

THE PLURAL MUNICIPAL COUNCILS IN EL SALVADOR

A Democratic Debt or an Obstacle to Governance?

Licda. Odaly Lissette Sánchez Arias

Los Concejos Municipales Plurales ¿Deuda Democrática u Obstáculo a la Gobernabilidad?

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Resumen

El artículo presenta un panorama de la conformación de los Concejos Municipales en El Salvador, los que constituyen los gobiernos locales y tienen la oportunidad de conocer de manera inmediata sus necesidades. En El Salvador, a partir de 2015, el mecanismo de elección de los Concejos Municipales será puesto a prueba al pasar de una conformación monopartidaria a una integración plural, es decir con la representación proporcional de los partidos que compitieron por la alcaldía. Sin embargo, a nivel político, la introducción de esta reforma abre el espacio para plantearse algunos posibles escenarios; por una parte, puede en efecto propiciar una mayor participación ciudadana a través de la representación de los partidos políticos en contienda, pero a su vez, podría acarrear mayores problemas en cuanto a la gobernabilidad, pues resulta más difícil tomar decisiones entre más intereses se encuentren representados. Esta disyuntiva sin embargo, no justifica el hecho de no haber implementado los Concejos Municipales Plurales con anterioridad, pues en toda la región latinoamericana se han registrado experiencias locales bajo este formato, pero en El Salvador, lo que una medida como ésta significa es que, los partidos políticos deberán comenzar a trabajar más bajo la figura de consensos y menos bajo la figura de oposición así como a tomar decisiones en base a intereses colectivos generales y menos intereses particulares. Ello se traducirá en un mayor fortalecimiento del sistema democrático salvadoreño y un manejo más transparente y eficiente del poder público.

PALABRAS CLAVE: CONCEJO MUNICIPAL – DEMOCRACIA REPRESENTATIVA – GOBERNABILIDAD – MUNICIPALISMO – PARTICIPACIÓN CIUDADANA – PLURALISMO POLÍTICO – REPRESENTACIÓN PROPORCIONAL – SISTEMA ELECTORAL – TRANSPARENCIA.

The Plural Municipal Councils in El Salvador, A Democratic Debt or an Obstacle to Governance?

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Abstract

The article presents an overview of the formation of the Municipal Councils in El Salvador, which are local governments and have the opportunity to meet their needs immediately. In El Salvador, from 2015, the election mechanism of the Municipal Councils will be tested when moving from one political system forming to plural integration, which is the proportional representation of parties competing for city hall. However, at the political level, the introduction of this reform opens the space for considering some possible scenarios; on the one hand, it may indeed promote greater citizen participation through the representation of political parties in contention, but in turn, it could lead to major problems in terms of governance, since it could be more difficult to make decisions when more political interests are at stake. However, this dilemma does not justify the failure of Plural Municipal Councils implemented before, considering that many countries in the Latin American region have experimented with these mechanisms. For El Salvador, Plural Municipal Councils may imply that political parties need to start working through consensus, rather than opposition; and they may want to consider collective interest, rather than particular motivations. This will lead to a further strengthening of the Salvadoran democratic system and a transparent and efficient management of public power.

KEYWORDS: MUNICIPAL COUNCIL – REPRESENTATIVE DEMOCRACY – GOVERNANCE – MUNICIPALISM – CITIZEN PARTICIPATION – POLITICAL PLURALISM – PROPORTIONAL REPRESENTATION – ELECTORAL SYSTEM – TRANSPARENCY.

The Plural Municipal Councils in El Salvador

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“Pluralism is the basis on which democracy is built and means recognition of the other, it is the ability to accept diversities and discrepancies as a condition for the existence of a free society”.²

Introduction

The figure of the plural municipal councils in the national legal system emerged in March 2013 after the 1992 reform of the Electoral Code. It was added to the new Electoral Code of July 2013. This figure was expected to be incorporated in the elections of mayors and municipal councils in 2015. In the academic sphere, different scenarios were proposed on the effectiveness of its implementation, from possible conflicts of governance to transparency and participation in the management of municipal affairs. From this political-electoral juncture, this article aims to presents a historical approach to the emergence of municipal councils, an analysis of the countries that apply municipal councils in their regulations, the incorporation of these regulations in the Salvadoran legislation and the possible challenges in its implementation.

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The doctrine presents municipal governments³ as the result of representative democracy,⁴ since through suffrage, the population seeks to choose the people with the greatest suitability for the achievement of their social interests. The composition of the Municipal Councils regains importance by ensuring harmonious and peaceful coexistence for each of the inhabitants of the municipality.

According to Reynoso Soto, it must be understood that *“The municipality is composed of a population sharing cultural and historical identities, settled in a given territory that is administered by authorities constituted in a Municipality elected by universal and direct suffrage or by the modalities determined by law, for their progress and development. Its legal personality is manifested in its political, administrative, financial and regulatory capacity”*.⁵

The municipal governments in reality establish a better approach to the population that they administrate, unlike the central government, which cannot opt for a closer proximity due to factors of distance and feasibility.

The population of the municipality is composed of sectors with opposing interests, some of them, may not be the majority and therefore they remain without representation in municipal decisions. In this sense, the composition of municipal councils with multi-party participation is reflected as an option for the effective representation of the population general interests in a municipality.

3 In El Salvador, the Municipal Code in the article 2 section 1 points out: *“The Municipality constitutes the primary Administrative Political Unit within the State organization. It was established in a given territory which is its own, organized under a legal system that guarantees popular participation in the formation and management of local society with autonomy to give itself its own government. This government is an instrumental part of the Municipality which is responsible for the direction and management of the local common good, in coordination with national policies and actions aimed at the general common good by enjoying sufficient power, authority and autonomy to fulfill those functions”*.

4 *“Therefore representativeness entails that the interests of the representative are perfectly suited to those of its representatives, where the former exercise the power granted in accordance with the interests of the latter”*. Cfr. National Foundation for Development (FUNDE), *“Plural Municipal Councils and Democratic Governance for El Salvador: A Proposal for Electoral Reform”*, San Salvador, 2009, p. 17.

5 REYNOSO SOTO, R. M. *“Basic Manual for Municipal Administration”*, Fourth Edition, Toluca, México, October 2003: Institute of Public Administration of the State of México, A.C, p. 2.

“A system is characterized as democratic if the people who participate in the exercise of power is the most accurate reflection possible of the people as such”.⁶ Based on this Presno Linera’s thought, the essence of a democratic system lies in the capacity of people influencing in the transcendental decisions of the management of public power.

In El Salvador the initiatives for effective representation within municipal councils were presented with proposals from professional and political sectors seeking to reform the Salvadoran Electoral Code.⁷ This was due to the fact that its consideration did not agree with the pluralistic political system established by the Salvadorian Constitution in Article 85.

On the basis of these proposals, various political circumstances held back for years the attempt to achieve proportional representation in the formation of the municipal councils because of the fear of losing total power over the administration of the municipality affairs. At that time, El Salvador faced the Central American region as the only country that did not allow the representation of the entire population of a municipality in the integration of municipal councils.

This situation was affecting the consolidation of representative democracy at the local level. It was not until 2013 that a legislative decree was approved, allowing a reform to the 1992 Electoral Code, which promoted its incorporation in the new code opening the way to the formation of the plural municipal councils.

6 PRESNO LINERA, M. Á., *“The Right to Vote”*, Tecnos Editorial, 2003, Madrid, España, p. 62.

7 Cfr. Social Initiative for Democracy, *Proposal on Plural Municipal Councils*, disponible en: <http://isd.org.sv/wp/wpcontent/uploads/2012/11/Presentaci%C3%B3n-depropuesta-sobre-Concejos-Municipales-Plurales.pdf>, consulted on July 31st 2014.

I. Historical analysis

During the colonial period, the Spanish city halls and the Indian cabildos^{TN 1} had their own powers over the central power of the Spanish monarchy representatives (captain general and intendants).

These local authorities constituted the immediate antecedent of the current municipalities.⁸

With independence, city halls were considered as the direct expression of popular opinion. In 1822, before the proposal to annex the Central American territories to the Mexican empire, the city halls were consulted to decide on this initiative. This indicated the relevance that was assigned to them as a direct and close citizens' representation.⁹

In the first years of independence, the city halls were renamed municipalities. At the time of the Liberal Reform (1870-1890), the municipally autonomy was limited in favor of a centralist scheme that remained during the historical period of the Coffee Republic (1890-1931) as well as during the governments of military authoritarianism (1931-1979). During this time, the municipality was considered as an appendix to the central government and even the position of local commanders, representatives of the military authority in the remote areas of the country were strengthened. The electoral legislation envisaged that the members of the municipal council (mayor, trustee and

Translator Note

TN 1 Cabildo: a municipal council, or a town hall, in Latin America - Collins English Dictionary. Retrieved from: <https://www.collinsdictionary.com/dictionary/english/cabildo>

8 *"In Ibero-America the municipal dimension acquired even more importance due to the absence of representative organs from the kingdoms during the whole colonial era. In addition, the cabildo was an institution of local autonomy for both white or creole society (the Spanish cabildos) and indigenous society (the indigenous cabildos). Indeed, the historiography of the last twenty years has amply demonstrated how this institution of European origin was managed by the indigenous people to redefine their identity in the wake of the conquest", MORELLI, F., "Origins and values of Ibero-American municipalism": Araucaria Magazine, year 9, number 18, Sevilla, second semester of 2007, p. 3.*

9 BONILLA, A., "Independence and Republic" en AA.VV., *Minimal history of El Salvador 1811-2011*: Secretariat of Culture of the Presidency of the Republic, p. 27-28.

aldermen) should belong to the list proposed by the political party with the highest number of votes excluding all other political options. This allowed the full control of the municipalities by the official political parties.¹⁰

Articles 202 to 206 of the 1983 Constitution established the foundations for a genuine democratic and autonomous municipal system, which materialized in the 1986 Municipal Code. Despite the innovations introduced by the Municipal Code, the monopolization of the council by the political party with the highest number of votes remained, by ignoring the figure of the plural councils. The 1992 Peace Agreements did not provide for municipal reforms.

In 1994 the first presidential elections were held after the signing of the Peace Accords. There was a second round between the candidates Dr. Armando Calderón Sol from the Alianza Republicana Nacionalista (ARENA)^{TN 2} and Dr. Rubén Zamora Rivas of a coalition of left-wing parties led by the Frente Farabundo Martí para la Liberación Nacional, FMLN^{TN 3}. In the context of this electoral process, the opposing forces negotiated a political reform agenda which included several elements that had been overlooked in the Peace Accords. The goal of introducing the figure of municipal councils in a plural composition was established in this agenda. These were demanded by the civil society organizations as a necessary mechanism of democratization. But the aforementioned political agreement did not become a reality, then passing the proposals to the Legislative Assembly.

Translator Note

- TN 2 The Nationalist Republican Alliance is the right-wing political party of El Salvador.
TN 3 The Farabundo Martí National Liberation Front is the left-wing political party of El Salvador.

10 Cfr. MORALES EHRLICH, A. et al., *Notes on Political History of El Salvador*, First Edition: Central American Institute for Political Studies, Guatemala City, 2001, p. 16-38.

At the end of 2007, the Comision Nacional para el Desarrollo Local, CONADEL^{TN 4} and the Red de Cooperantes para el Desarrollo Local^{TN 5}, RECODEL, together with the Fundacion Nacional para el Desarrollo^{TN 6}, FUNDE, the Agencia Española de Cooperación Internacional^{TN 7}, AECID and the United States Agency for International Development (USAID) took seriously the analysis of electoral reforms that would facilitate the formation of multi-party councils.

In 2008, there was a new political agreement that sought to materialize the plural municipal councils in the electoral process of March 2009 but in the same way this agreement was frustrated by the interests of political actors. In August, 2009, the Iniciativa Social para la Democracia^{TN 8}, ISD promoted a law to introduce the plural composition of municipal councils.

Upon the prolonged default of the Legislative Assembly to make the plural composition of the municipal councils a reality, the director of the Iniciativa Social para la Democracia, Ramón Villalta, lodged an action of unconstitutionality on December 12th, 2011 against the one-party formation of the councils. This was on the basis of Articles 3 (principle of equality), 78 (egalitarian nature of the vote) and 85 (principle of political pluralism) of the Constitution. This action was supported by the civil organizations integrated into the management group by plural municipal councils, among which the Fundación Nacional para el Desarrollo, FUNDE stood out.

Translator Note

TN 4 National Commission for Local Development

TN 5 Network for Local Development Aid Workers

TN 6 National Foundation for Development

TN 7 Spanish Agency for International Cooperation

TN 8 Social Initiative for Democracy

Thereafter, the Legislative Assembly was requested by the Constitutional Chamber of the Supreme Court of Justice due to the admission of a lawsuit of unconstitutionality of Article 264 of the Electoral Code for whose the deadline for deciding on the legality of that article was February 28th, 2013. In this context of judicial questioning of legislative inactivity, a final agreement was reached between the legislative fractions within the Electoral and Constitutional Reform Commission. This provided the approval of the 1992 reforms to the Electoral Code on March 7th, 2013 which allowed the composition of the plural municipal councils by fulfilling the plaintiffs' claim in the unconstitutionality process followed before the Constitutional Chamber. In July of that same year, a new Electoral Code was approved by Legislative Decree No. 413. This incorporated in its Article 219 the formation of the Municipal Council in a plural manner.

All this took place within the framework of an initiative presented by the FMLN Parliamentary Group in addition to the political lobbying carried out by the civil society organizations, which were grouped together in the aforementioned management group. These efforts were aimed at achieving the legal changes needed to implement the plural municipal councils in the country. After a long discussion within the Electoral and Constitutional Reform Commission, an agreement was reached in January, 2013 between the legislative fractions to implement the plural municipal councils. The prompt adoption of the judgment was impeded by the decision of the ARENA party to submit this proposal to the consultation of its mayors. However on March 7th, 2013,¹¹ after new negotiations, the Legislative Assembly approved the legal reforms necessary to end the one-party composition of the municipal councils, and it was reaffirmed in July of the same year in the new Electoral Code.

11 See the following journalistic notes that expose the discussion process for the implementation of the plural composition of the Municipal Councils: "Contra Punto" Digital Newspaper, <http://www.contrapunto.com.sv/politica/concejos-plurales-19-anos-para-materializarse>, Co Latino Newspaper, <http://www.diariocolatino.com/es/20120606/nacionales/104224/FMLN-presiona-por-Concejos-Plurales.htm>, <http://www.diariocolatino.com/es/20120324/nacionales/101755/Organizaciones-piden-aprobaci%C3%B3n-de-Concejos-Municipales-Plurales-en-actuallegislatura.htm>, Active Transparency, <http://www.transparenciaactiva.gob.sv/apruebanconcejos-plurales/>

II. Comparative law

The presentation of a further overview of the implementation of the plural municipal councils allows to observe the degree of progress of the reform implemented in the country, showing objective data of the form of regulation in the legislation of other countries. Below are the data on the application of this figure in electoral laws that form a more complete vision of the feasibility of the plural formation in the municipal councils.

Regarding the Latin American Constitutions, Nohlen in his *Treaty of Comparative Electoral Law*¹² establishes that in almost all constitutions a section referring to the electoral system can be found. He gives as examples countries such as Mexico (Articles 52-54) and Panama (Article 14), in which the electoral system is described in a complete and detailed manner in the Constitution. He also reiterates that in all other countries there is an electoral law containing important additional.

This additional or decisive regulations, such as Costa Rica, El Salvador and Honduras, in which the electoral system is determined exclusively by an electoral law. This situation is not common because it is difficult to find the principle of representation embodied in constitutions.

In the same vein, there are other countries such as Paraguay, whose Constitution (Article 118) establishes the “system of proportional representation”. In Peru the 1993 Constitution establishes the principle that proportional representation must be used in all multi-personal elections (Article 187). In Bolivia (Art. 60), Brazil (Art. 56), Ecuador (Art. 99), Nicaragua (Art. 132), Uruguay (Art. 88), Venezuela (Arts. 63 and 186) in their corresponding constitutions express this proportional representation as a principle or a decision-making formula. The majority representation is named as an electoral system only in the constitutions of two countries (Haiti, Art. 89s. and Argentina, Art. 45); however in Argentina

12 NOHLEN, D. *et al*, *Treaty of Comparative Electoral Law of Latin America*, Culture Fund Economical 2011, p. 296.

it is elected according to proportional representation.

The table below contains the regulation of the electoral system of some countries concerning the formation of municipal councils, which shows the application of the principle of proportional representation in that election.

Table N° 1. Comparative Law: Electoral laws that regulate the principle of proportional representation in municipal councils.

COUNTRY	LAW	ARTICLE
Honduras	Electoral Law and Political Organizations ¹³	<p>Article 3 Election system: In accordance with the provisions of this law, the election system may be:</p> <ol style="list-style-type: none"> 1. By a simple majority; or 2. By proportional representation by electoral, national, departmental and municipal quotient and remainder. Article 195 Members of municipal corporations: For the declaration of election of members of municipal corporations the following shall be done: 3. In order to obtain the municipal electoral quotient, the total number of valid votes cast in the municipality shall be divided by the total number of members of the municipal council to be elected, excluding the vice-mayor; 4. The elected mayor and vice-mayor shall be those citizens who appear on the list of candidates of a political party, alliance or independent candidacy, who have obtained the majority of votes, subtracting from the total number of votes in favor of this list, the equivalent of a municipal electoral quotient; and, 5. A citizen who appears on the list with the highest number of votes, after having subtracted the municipal electoral quotient, with which the mayor and vice-mayor were declared elected, shall be declared elected first councilor. In the same way it will be done successively until completing the number of councilors corresponding to the municipality. 6. If the distribution referred to in the previous paragraph of this article does not complete the total number of councilors to be elected for each municipality, the candidate for councilor shall be declared elected from the list of the political party, alliance or independent candidacy that has reached the greatest municipal electoral remainder; and so forth, in the descending order of remainders, until completing the number of councilors to be elected.

13 For more information, see the Law here <http://pdba.georgetown.edu/Electoral/Honduras/Leyes/LeyeElectoral.pdf>

COUNTRY	LAW	ARTICLE
Nicaragua	Electoral Law ¹⁴	Article 157. "The election of the councilors provided in the preceding article shall be carried out by the municipal district using the proportional representation system by the electoral quotient and with the same methodology of a greater average that is used for the election of the departmental or regional members".
Panamá	Electoral Law	<p>Article 330. "In the case of two or more councilors' election, the rules of article 326 shall be applied with consideration in the case of the lists of independent candidates".</p> <p>Article 326. "In the case of electoral circuits that elect two or more legislative members, the Electoral Circuit Counting Boards shall proclaim the candidates elected in accordance with the following rules:</p> <ol style="list-style-type: none"> 1. The total number of valid votes cast by all electors shall be divided by the number of citizens to be elected. The result of this division shall be called the electoral quotient. 2. The total number of ballots obtained by each list of candidates shall be divided by the electoral quotient and the result of this operation shall be the number of candidates to be elected by the party which launched the list in question. 3. If the number of citizens to be elected remains to be filled, one shall be awarded to each of the remaining lists which have obtained a number of ballots not less than half of the electoral quotient in the order in which those lists obtained the ballots. The parties that have obtained the electoral quotient shall not be entitled to the medium quotient. 4. If there are still vacancies to be filled, they shall be awarded to the most voted candidates, once the quotient and half quotient have been applied"...
Venezuela	Organic Law of Electoral Processes ¹⁵	Article 8. "For the election of the members of the National Assembly, those of the State legislative councils, those of the municipal councils, and those of popular election collegiate bodies, a parallel electoral system shall be applied with a personalization in the suffrage for the nominal positions and of proportional representation for the positions on the list. In no case shall the nominal election affect the proportional election by list".

14 For more information, see the Law here <http://pdba.georgetown.edu/Parties/Nica/Leyes/LeyElectoral.pdf>

15 For more information, see the Law here

By observing the laws on electoral systems, El Salvador was facing a delay in its representative democracy, since it did not allow for genuine participation¹⁶ by the population in municipal affairs. This limited the suffrage to a single option for local government administration. This situation is different even in countries like Cuba that do not allow the diversity of political parties, but whose municipal councils, however, are regulated by the direct representation of social organizations in the municipal assemblies of people's power, which guarantees the existence of plural criteria in it.

In the countries in Table N°1, the formation of municipal councils is established in a plural way, respecting the representative democracy by giving value to each of the votes of the population that make up the municipality. In the light of the international experience, which reflects an advance in terms of plural representation in the municipal administration, in El Salvador, is the formation of plural municipal councils a debt to democracy or an obstacle to governance?

Undoubtedly, the reform of Articles 220 and 264 of the 1992 Electoral Code and their incorporation into the 2013 Electoral Code is an inescapable step for the democratic breakthrough of the country in terms of municipal governments. It has been evident that the basic rule for the formation of the municipal councils was the majority system.

http://www.cne.gov.ve/web/normativa_electoral/ley_organica_procesos_electorales/indice.php

16 *"The participation of the citizen in the municipality is a kind of political participation related to the conduct of the local political society and consists of taking an active part in the corresponding governmental decisions". Cfr. HERNÁNDEZ, A. M., Municipal Law: general part, Institute of Legal Research of the National Autonomous University of Mexico, 2003, p. 381 y ss.*

III. Plural municipal councils, a new Salvadoran reality

The representation procedures in the election of municipal officials are a democratic mechanism¹⁷ that gives full legitimacy to this role and through which the popular will is reflected. Through them, these officials acquire the commitment to administer the municipal government. *“The clearest explanation of political participation in the democratic municipality consists of the elective character of the communal authorities”*.¹⁸

Within societies, a multiplicity of developing problems requires solutions. Against this background, democracy proposes a mechanism to the research for common good by consolidating the agreement of the population on the people who will make the transcendental decisions for social harmony. It is on the basis of that consensus that decision-making in municipal affairs is not carried out directly by the community, but by the people elected by citizens, who have the obligation to look after their interests.¹⁹

The democratic exercise within the plural municipal councils arises from understanding that, through the diversity of political components in the administration of the municipal government, a greater legitimacy of the agreements and decisions reached will be allowed, in addition to attaching importance to the opinion of a minority that feels represented, as expressed

17 *“In accordance with a “minimum definition” of democracy as a form of government, characterized by Norberto Bobbio, democracy refers to a set of fundamental rules which establishes who is authorized to make decisions, under what procedures and under what conditions. According to this, a form of government will be considered democratic only if it is complied with 3 conditions: the individuals involved in the decision-making processes are the majority of the adult population; the decision-making procedure is governed by the principle of majority; and a set of basic freedoms are guaranteed (opinion, information, association, assembly, etc.). With these the involved individuals are allowed to present and/or choose the undefined political options without any pressure on them from the coercion mechanisms”*. CAMOU, A., in *“Governance and Democracy”*, in *Notebooks for the Disclosure of Democratic Culture*, number 4, Federal Electoral Institute, available in: http://www.ife.org.mx/documentos/DECEYEC/gobernabilidad_y_democracia.htm#presenta

18 HERNÁNDEZ, A. M., *op. cit.*, p. 388.

19 See: Constitutional Chamber of the Supreme Court of Justice, *Judgment of unconstitutionality*, reference: 61-2009. Recital III. 3. A: *“The right to vote rests on three elements: the principle of popular sovereignty; democracy as a form of government; and the political representation. This right is affirmed because the popular election of the rulers serves both to allow the people to participate in the government and for the rulers to exercise the quality of representatives of the same”*.

by the Constitutional Chamber: *“Popular sovereignty implies the management of public affairs affecting the generality, and to that extent, has an interest in it. For this reason, the fate of society must be decided by all the members, each citizen having a vote with the same value. In other words: (i) the general decisions affecting the collective fate must be made by the people; (ii) all public office holders must be elected by the people or derived from elected office; and (iii) decisions are made by the majority, taking into account their interests, but with respect for minorities”*.²⁰

In the specific case of El Salvador, on March 22nd, 2013, Legislative Decree 326²¹ established that, on the basis of Article 85 of the Constitution, which reflected the pluralistic nature of the political system,²² it opens the door for the formation of the plural municipal councils, allowing the participation of political forces with a greater support from the population was presented, that is, the political forces with a significant degree of votes obtained in the municipal election.

The main incentives for the adoption of this reform are to promote the inclusion of minorities,²³ accountability and transparency of the exercise of municipal power.

20 Constitutional Chamber of the Supreme Court of Justice, *Judgment of unconstitutionality*, reference: 61-2009. Recital III.1

21 Legislative Decree N° 366, published in the Official Gazette, volume 398, number 57 of 22 March 2013.

22 *“The principle of pluralism enshrined in article 85 section 2 has two basic dimensions: The ideological pluralism, which, as opposed to totalitarianism or integralism, implies promoting the expression and dissemination of a diversity of opinions, beliefs or conceptions of the world, from the conviction that no individual or social sector is the repository of the truth. The truth can only be achieved through discussion and encounter between different positions; or, in the words of the Single Report of the Committee for the Study of the Draft Constitution, ‘the temporal and spatial coexistence of multiple ideologies within a regime of freedom’. The political pluralism, which -in contrast to statism- implies the recognition and protection of the multiplicity of social groups and institutions formed naturally and spontaneously between the individual and the State -the so-called intermediary institutions-. These institutions are generally organized for the defense of group or sectoral interests and to promote certain ideologies. Although they are not part of the governmental structure, they influence the formulation of political decisions”*. Vid. Judgment of 20-VII-99, Inc. 5-99, Recital IX. 1.

23 *“A man gathers in society, not for the attainment of the good of one to the exclusion of others constituents but for the good of each and every member, in that sense a general community good. The common good is the purpose that focuses the life of the political community, encourages the activity of its government and provides meaning to the law as an instrument of power action and political order”*. DROMI, J. R., *Municipal Autonomy*, La Plata: Argentine Notarial University, 1982, p. 111.

On the basis of this progress, the pluralist political system is accompanied by the principle of representative democracy as opposed to the system of municipal elections used before Decree 326 and the adoption of the new Electoral Code, through which the city halls were granted by a majority system. In this way, the mayor was elected, as well as the administrator and the entire municipal council, by being members of the same political party or coalition. This form of election was based on a complete exclusion of the rest of the political forces without allowing a channel to get back on track the interests represented by them.

Within this framework, Articles 220 and 264 of the 1992 Electoral Code, which allow for the pluralistic composition of municipal councils, are amended, taking into account the support reflected in votes by the inhabitants of the municipality for their formation. The achievement of this reform of the Electoral Code presented a lack of will on the part of political actors to consolidate this democratic advance because throughout the political discussions for its approval there was opposition and extensions. These oppositions and extensions were due to the interest of the exclusive management of the mayors; but despite the obstacles, political consensus was achieved that finally allowed the reform.

Political parties also reacted in different ways to this electoral reform. The political party Gran Alianza por la Unidad Nacional (GAN) showed a negative stance, since they were thought to impede the stable management of the municipal governments, and that a power struggle would be unleashed leading to the regression in the municipalities. In their turn, the political party Alianza Republicana Nacionalista (ARENA), after giving initial support to the favorable opinion, changed their position and asked for the withdrawal of the opinion of the legislative plenary, becoming an obstacle to the approval of the same one under the justification that they needed more time to explain to their mayors the new functioning of the plural Councils.²⁴

24 Cfr. Semanario Voces "Assembly delays approval of plural councils", new published in January 25, 2013, available <http://voces.org.sv/2013/01/25/asamblea-legislativa-retrasala-aprobacion-de-consejos-plurales/>

Finally, the political party Frente Farabundo Martí para la Liberación Nacional (FMLN), as the driving force behind the reform since their first formulations, maintained its support for it, ensuring that the corresponding opinion were not shelved but returned to the legislative plenary. After the criticism made by civil society organizations, the ARENA party had to express its support for this project again. Finally, with 73 votes, the Legislative Decree 326 containing a reform to the 1992 Electoral Code²⁵ was approved on March 25th 2013. From that date it was incorporated into the Electoral Code in July of that same year; this showed a step towards transparency and the proper management of public funds.

The social and political actors have agreed to positively assess the incorporation of pluralism within the municipal councils and it is considered as further progress in the democratization process in the country. It is noteworthy that a consensus of the political forces were achieved, as well as the approval of civil society organizations on the scope of this reform. However one of the criticisms made from the academy notes the delay in adopting this measure despite the fact that it has been under discussion since 1994, making El Salvador the only Latin American country with councils composed of a single political party.

This unequal condition prior to the reform of Articles 220 and 264 of the Electoral Code was the lack of respect for the pluralistic character of the political system. This situation occurred in the national elections of members to the Legislative Assembly, prevailing the principle of representative democracy. On the contrary, for elections at the local level, that is, in the municipalities there was no level of access to effective representation of the interests of the general population.

25 See the text of the reform allowing the composition of plural municipal councils: D.L. N° 326, published in the Official Gazette., volume 398, number 57 of March 22nd 2013.

This lack of homogeneity in the electoral system²⁶ affected democracy at the municipal level, since only one political party was left to conduct municipal affairs and the latter often won with less than fifty per cent of the vote, which meant that a minority decided affecting governance and democracy within the municipality.

IV. Challenges in the Implementation of Plural Municipal Councils

Regarding the implications on governance²⁷ and democracy, from the academic point of view, the possibility is left open to a first scenario characterized by the understanding and honest debating among political forces. This would promote the achievement of the country-vision agreements and the implementation of long-term projects, which would lead to democratic consolidation. Among the expected advances in governance is transparency in the administration of the municipal government and citizen participation established with the multi-party composition of the municipal council that is the highest authority of the municipality, a better management of resources and effective accountability under an internal control scheme allowing an effective debate on the appropriateness of the decisions made.

The other potential scenario when integrating the Plural Municipal Councils is the possible repetition of the confrontation between the different

26 *The purpose of the electoral system is to ensure that the votes reflect the authentic, free and spontaneous expression of the citizens. The votes are also an accurate and timely reflection of the will of the elector expressed at the polls by direct vote. Its basic functions are the planning, organization and execution of electoral, the referendum processes or other popular consultations, the maintenance and care of a single register of people's identification and the registration of acts modifying civil status. Cfr.* NOHLEN, D. *et al.*, *op. cit.*, p. 295.

27 *"In other words, it is not a state or government that allows itself to govern a society, nor is a society itself governable or ungovernable; rather, it is the complex relationship between the two terms allowing to talk about the conditions of governance. The issue is not only of theoretical importance but also of practical relevance: the responsibility to maintain adequate conditions of governance is not a question that lays unilaterally on the government or on society. In this way, government and opposition, citizen parties and organizations must jointly commit themselves to maintaining an acceptable level of governance".* Cfr. CAMOU, A., *op. cit.*

political forces at the local level. This situation may generate problems for governance and delays in decision-making process which are for the welfare of the community, due to the pursuit of partisan interests over the general interest.

In order to achieve the first scenario, it is necessary to sacrifice particular interests on the part of the political forces of the country becoming aware that they must agree on decisions that are transcendental for society. Based on this reality, municipalities must learn to overcome party differences in order to prioritize the well-being of the population, while guaranteeing accountability to their governed, which in this case is more effective because of the proximity between the municipal leaders and the population.²⁸

In addition to the amendments to the Electoral Code, the approval of the Law on Access to Public Information is also part of the need to show the population a degree of transparency in the decision-making of public entities as well as the criteria that guided public officials to decide what the best option was. With this, a system of social comptroller is created that monitors and regulates the actions of the government granting a greater legitimacy and trust to the public administration.

As part of the implementation of the plural municipal councils, the Legislative Assembly approved a new Decree number 737, which contains another set of reforms to the Electoral Code, such as the incorporation in the election of Members of the Central American Parliament on the same rules for the election of Members to the Legislative Assembly (Article 156). Article 165 has been amended establishing the creation of a list of the party or coalition in order of precedence of their candidates for municipal council in the event that they do not obtain a simple majority and that in this list the candidate for

28 *“Municipal democracy “fulfills, for its supporters says Fernando Albi, three fundamental missions: it brings the population closer to local problems, constitutes a school of civility and citizenship and means a brake on the excessive concentration of power in the central bodies power”. There is faith in local democracy but that does not mean that it is taken for granted that every municipality is democratic, just as not every state is democratic. It is desirable to have democracy in the government since this constitutes “the only moral climate in which man can realize the sacred right to be man”. Cfr. HERNÁNDEZ, A. M., op. cit., p. 422.*

mayor and municipal administrator may be included. Article 219 literals g and h and the final paragraph were amended as well; they determine that in the event of a tie between the parties, a decision shall be taken by lottery. In the constitution of the municipal council, it creates a prohibition that excludes the participation of blood relatives, and the allocation of councilors in ascending order according to the number of valid votes.²⁹

This set of reforms in the electoral system shows signs of innovation, as well as a greater political representation and participation. With the first formation of plural councils scheduled for March 1st, 2015, the decrease in secret and authoritarian practices that impede transparency in decision-making processes at the municipal level is promoted, favoring a more effective public comptroller.

Conclusions

1. *The consolidation of the democratic system in El Salvador lies in the search for a real representation of the people in the significant decisions and the transparent and efficient management of public power.*
2. *The municipal council is the entity in charge of the public administration of the municipality, showing itself closer to the needs of the population. In this sense, the representation of all sectors in this entity allows the discussion and problem-solving process affecting the community.*
3. *The reforms approved in March 2013 to Articles 220 and 264 of the 1992 Electoral Code made way for ruling to the pluralistic representation in the municipal councils. The new Electoral Code of July 2013 incorporated the mechanism for the election of a proportional municipal council to the votes obtained in the election (Art. 219).*
4. *In 2014, the Legislative Assembly issued a new Decree (N° 737) establishing the order of precedence of the candidates to the municipal council, the incorporation of the*

²⁹ Legislative Decree 737: Reforms to the Electoral Code relating to Plural Municipal Councils, approval of ballots and registration of deputies to the Central American Parliament.

candidate for mayor and an exclusion referred to kinship. This Decree sought the effective implementation of the plural municipal councils for the municipal elections of 2015.

- 5. El Salvador was the only country in the Central American region that did not allow proportional representation of the voting population, establishing a mayor and municipal council by the majority system, reflected in the administration of the mayor's office by a single political party. However, before 2013, many attempts were made to approve the plural municipal councils in order to create a real representation in the administration of municipalities. Within the legislative debate political negotiations emerged as well as the pressure from civil society organizations and even a process of unconstitutionality by the one-party formation of the municipal councils.*
- 6. The formation of the plural municipal councils remained as a debt to the Salvadoran democracy, since before that, the municipal representation of the majority of the population was avoided. This reform of the municipal election system constituted a democratic advance that would help to measure the level of political maturity of the political parties in terms of work in favor of the population.*
- 7. Regarding governance, it is expected that with this reform, there will be a greater transparency in the administration of the Municipal Government, as well as a greater citizen participation. With the multi-party composition of the municipal council is intended to have a better management of resources and effective accountability under an internal control scheme allowing broadening the debate in the decision-making process.*
- 8. Finally, with the plural municipal councils, one of the biggest challenges for governability is to get over the particular interests generated between the different political parties, thus avoiding delays in the decision making that would be for the wellbeing of the community, and focusing on the transparent and efficient management of the municipal administration.*