of the true nature of microfinance should guide future regulatory interventions in this sector. What today we know as microfinance has been the outcome of a series of remarkable innovations in the production and the delivery of various types of financial services to populations that had not previously had access to institutional finance.

Actually, the essence of microfinance has neither been so much the very small size of the transactions nor the fact that the clients are poor. Rather, its essence has been the development and implementation of innovations in financial technologies (for lending and for deposit mobilization) that have made it possible to prudently manage the risks associated with the target clienteles, among the poor, and to lower the costs associated with very small transactions.

In these production functions for financial services, modern information and communication tools will increasingly be key inputs, but the critical components of microlending technologies have been: (i) the collection in the field, interpretation, and use-in-decisions of personalized information (both to design services that match diverse client demands and that lead to positive impacts in their lives and to determine the ability and willingness to repay of loan applicants) and (ii) the design and enforcement of contracts (in order to secure the sustainability of client relationships and create robust incentives to repay).

A critical dimension of success has been the signal that a loan is a contract and that, as in any contractual relationship, it creates rights and responsibilities for *both* parties. This notion of microcredit as a contract emerged in sharp contrast with the earlier notion of credit as policy tool, which easily became an electoral instrument. When viewed as a public policy tool, credit was a top-down intervention (not client-centric), with the authorities either granting a favour (transferring a subsidy) or mandating a behaviour (conditioning the use of the funds). This perspective destroyed the culture of repayment, an important dimension of a country´s social capital.

If, in contrast, a microloan is viewed as a contract, then the borrower commits to its repayment as agreed and, at the same time, she acquires rights, in terms of the suitable quality of the service, the transparency in the revelation of the actual terms of the obligation, and the expectation of improved conditions in future interactions with the institution. In turn, the institution acquires the right to receive repayment as promised, in order to protect its equity, but it also incurs the obligation of delivering services appropriate to the client´s conditions and of protecting its own sustainability, in order to be available when the client may require its services in the future. This is what responsible and sustainable finance is about. The interaction of these rights and obligations, of both the client and the institution, determines the quality of the relationship.

Claudio González Vega during a meeting in Bancamia (Colombia) in 2014

The core of the new lending technologies developed by microfinance institutions has been the creation, *in situ*, of credible relationships that are mutually valuable. Indeed, these relationships constitute explicit or implicit long-term contracts, which create structures of incentives that influence the behaviour of the parties in the contract. In turn, these structures of compatible incentives encourage investment, by both parties, in the continuation and deepening of the relationships.

Indeed, the present value of these future relationships, for either one of the parties, has been the element of the lending technologies that has nurtured the astounding repayment performance of microfinance borrowers and the exponential growth of these institutions.

These relationships have been more valuable when attractive productive opportunities have been available to the borrowers (which allows them to fulfil their repayment obligations without being impoverished and to benefit from a positive impact from the relationship), when the services delivered have matched the demands and financial strategies of the client households, and when the institution has been perceived as sustainable. The value of the relationships has lowered the costs and the risks faced by the microfinance institution which, in turn, has made the expanded breadth and depth of outreach of its services possible.

Similarly, the expansion of the dimension of deposit facilities of microfinance institutions has reflected key innovations in savings mobilization, with the development of new products (such as debit cards with biometric identification) and the broadening of delivery channels, both through the expansion of the branching network and the use of branchless mechanisms, that go beyond, such as networks of correspondents and the use of cellular phones and online banking, thus allowing a more accessible service, appropriate to the client´s circumstances. This progress has been facilitated by the development of more flexible prudential norms (such as the authorization of basic accounts, with simplified procedures), better-adapted to modern technologies. These norms have attempted to optimally combine, on the one hand, concerns for the safety of the depositor´s savings and the need to cultivate the public´s trust and, on the other hand, an acknowledgement of the unique challenges of expanding deposit services towards marginal areas and populations.

Thus, the strength of contractual relationships has been at the roots of the success and has constituted the essence of the innovations that have characterized the microfinance revolution. Therefore, as the regulation of financial systems will evolve in the future and as new efforts to create legal environments appropriate for microfinance will emerge, it will be critically important that a responsible regulation makes sure that these contractual relationships continue to be protected rather than being degraded. Given increasing political pressures on the authorities, this will be a formidable responsibility.

The task faced by a responsible regulator is not easy and, after the international financial crisis, the challenge has become even more complex. At the most basic level, the prudential regulator must achieve an optimal combination of at least two objectives: (i) to ensure the stability of the financial system, by promoting the trust of the public and by constraining the opportunistic behaviour of the various actors (in order to avoid the emergence of systemic crisis) and (ii) to promote both financial deepening (namely, the contributions of the financial system to increases in productivity and of the rate of growth of the economy) as well as financial inclusion (namely, the access and greater use of high quality financial services, at a reasonable cost, by broad sectors of the population. With increasing emphasis, in addition to these objectives, the protection of the consumers of all types of financial services, and not just of depositors, has become another goal of the authorities.

The reasonable achievement of these objectives is a complex task, which must avoid several types of mistakes. First, a basic obligation of a responsible regulator is to clearly define the rules of the game and to not arbitrarily modify them. When this is not the case, regulation no longer is an effective instrument to contain systemic risk and, instead, regulatory uncertainty becomes an additional source of risk for financial intermediaries and other market participants. Second, in any case, regulation and supervision are inevitably costly for all market participants. Beyond operational costs, both for the regulator and for the regulated and its clients, there are the opportunity costs that emerge from unnecessary restrictions on entry and unjustified prohibitions on the development of new products and procedures. These types of norms represent an important damper on innovation. Third, in the worst of cases, repressive regulation introduces distortions in the nature of the transactions and the role of the market, leading to serious inefficiencies and inequities.

In conclusion, the essence of microfinance has been the innovation in the delivery of financial services of small size, to poor clienteles. Its continued progress will depend on how the authorities face the need for innovation in their own regulation and supervision technologies, for a virtuous matching of the characteristics of the sector and the intervention of the authorities to emerge. Thus, the microfinance revolution must be accompanied by a responsible regulatory revolution, in which interventions are consistent with the true nature of the microfinance sector.

Santiago A. Cantón, Director of the Human Rights Program of RFK Human Rights

Santiago Cantón

Santiago A. Canton is the Director of the Human Rights Program of RFK Human Rights and was executive secretary of the InterAmerican Commission of Human Rights and the first Special Rapporteur for Freedom of Expression in the Americas.

Mr Canton was political advisor to President Carter for democratic development programs in Latin-American countries. He graduated in law from Buenos Aires University and has a masters in International Law from the American University's Washington College of Law.

How would you describe the performance of the Latin American economies and societies over the last 25 years? How has the performance of the economy and politics impacted society and human rights in the region?

It is too easy to make the mistake of generalising when you are asked about such an enormous region with such huge differences between the different countries. I hope that this will serve as an initial disclaimer, making it clear that not everything I say can be applicable in the same way to all the countries.

However, the region has enjoyed three decades or more of governments chosen by the votes of their people. This is an extraordinary feat for a region so accustomed to coups d'état.

In just over a century, we have gone through three waves of democracy in the region. The latest one began in the eighties, and has been the most comprehensive and the longest lasting. Although it has its difficulties, it seems unlikely that the tide can be turned back now. We cannot and we should not forget what an enormous achievement this has been.

Nonetheless, despite the progress, the rule of law is far from being what one would hope. Democracy in the ballot box has not consolidated any procedures to strengthen democratic institutions. It has not prevented overly strong presidential systems with strong personality cults from overshadowing and weakening them. Only when we manage to establish such procedures will our democracies stand on a sound footing.

In terms of economics, too, these decades have been very varied. There are enormous differences, for example, if we compare the eighties, the “lost decade” (which, as an aside, I might point out was the best decade, as it was when democracy was recovered) with the first decade of this century, when the economy grew thanks to rising commodity prices.

Yet despite enormous growth in the last ten years, the great majority of Latin-American countries are still highly dependent on international commodity price cycles. Until there is greater industrialisation, this dependency will continue. The sad thing is that it not only affects the economy, but also politics, and society as a whole.

For human rights, the return to democracy, almost by definition, was like coming out into the light after the darkness of the dictators and setting off down the long road towards increased protection of human rights. Along the way, the response from the different states is impossible to generalise. For example, in judging liability for human-rights violations committed under dictatorship, countries like Argentina have made enormous progress, but others, such as El Salvador or Brazil are dragging their feet.

Important progress has also been achieved in the respect and/or protection accorded to certain vulnerable groups; for example, in the right to land for indigenous peoples or equal marriage rights. In human rights the path ahead must always be longer than the path already trod. And true enough, beyond the formal rights of women, the discrimination against women continues to be the biggest challenge we face in the region. Latin America is the worst region in the world for gender-based murders of women, with over 50000 a year. In general terms, although the fight to equality has won formal rights for indigenous and Afro peoples and LGTBs, in practice they continue to suffer discrimination.

What is your reaction to the reports of greater socioeconomic inequality and a slowdown of the economy in Latin America? What were the driving factors behind this? And what consequences might it have?

Economic inequality is a grave problem that not only costs thousands of lives each day, but is also the most serious threat to world stability. There are no words to adequately describe the fact that the 80 richest people on the planet possess the same fortune as the 3.6 billion poorest. This is unsustainable, however many cultural or even bricks-and-mortar walls are built to hide reality.

Our region is the largest contributor to such extreme inequality. Despite the progress stemming from growth during the first decade of 2000, Latin America continues to be the most unequal region in the world, along with Africa. Regional leaders, mainly politicians and business persons, should realise that if democratic structural changes to our democracy are not brought in peaceably, they could be brought in with violence. The main threat to democracy in Latin America is the poverty originating from the enormous gap between the rich and the poor.

What actions do you think the international community should take so that this greater inequality does not jeopardise fundamental rights?

It is clear that the political and economic order that arose after the Second World War needs immediate reform. The United Nations system that dates back to 1945, even with the extraordinary successes it has clocked up over these decades, is not representative of the current world order.

The mainly bipolar world of that time has been replaced by a world in which there is a large number of new actors. Not just states with major weight in the world equilibrium, but also new, non-state actors with enormous quotas of power and the capacity to create and destroy.

The current world order is not prepared to resolve the current conflicts, including those of enormous inequality. We have been reporting on this for decades, but little or nothing has changed, and as the recent Oxfam report warned, the tendency continues towards even greater inequality.

I do not think it is necessary to dig down any further into the relationship between poverty and fundamental rights. Education, health, housing, food, water, etc, are just a few of the many rights that for millions of people are simply an aspiration that will never become reality.

You have sometimes said that the international organisations have lost the spirit that inspired the Universal Declaration of Human Rights in 1948. How do you think it could be recovered to drive a common platform for defending and protecting human rights?

True. The spirit of 1948, with the Universal Declaration and the explosion of declarations, conventions and standards of all types to defend and protect human rights, no longer exists. Our region was a pioneer in the defence of human rights. The American Declaration was made prior to the Universal Declaration. But the spirit of Bogota, where the OAS was created and the American Declaration approved, does not exist any longer either.

In my university classes, I speak of the four pillars underpinning any system for protecting human rights and how necessary it is for all of them to work properly. They are: states, regulations, international institutions set up to supervise compliance with the regulations, and civil society, as the main driving force.

It is clear that nowadays many states do not have the will to uphold these rights in practice, however much they may praise the wonders of human rights. Recently, the OAS culminated a process that the member states called the Strengthening of the InterAmerican System of Human Rights. However, after more than two years of discussion, the states did not come up with one single idea to really strengthen those rights. Quite the contrary. Their only aim was to hamper what the InterAmerican Commission on Human Rights was doing, so that it could not go on performing its duties with the independence that was its hallmark in the seventies.

The spirit of 1948 will be difficult to recover, especially under current conditions worldwide, with new security threats reviving the false dichotomy between security and human rights.

It is also necessary for many current leaders in Latin America to stop politicising human rights to score their own political points. Only when we manage to unite all the political, social and economic forces under the banner of human rights will we be closer to calling out the first letter of the word “victory”.

The Fundación has developed a methodology we call Responsible Productive Finance, to offer various financial services (loans, deposits, insurance, payments) through its member entities to support productive activities and projects among the most vulnerable sectors of society, and to offer advice and training. To what degree do you think this kind of microfinance outreach contributes to promoting

human rights?

Without a doubt, offering microfinance services focused on responsible development is a very important step throughout our region, to incorporate groups of people into the production system who would otherwise be unable to enter. In RFK we also support such initiatives: Muhammad Yunus, one of the pioneers in modern microfinance, is one of the winners of our human rights prize.

It is fundamental that the support be focussed fundamentally on the most vulnerable groups in our region, who have historically suffered from structural discrimination, such as women, and above all women of indigenous and African descent.

The Fundación also actively tries to encourage the establishment of formal, transparent regulatory frameworks for the entities to work in this sector. We altruistically offer courses on corporate governance in Latin America for organisations within our group and outside it. What influence do you think the implementation of best corporate governance practices in the public and private sector has for the socioeconomic development of a country?

One of the main problems, with a direct impact on human rights, is the high level of corruption in the public and the private sectors of our countries. Having efficient control mechanism to ensure transparent management of public goods is another major challenge for us. Nowadays, several governments in Latin America are caught up in cases of serious corruption.

Do you see any progress in the public policies of the Latin-American states regarding the age-old inequality between men and women? Do you think there are still more violations against the human rights of women?

It is the principal violation of human rights we see in the region. Today an average of 15 women will be murdered in Latin America simply because they are women.

As I said before, we have the highest femicide index in the world, and also the greatest impunity. In a case in which the International Court of Human Rights found against Mexico, known as the “Campo Algodonero” case, the ruling mentioned the need to implement state-wide public policies to bring about social change.

What message was the court putting out to the region? That if we do not bring about profound changes in our society, we will be unable to stop structural discrimination and gender violence, which affect hundreds of millions of women in the region. Sadly, these changes are just not happening.

What memory do you have from each stage of your career?

Infinite memories… impossible to deal with all of them! If I had to sum them up, I would mainly say that I got to know extraordinary people who devote their lives to the search for truth and justice.

The force of thousands of relations of victims of human rights violations, especially mothers, that do not rest for a second and have absolutely no fear of anything, striving to find out the truth about what happened to their children, their loved ones. It is an indescribable force, a truly worthy cause that obliges us to rethink our priorities, values and goals in life.

Another aspect was being able to travel throughout all the countries in Latin America. I got to know our diverse cultures, histories, artistic outpourings, the challenges our peoples face, and that is

something that I carry within me forever. These things have been enormously enriching for me.

What was your most difficult professional challenge?

In general terms, sadly I have to say that it was getting any results in human rights. It is not easy. A Manichean way of using nationalism and sovereignty has resurfaced in the governments of the region, which is merely a way of dressing things up to gain electoral credits and at the same time avoid any oversight of their human-rights records. For example, Mexico has recently criticised the UN Special Rapporteur on Torture, simply for denouncing the grave situation in Mexico, and has withdrawn any future invitation. Argentina, Ecuador and Brazil, amongst others, have also taken stances that undermine the capacity to supervise human rights compliance.

On a more individual level, my main challenge was to maintain the independence of the InterAmerican Commission of Human Rights against the boundless efforts of the governments and even the General Secretariat of the OAS to influence its decisions. It was a round-the-clock job, 365 days a year. But I left with the conviction that I had managed to do it.

Given your long professional experience, you must have many a tale to tell. Would you like to share any with our readers?

Indeed. Many and of all kinds… happy, sad and moving.

Being surprised by people throwing their arms around me, people who had been unjustly imprisoned, whom we had helped achieve freedom, and whom I had never met personally before. Those embraces are unforgettable.

Being declared a Persona Non Grata in the Dominican Republic for denouncing serious electoral fraud and being abruptly escorted by military officers to the airport to expel me from the country.

All the statements made by the mothers of victims of human-rights violations before the InterAmerican Court of Human Rights, recounting the tragedies they had lived through, and seeing what enormous humility they showed as they simply requested truth and justice.

The shaming of governments defending the indefensible instead of complying with their obligations to make the region fairer and less violent. Luckily, I still get indignant that anyone can defend cases of tortures, rape, executions, disappearances and suchlike.

And finally, a lovely story, also from the Dominican Republic: I was walking around the old part of Santo Domingo with the former President, Jimmy Carter. A Uruguayan citizen (and I am sorry not to remember his name) tried to break through the security detail to give something to President Carter. When I saw that he couldn’t get through, I went up to him and, overcome by emotion, he gave me his card with his name on it and said please would I say thank-you Carter, because it was thanks to him that he was still alive. He said it was his government’s pressure on the dictatorships that enabled him to be set free.

Minutes later, when I told him the story, President Carter, who was also visibly moved, answered: “Saving human lives it exactly what we wanted to do and nobody would believe us.” I think that sums up in a nutshell what it means to work in human rights and this link between victims and activists.

What do you like to do in your free time?

Apart from being with my family, reading history, classical literature, writing, listening to music and spending time with friends, over the last few years I have also started riding a motorbike.

How would you sum up the history of human rights in the region?

Your question brings to mind an historic event, which was in a way a foretaste of things to come in human rights and Latin America.

In 1794, after the French Revolution, the Colombian hero, Antonio Nariño, obtained a copy of the French Declaration of the Rights of Man and of Citizens and decided to translate it into Spanish so that it could be known throughout all corners of the continent.

The new revolutionary ideas seeking for equality among all people were obviously not pleasing to the Colony. The copies of the translation were immediately burned and Nariño was condemned to 10 years of prison in Africa. When he got out, he managed to become Vice President of Colombia and one of the great heroes of independence from Spain.

In the fight for human rights, Latin America continues to lurch between progress and equality on the one hand and retrograde views of the world unmoved by the enormous injustice and inequality that is killing thousands of people each day.