

CHARITO PLANAS, PETITIONER, VS. COMMISSION ON ELECTIONS, ET AL., RESPONDENTS.

G.R. No. L-35925. January 22, 1973

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

On March 16, 1967, Congress of the Philippines passed Resolution No. 2, which was amended by Resolution No. 4 of said body, adopted on June 17, 1969, calling a Convention to propose amendments to the Constitution of the Philippines. Said Resolution No. 2, as amended, was implemented by Republic Act No. 6132, approved on August 24, 1970, pursuant to the provisions of which the election of delegates to said Convention was held on November 10, 1970, and the 1971 Constitutional Convention began to perform its functions on June 1, 1971. While the Convention was in session on September 21, 1972, the President issued Proclamation No. 1081 placing the entire Philippines under Martial Law. On November 29, 1972, the Convention approved its Proposed Constitution of the Republic of the Philippines. The next day, November 30, 1972, the President of the Philippines issued Presidential Decree No. 73, "submitting to the Filipino people for ratification or rejection the Constitution of the Republic of the Philippines proposed by the 1971 Constitutional Convention, and appropriating funds therefor," as well as setting the plebiscite for said ratification or rejection of the Proposed Constitution on January 15, 1973.

Soon after, or on December 7, 1972, Charito Planas filed, with this Court, Case G.R. No. L-35925, against the Commission on Elections, the Treasurer of the Philippines and the Auditor General, to enjoin said "respondents or their agents from implementing Presidential Decree No. 73, in any manner, until further orders of the Court," upon the grounds, inter alia, that said Presidential Decree "has no force and effect as law because the calling x x x of such plebiscite, the setting of guidelines for the conduct of the same, the prescription of the ballots to be used and the question to be answered by the voters, and the appropriation of public funds for the purpose, are, by the Constitution, lodged exclusively in Congress x x x," and "there is no proper submission to the people of said Proposed Constitution set for January 15, 1973; there being no freedom of speech, press and assembly, and there being no sufficient time to inform the people of the contents thereof."

Substantially identical actions were filed, on December 8, 1972, by Pablo C. Sanidad against the Commission on Elections (Case G.R. No. L-35929); on December 11, 1972, by Gerardo Roxas, et al., against the Commission on Elections, the Director of Printing, the National Treasurer and the Auditor General (Case G.R. No. L-35940), by Eddie B. Monteclaro against the Commission on Elections and the Treasurer of the Philippines (Case G.R. No. L-35941), and by Sedfrey A. Ordonez, et al. against the National Treasurer and the Commission on Elections (Case G.R. No. L-35942), on December 12, 1972, by Vidal Tan, et al., against the Commission on Elections, the Treasurer of the Philippines, the Auditor General and the Director of Printing (Case G.R. No. L-35948), and by Jose W. Diokno and Benigno S. Aquino against the Commission on Elections (Case G.R. No. L-35953); on December 14, 1972, by Jacinto Jimenez against the Commission on Elections, the Auditor General, the Treasurer of the Philippines and the Director of the Bureau of Printing (Case G.R. No. L-35961), and by Raul M. Gonzales

against the Commission on Elections, the Budget Commissioner, the National Treasurer and the Auditor General (Case G.R. No. L-35965); and on December 16, 1972, by Ernesto C. Hidalgo against the Commission on Elections, the Secretary of Education, the National Treasurer and the Auditor General (Case G.R. No. L-35979).

In all these cases, except the last (G.R. No. L-35979), the respondents were required to file their answers "not later than 12:00 (o'clock) noon of Saturday, December 16, 1972." Said cases were, also, set for hearing and partly heard on Monday, December 18, 1972, at 9:30 am. The hearing was continued on December 19, 1972. By agreement of the parties, the aforementioned last case — G.R. No. L-35979 — was, also, heard, jointly with the others, on December 19, 1972. At the conclusion of the hearing, on that date, the parties in all of the aforementioned cases were given a short period of time within which "to submit their notes on the points they desire to stress." Said notes were filed on different dates, between December 21, 1972, and January 4, 1973.

Meanwhile, or on December 17, 1972, the President had issued an order temporarily suspending the effects of Proclamation No. 1081, for the purpose of free and open debate on the Proposed Constitution. On December 23, the President announced the postponement of the plebiscite for the ratification or rejection of the Proposed Constitution. No formal action to this effect was taken until January 7, 1973, when General Order No. 20 was issued, directing "that the plebiscite scheduled to be held on January 15, 1973, be postponed until further notice." Said General Order No. 20, moreover, "suspended in the meantime" the "order of December 17, 1972, temporarily suspending the effects of Proclamation No. 1081 for purposes of free and open debate on the proposed Constitution."

In view of these events relative to the postponement of the aforementioned plebiscite, the Court deemed it fit to refrain, for the time being, from deciding the aforementioned cases, for neither the date nor the conditions under which said plebiscite would be held were known or announced officially. Then, again, Congress was, pursuant to the 1935 Constitution, scheduled to meet in regular session on January 22, 1973, and since the main objection to Presidential Decree No. 73 was that the President does not have the legislative authority to call a plebiscite and appropriate funds therefor, which Congress unquestionably could do, particularly in view of the formal postponement of the plebiscite by the President — reportedly after consultation with, among others, the leaders of Congress and the Commission on Elections — the Court deemed it more imperative to defer its final action on these cases.

In the afternoon of January 12, 1973, the petitioners in Case G.R. No. L-35948 filed an "urgent motion," praying that said case be decided "as soon as possible, preferably not later than January 15, 1973." It was alleged in said motion, *inter alia*:

"6. That the President subsequently announced the issuance of Presidential Decree No. 86 organizing the so-called Citizens Assemblies, to be consulted on certain public questions [Bulletin Today, January 1, 1973];

"7. That thereafter it was later announced that 'the Assemblies will be asked if they favor or oppose —

'[1] The New Society;

'[2] Reforms instituted under Martial Law;

'[3] The holding of a plebiscite on the proposed new Constitution and when (the tentative new date given following the postponement of the plebiscite from the original date of January 15 are February 19 and March 5);

'[4] The opening of the regular session slated on January 22 in accordance with the existing Constitution despite Martial Law.' [Bulletin Today, January 3, 1973.]

"8. That it was later reported that the following are to be the forms of the questions to be asked to the Citizens Assemblies —

'[1] Do you approve of the New Society?

'[2] Do you approve of the reform measures under martial law?

'[3] Do you think that Congress should meet again in regular session?

'[4] How soon would you like the plebiscite on the new Constitution to be held?' [Bulletin Today, January 5, 1973].

"9. That the voting by the so-called Citizens Assemblies was announced to take place during the period from January 10 to January 15, 1973;

"10. That on January 10, 1973, it was reported that one more question would be added to the four (4) questions previously announced, and that the forms of the questions would be as follows: —

'[1] Do you like the New Society? :

'[2] Do you like the reforms under martial law? '[3] Do you like Congress again to hold sessions? '[4] Do you like the plebiscite to be held later?

'[5] Do you like the way President Marcos is running the affairs of the government?' [Bulletin Today, January 10, 1973; additional question italicized.]

"11. That on January 11, 1973, it was reported that six (6) more questions would be submitted to the so-called Citizens Assemblies: —

'[1] Do you approve of the citizens assemblies as the base of popular government to decide issues of national interests?

'[2] Do you approve of the new Constitution?

'[3] Do you want a plebiscite to be called to ratify the new Constitution?

'[4] Do you want the elections to be held in November, 1973 in accordance with the provisions of the 1935 Constitution?

' [5] If the elections would not be held, when do you want the next elections to be called?

'[6] Do you want martial law to continue?' [Bulletin Today, January 11, 1973; italics supplied.]

"12. That according to reports, the returns with respect to the six (6) additional questions quoted above will be on a form similar or identical to Annex 'A' hereof;

" 13. That attached to page 1 of Annex 'A' is another page, which we marked as Annex 'A-I and which reads: —

'COMMENTS ON

QUESTION No. 1

In order to broaden the base of citizens' participation in government.

QUESTION No. 2

But we do not want the Ad Interim Assembly to be convoked. Or if it is to be convened at all, it should not be done so until after at least seven (7) years from the approval of the New Constitution by the Citizens

Assemblies.

QUESTION No. 3

The vote of the Citizens Assemblies should already be considered the plebiscite on the New Constitution.

If the Citizens Assemblies approve of the New Constitution, then the new Constitution should be deemed ratified.

QUESTION No. 4

We are sick and tired of too frequent elections. We are fed up with politics, of so many debates and so much expenses.

QUESTION No. 5

Probably a period of at least seven (7) years moratorium on elections will be enough for stability to be established in the country, for reforms to take root and normalcy to return.

QUESTION No. 6

We want President Marcos to continue with Martial Law. We want him to exercise his powers with more authority. We want him to be strong and firm so that he can accomplish all his reform programs and establish normalcy in the country. If all other measures fail, we want President Marcos to declare a revolutionary government along the lines of the new Constitution without the ad interim Assembly.'

"Attention is respectfully invited to the comments on 'Question No. 3/ which reads; —

'QUESTION No. 3

The vote of the Citizens Assemblies should be considered the plebiscite on the New Constitution.

If the Citizens Assemblies approve of the New Constitution, then the new Constitution should be deemed ratified.'

This, we are afraid, and therefore allege, is pregnant with ominous possibilities.

"14. That, in the meantime, speaking on television and over the radio, on January 7, 1973, the President announced that the limited freedom of debate on the proposed Constitution was being withdrawn and that the proclamation of martial law and the orders and decrees issued thereunder would thenceforth strictly be enforced [Daily Express, January 8, 1973];

"15. That petitioners have reason to fear, and therefore state, that the question added in the last list of questions to be asked to the Citizens Assemblies, namely: —

'Do you approve of the New Constitution?'—

in relation to the question following it: —

'Do you still want a plebiscite to be called to ratify the new Constitution?' —

would be an attempt to by-pass and short-circuit this Honorable Court before which the question of the validity of the plebiscite on the proposed Constitution is now pending;

"16. That petitioners have reason to fear, and therefore allege, that if an affirmative answer to the two questions just referred to will be reported then this Honorable Court and the entire nation will be confronted with a fait accompli which has been attained in a highly unconstitutional and undemocratic manner;

" 17. That the fait accompli would consist in the supposed expression of the people approving the proposed Constitution;

"18. That, if such event would happen, then the case before this Honorable Court could, to all intents and purposes, become moot because, petitioners fear, and they therefore allege, that on the basis of such supposed expression of the will of the people through the Citizens Assemblies, it would be announced that the proposed Constitution, with all its defects, both congenital and otherwise, has been ratified;

"19. That, in such a situation, the Philippines will be facing a real crisis and there is likelihood of confusion if not chaos, because then, the people and their officials will not know which Constitution is in force.

"20. That the crisis mentioned above can only be avoided if this Honorable Court will immediately decide and announce its decision on the present petition;

"21. That with the withdrawal by the President of the limited freedom of discussion on the proposed Constitution which was given to the people pursuant to Sec. 3 of Presidential Decree No. 73, the opposition of respondents of petitioners' prayer that the proposed plebiscite be prohibited has now collapsed and that a free plebiscite can no longer be held."

At about the same time, a similar prayer was made in a "manifestation" filed by the petitioners in L-35949, "Gerardo Roxas, et al. v. Commission on Elections, et al.," and L-35942, "Sedfrey A. Ordonez, et al. v. The National Treasurer, et al."

The next day, January 13, 1973, which was a Saturday, the Court issued a resolution requiring the respondents in said three (3) cases to comment on said "urgent motion" and "manifestation," "not later than Tuesday noon, January 16, 1973." Prior thereto, or on January 15, 1973, shortly before noon, the petitioners in said Case G.R. No. L-35948 filed a "supplemental motion for issuance of restraining order and inclusion of additional respondents," praying —

"x x x that a restraining order be issued enjoining and restraining respondent Commission on Elections, as well as the Department of Local Governments and its head, Secretary Jose Rofio; the Department of Agrarian Reforms and its head, Secretary Conrado Estrella; the National Ratification Coordinating Committee and its Chairman, Guillermo de Vega; their deputies, subordinates and substitutes, and all other officials and persons who may be assigned such task, from collecting, certifying, and announcing and reporting to the President or other officials concerned, the so-called Citizens' Assemblies referendum results allegedly obtained when they were supposed to have met during the period comprised between January 10 and January 15, 1973, on the two questions quoted in paragraph 1 of this Supplemental Urgent Motion."

In support of this prayer, it was alleged —

"3. That petitioners are now before this Honorable Court in order to ask further that this Honorable Court issue a restraining order enjoining herein respondents, particularly respondent Commission on Elections as well as the Department of Local Governments and its head, Secretary Jose Rofio; the Department of Agrarian Reforms and its head, Secretary Conrado Estrella; the National Ratification Coordinating Committee and its Chairman, Guillermo de Vega; and their deputies, subordinates and/or substitutes, from collecting, certifying, announcing and reporting to the President the supposed Citizens' Assemblies referendum results allegedly obtained when they were supposed to have met during the period between January 10 and January 15, 1973, particularly on the two questions quoted in paragraph 1 of this Supplemental Urgent Motion;

"4. That the proceedings of the so-called Citizens' Assemblies are illegal, null and void particularly insofar as such proceedings are being made the basis of a supposed consensus for the ratification of the proposed Constitution because: —

[a] The elections contemplated in the Constitution, Article XV, at which the proposed constitutional amendments are to be submitted for ratification, are elections at which only qualified and duly registered voters are permitted to vote, whereas, the so-called Citizens' Assemblies were participated in by persons 15 years of age and older, regardless of qualifications or lack thereof, as prescribed in the Election Code;

[b] Elections or plebiscites for the ratification of constitutional amendments contemplated in Article XV of the Constitution have provisions for the secrecy of choice and of vote, which is one of the safeguards of freedom of action, but votes in the Citizens' Assemblies were open and were cast by raising hands;

[c] The Election Code makes ample provisions for free, orderly and honest elections, and such provisions are a minimum requirement for elections or plebiscites for the ratification of constitutional amendments, but there were no similar provisions to guide and regulate proceedings of the so-called Citizens' Assemblies;

[d] It is seriously to be doubted that, for lack of material time, more than a handful of the so-called Citizens' Assemblies have been actually formed, because the mechanics of their organization were still being discussed a day or so before the day they were supposed to begin functioning; —

'Provincial governors and city and municipal mayors had been meeting with barrio captains and community leaders since last Monday [January 8, 1973] to thresh out the mechanics in the formation of the Citizens' Assemblies and the topics for discussion,' [Bulletin Today, January 10, 1973].

"It should be recalled that the Citizens' Assemblies were ordered formed only at the beginning of the year [Daily Express, January 1, 1971], and considering the lack of experience of the local organizers of said assemblies, as well as the absence of sufficient guidelines for organization, it is too much to believe that such assemblies could be organized at such a short notice.

"5. That for lack of material time, the appropriate amended petition to include the additional officials and government agencies mentioned in paragraph 3 of this Supplemental Urgent Motion could not be completed because, as noted in the Urgent Motion of January 12, 1973, the submission of the proposed Constitution to the Citizens' Assemblies was not made known to the public until January 11, 1973. But be that as it may, the said additional officials and agencies may be properly included in the petition at bar because: —

[a] The herein petitioners have prayed in their petition for the annulment not only of Presidential Decree No. 73, but also of "any similar decree, proclamation, order or instruction"

so that Presidential Decree No. 86, insofar at least as it attempts to submit the proposed Constitution to a plebiscite by the so-called Citizens' Assemblies, is properly in issue in this case, and those who enforce, implement, or carry out the said Presidential Decree No. 86, and the instructions incidental thereto clearly fall within the scope of this petition;

[b] In their petition, petitioners sought the issuance of a writ of preliminary injunction restraining not only the respondents named in the petition but also their 'agents' from implementing not only Presidential Decree No. 73, but also 'any other similar decree, order, instruction, or proclamation in relation to the holding of a plebiscite on January 15, 1973 for the purpose of submitting to the Filipino people for their ratification or rejection the 1972 Draft or proposed Constitution approved by the Constitutional Convention on November 30, 1973'; and finally,

[c] Petitioners prayed for such other relief which may be just and equitable, [p. 39, Petition],

"Therefore, viewing the case from all angles, the officials and government agencies mentioned in paragraph 3 of this Supplemental Urgent Motion, can lawfully be reached by the processes of this Honorable Court by reason of

this petition, considering, furthermore, that the Commission on Elections has under our laws the power, among others, of: —

'(a) Direct and immediate supervision and control over national, provincial, city, municipal and municipal district officials required by law to perform duties relative to the conduct of elections on matters pertaining to the enforcement of the provisions of this Code * * *.' [Election Code of 1971, Sec. 3].

"6. That unless the petition at bar is decided immediately and the Commission on Elections, together with the officials and government agencies mentioned in paragraph 3 of this Supplemental Urgent Motion are restrained or enjoined from collecting, certifying, reporting or announcing to the President the results of the alleged voting of the so-called Citizens' Assemblies, irreparable damage will be caused to the Republic of the Philippines, the Filipino people, the cause of freedom and democracy, and the petitioners herein because:

[a] After the result of the supposed voting on the questions mentioned in paragraph 1 hereof shall have been announced, a conflict will arise between those who maintain that the 1935 Constitution is still in force, on the one hand, and those who will maintain that it has been superseded by the proposed Constitution, on the other, thereby creating confusion, if not chaos;

[b] Even the jurisdiction of this Court will be subject to serious attack because the advocates of the theory that the proposed Constitution has been ratified by reason of the announcement of the results of the proceedings of the so-called Citizens' Assemblies will argue that, General Order No. 3, which shall also be deemed ratified pursuant to the Transitory Provisions of the proposed Constitution, has placed Presidential Decrees Nos. 73 and 86 beyond the reach and jurisdiction of this Honorable Court."

On the same date — January 15, 1973 — the Court passed a resolution requiring the respondents in said case G.R. No. L-35948 to "file an answer to the said motion not later than 4 P.M., Tuesday, January 16, 1973," and setting the motion for hearing "on January 17, 1973, at 9:30 a.m." While the case was being heard, on the date last mentioned, at noontime, the Secretary of Justice called on the writer of this opinion and said that, upon instructions of the President, he (the Secretary of Justice) was delivering to him (the writer) a copy of Proclamation No. 1102, which had just been signed by the President. Thereupon, the writer returned to the Session Hall and announced to the Court, the parties in G.R. No. L-35948 — inasmuch as the hearing in connection therewith was still going on — and the public there present that the President had, according to information conveyed by the Secretary of Justice, signed said Proclamation No. 1102, earlier that morning. Thereupon, the writer read Proclamation No. 1102 which is of the following tenor:

"BY THE PRESIDENT OF THE PHILIPPINES

"PROCLAMATION NO. 1102

"ANNOUNCING THE RATIFICATION BY THE FILIPINO PEOPLE OF THE CONSTITUTION PROPOSED BY THE 1971 CONSTITUTIONAL CONVENTION.

"WHEREAS, the Constitution proposed by the nineteen hundred seventy-one Constitutional Convention is subject to ratification by the Filipino people;

"WHEREAS, Citizens Assemblies were created in barrios, in municipalities and in districts /wards in chartered cities pursuant to Presidential Decree No. 86, dated December 31, 1972, composed of all persons who are residents of the barrio, district or ward for at least six months, fifteen years of age or over, citizens of the Philippines and who are registered in the list of Citizen Assembly members kept by the barrio, district or ward secretary;

"WHEREAS, the said Citizens Assemblies were established precisely to broaden the base of citizen

participation in the democratic process and to afford ample opportunity for the citizenry to express their views on important national issues;

"WHEREAS, responding to the clamor of the people and pursuant to Presidential Decree No. 86-A, dated January 5, 1973, the following questions were posed before the Citizens Assemblies or Barangays: Do you approve of the New Constitution? Do you still want a plebiscite to be called to ratify the new Constitution?

"WHEREAS, fourteen million nine hundred seventy-six thousand five hundred sixty one (14,976,561) members of all the Barangays (Citizens Assemblies) voted for the adoption of the proposed Constitution, as against seven hundred forty-three thousand eight hundred sixty-nine (743,869) who voted for its rejection; while on the question as to whether or not the people would still like a plebiscite to be called to ratify the new Constitution, fourteen million two hundred ninety-eight thousand eight hundred fourteen (14,298,814) answered that there was no need for a plebiscite and that the vote of the Barangays (Citizens Assemblies) should be considered as a vote in a plebiscite;

"WHEREAS, since the referendum results show that more than ninety-five (95) per cent of the members of the Barangays (Citizens Assemblies) are in favor of the new Constitution, the Katipunan ng Mga Barangay has strongly recommended that the new Constitution should already be deemed ratified by the Filipino people;

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby certify and proclaim that the Constitution proposed by the nineteen hundred and seventy-one (1971) Constitutional Convention has been ratified by an overwhelming majority of all of the votes cast by the members of all the Barangays (Citizens Assemblies) throughout the Philippines, and has thereby come into effect.

"IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

"Done in the City of Manila, this 17th day of January, in the year of Our Lord, nineteen hundred and seventy-three.

(Sgd.)

FERDINAND E. MARCOS

"President of the Philippines.

"By the President:

"ALEJANDRO MELCHOR

"Executive Secretary"

Such is the background of the cases submitted for Our determination. After admitting some of the allegations made in the petition in L-35948 and denying the other allegations thereof, respondents therein alleged in their answer thereto, by way of affirmative defenses: 1) that the "questions raised" in said petition "are political in character"; 2) that "the Constitutional Convention acted freely and had plenary authority to propose not only amendments but a Constitution which would supersede the present Constitution"; 3) that "the President's call for a plebiscite and the appropriation of funds for this purpose are valid"; 4) that "there is not an improper submission" and "there can be a plebiscite under Martial Law"; and 5) that the "argument that the Proposed Constitution is vague and incomplete, makes an unconstitutional delegation of power, includes a referendum on the proclamation

of Martial Law and purports to exercise judicial power" is "not relevant and x x x without merit." Identical defenses were set up in the other cases under consideration.

Immediately after the hearing held on January 17, 1973, or since the afternoon on that date, the Members of the Court have been deliberating on the aforementioned cases and, after extensive discussions on the merits thereof, have deemed it best that each Member write his own views thereon and that thereafter the Chief Justice should state the result or the votes thus cast on the points in issue. Hence, the individual views of my brethren in the Court are set forth in the opinions attached hereto, except that, instead of writing their separate opinions, some Members have preferred to merely concur in the opinion of one of our colleagues.

What follows is my own view on these cases.

The first question for Our determination is whether We have authority to pass upon the validity of Presidential Decree No. 73, in view of the Solicitor General's allegation to the effect that said question is a political one. I am of the opinion — on which the Members of the Court are unanimous — that the contention of the Solicitor General is untenable and that the issue aforementioned is a justiciable one. Indeed, the contested decree purports to have the force and effect of a legislation, so that the issue on the validity thereof is manifestly a justiciable one, on the authority, not only of a long list of cases in which the Court has passed upon the constitutionality of statutes and/or acts of the Executive,[1] but, also, of no less than that of Subdivision (1) of Section 2, Article VIII of the 1935 Constitution,² which expressly provides for the authority of this Court to review cases involving said issue.

Petitioners in G.R. No. L-35948 maintain that the 1971 Constitutional Convention had exceeded its authority in approving Sections 2, 3 (par. 2) and 12 of Article XVII of the proposed Constitution. Regardless of the wisdom and moral aspects of the contested provisions of the proposed Constitution, it is my considered view that the Convention was legally free to postulate any amendment it may deem fit to propose — save perhaps what is or may be inconsistent with what is now known, particularly in international law, as *Jus Cogens* — not only because the Convention exercised sovereign powers delegated thereto by the people — although insofar only as the determination of the proposals to be made and formulated by said body is concerned — but, also, because said proposals cannot be valid as part of our Fundamental Law unless and until "approved by the majority of the votes cast at an election at which" said proposals "are submitted to the people for their ratification," as provided in Section 1 of Art. XV of the 1935 Constitution.

As regards the authority of the President to issue Presidential Decree No. 73, "submitting to the Filipino people (on January 15, 1973) for ratification or rejection the Constitution of the Republic of the Philippines proposed by the 1971 Constitutional Convention and appropriating funds therefor," I find it unnecessary, for the time being, to pass upon such question, because the plebiscite ordained in said Decree has been postponed. In any event, should the plebiscite be scheduled to be held at any time later, the proper parties may then file such action as the circumstances may justify.

With respect to the question whether or not martial law per se affects the validity of a submission to the people for ratification of specific proposals for amendment of the Constitution, I consider this matter as one intimately and necessarily related to the validity of Proclamation No. 1102 of the President of the Philippines. This question has not been explicitly raised, however, in any of the cases under consideration, said cases having been filed before the issuance of such Proclamation, although the petitioners in L-35948 maintain that the issue on the referral of the Proposed Constitution to the Citizens' Assemblies may be deemed and was raised in their Supplemental Motion of January 15, 1973. At any rate, said question has not been adequately argued by the parties in any of these cases, and it would not be proper to resolve, such a transcendental question without the most thorough discussion possible under the circumstances. In fairness to the petitioners in L-35948 and considering the

surrounding circumstances, I believe, therefore, that, instead of dismissing the case as moot and academic, said petitioners should be given a reasonable period of time within which to move in the premises.

Recapitulating' the views expressed by the Members of the Court, the result is this:

- There is unanimity on the justiciable nature of the issue on the legality of Presidential Decree No. 73.
- On the validity of the decree itself, Justices Makalintal, Ruiz Castro, Fernando, Teehankee, Esguerra and myself, or six (6) Members of the Court, are of the opinion that the issue has become moot and academic, whereas Justices Barredo, Makasiar and Antonio voted to uphold the validity of said Decree.
- On the authority of the 1971 Constitutional Convention to pass the proposed Constitution or to incorporate therein the provisions contested by the petitioners in L-35948, Justices Makalintal, Ruiz Castro, Teehankee and Esguerra opine that the issue has become moot and academic, Justices Fernando, Barredo, Makasiar, Antonio and myself have voted to uphold the authority of the Convention.
- Justice Fernando, likewise, expressed the view that the 1971 Constitutional Convention had authority to continue in the performance of its functions despite the proclamation of Martial Law. In effect, Justices Barredo, Makasiar and Antonio hold the same view.
- On the question whether the proclamation of Martial Law affected the proper submission of the proposed Constitution to a plebiscite, insofar as the freedom essential therefor is concerned, Justice Fernando is of the opinion that there is a repugnancy between the election contemplated under Art. XV of the 1935 Constitution and the existence of Martial Law, and would, therefore, grant the petitions were they not moot and academic. Justices Barredo, Antonio and Esguerra are of the opinion that that issue involves questions of fact which cannot be predetermined, and that Martial Law per se does not necessarily preclude the factual possibility of adequate freedom for the purposes contemplated.
- On Presidential Proclamation No. 1102, the following views were expressed:
 - Justices Makalintal, Castro, Fernando, Teehankee, Makasiar, Esguerra and myself are of the opinion that question of validity of said proclamation has not been properly raised before the Court, which, accordingly, should not pass upon such question.
 - Justice Barredo holds that the issue on the constitutionality of Proclamation No. 1102 has been submitted to and should be determined by the Court, and that the "purported ratification of the Proposed Constitution x x x based on the referendum among Citizens' Assemblies falls short of being in strict conformity with the requirements of Article XV of the 1935 Constitution," but that such unfortunate drawback, notwithstanding, "considering all other related relevant circumstances, x x x the new Constitution is legally recognizable and should be recognized as legitimately in force."
 - Justice Zaldivar maintains unqualifiedly that the Proposed Constitution has not been ratified in accordance with Article XV of the 1935 Constitution, and that, accordingly, it has no force and effect whatsoever.
 - Justice Antonio feels "that the Court is not competent to act" on the issue whether the Proposed Constitution has been ratified by the people or not, "in the absence of any judicially discoverable and manageable standards," since the issue "poses a question of fact."
- On the question whether or not these cases should be dismissed, Justices Makalintal, Ruiz Castro, Barredo, Makasiar, Antonio and Esguerra voted in the affirmative, for the reasons set forth in their respective opinions.

Justices Fernando, Teehankee and the writer similarly voted, except as regards Case No. L-35948 as to which they voted to grant to the petitioners therein a reasonable period of time within which to file appropriate pleadings should they wish to contest the legality of Presidential Proclamation No. 1102. Justice Zaldivar favors the granting of said period to the petitioners in said Case No. L-35948 for the aforementioned purpose, but he believes, in effect, that the Court should go farther and decide on the merits everyone of the cases under consideration.

WHEREFORE, all of the aforementioned cases are hereby dismissed, without special pronouncement as to costs.

IT IS SO ORDERED.

Conception, C. J., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, and Esguerra, JJ., concur.

Barredo, J., concurs and dissents in a separate opinion.

Makasiar, J., concurs as recapitulated.

Antonio, J., concurs as per separate opinion.

[1] Mun. of Malabang v. Benito, L-28113, Mar. 28, 1969; NAWASA v. Piguin, et al., L-35573, Oct 11, 1968; Fernandez v. P. Cuerva & Co., L-21114 (Nov. 25, 1967; Gonzales v. Commission on Elections, L-28224, Nov. 27, 1967; Bara Lidasan v. COMELEC, L-28089, Oct 25, 1967; Mun. of San Juan v. NAWASA, L-22047, Aug. 31, 1967; Mun. of San Joaquin v. Siva, L-19870, Mar. 18, 1967; Pelayo v. Auditor General, L-23825, Dec. 24, 1965; Philippine Constitution Association v. Gimenez, L-23326, Dec. 18, 1965; Mun. of La Carlota v. NAWASA, L-20232, Sept 30, 1964; Guevara v. Lao (Xates), L-25577, Mar- 15, 1966; Gillera v. Fernandez, L-20741, Jan. 31, 1964; Sigiente v. Secretary of Justice, L-20370, Nov. 29, 1963; Mun. of Naguilian v. NAWASA, L-18540, Nov. 29, 1963; Herrerav. Liwag, L-20079, Sept 30, 1963; Avtonav. Castillo, L-19313, Jan. 19, 1962; La Mallorca, etc. v. Ramos, et al., L-15476, Sept. 19, 1961; Tan v. De Leon, et al., L-15254, Sept. 16, 1961; Macias v. Commission on Elections, L-18684, Sept 14, 1961; Philippine Tobacco Flue-Curing & Redrying Corp. v. Sabugo, et al., L-16017, Aug. 31, 1961, Miller v. [1] Con't.

Mardo, L-15138, July 31, 1961; CuBu Liong v. Estrella, et al., L-14212, July 31, 1961; Pampanga Sugar Development Co., Inc. v. Fuentes, et al., L-14738, July 31, 1961; Eamshaw Docks & Honolulu Iron Works v. Mardo, et al., L-14759, July 31, 1961; Liwanag v. Central Azucarera Don Pedro, L-15372, July 31, 1961; Lecurav. Regional Office No. 3, etc., L-15582, July 31, 1961; Pitogo v. Sen Bee Trading Co., et al., L-15693, July 31, 1961; Pascual v. Sec. of Public Works and Communications, L-10405, Dec. 29, 1960; Corominas, Jr. v. Labor Standards Commission, L-14837, June 30, 1961; City of Baguio v. NAWASA, L-12032, Aug. 31, 1959; City of Cebu v. NAWASA, L-12892, April 20, 1960; Monies v. Civil Service Board of Appeals, 101 Phil. 490; Rutter v. Esteban, 93 Phil. 68; Araneta v. Dinglasan, 84 Phil. 368; Borromeo v. Mariano, 41 Phil. 322.

[2] Reiterated in the aforementioned Proposed Constitution [Subdivision (2) (a) of Section 5, Article X thereof.]

TEEHANKEE, J.:

Without prejudice to the filing of a separate extended opinion, I concur with the Chief Justice in his separate opinion and add the following brief comments.

The Solicitor General's Office on behalf of respondents manifested as of its last comment of January 16, 1973 that

"(W)ith respect to the statement in the Joint Manifestation that Presidential Decree No. 73 which calls for the holding of the plebiscite on January 15, 1973 still stands, the plebiscite scheduled to be held on January 15, 1973 has been postponed until further notice by virtue of General Order No. 20, dated January 7, 1973, of President Ferdinand E. Marcos."

On the other hand, Presidential Proclamation No. 1102 issued on January 17, 1973 recites as a premise, thereof, inter alia, that "since the referendum results show that more than ninety-five (95) per cent of the members of the Barangays (Citizens Assemblies)[1] are in favor of the New Constitution, the Katipunan ng Mga Barangay has strongly recommended that the new Constitution should already be deemed ratified by the Filipino people." [2]

Under the circumstances of record from which it appears that no election (or plebiscite) for the purpose has been called and held,³ it would be premature for now to hold that the averred ratification of the Constitution proposed by the 1971 Constitutional Convention has met the requirements of Article XV of the Constitution that "(S)uch amendments shall be valid as part of this Constitution when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification" or of Section 16 of Article XVII of the proposed Constitution itself that "(T)his Constitution shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite called for the purpose."

With the result reached by the Court, and the rendering moot of the issues raised against the validity of Presidential Decree No. 73, I do not deem it necessary to reach and pass upon the grave constitutional question in its two aspects (a) whether the Constitutional Convention may assume the power to call the plebiscite (a power historically exercised by Congress) and to appropriate funds therefor against the Constitutional mandate lodging such power in Congress⁴ and (b) whether the Constitutional Convention may delegate such assumed power to the President — absent any showing of wilful default or incapacity on the part of Congress to discharge it.

By the same token, it is unnecessary to resolve the equally grave question of whether certain matters adopted and proposed by the 1971 Constitutional Convention were ultra vires, e.g. Sections 2 and 15 of Article XVII (Transitory Provisions) providing for the delegates of said Convention to constitute the majority of an interim National Assembly and empowering such Assembly "upon special call by the interim Prime Minister ..., by a majority vote of all its members, (to) propose amendments to this Constitution (which) shall take effect When ratified in accordance with Article Sixteen hereof," which would appear to be in violation of the accepted principles governing constitutional conventions that they become functus officio upon completion of their function to formulate and adopt amendments to the Constitution^[5] for the people's ratification or rejection in the manner ordained in the Constitution^[6] — since such convention-controlled interim National Assembly may continue proposing Constitutional amendments by mere majority vote in contrast to the regular national assembly which would require "a vote of three-fourths of all its members" to propose such amendments.^[7]

[1] Such Citizens Assemblies, as stated in the proclamation, "were created in barrios in municipalities and in districts/wards in chartered cities pursuant to Presidential Decree No. 86, dated December 31, 1972, composed of all persons who are residents of the barrio, district or ward for at least six months, fifteen years of age or over, citizens of the Philippines and who are registered in the list of Citizen Assembly members kept by the barrio, district or ward secretary." (2nd whereas clause)

[2] 6th whereas clause.

[3] The conduct of such elections (or plebiscite) is, under Article X of the Constitution, entrusted to the

Commission on Elections which has "exclusive charge" (See Justice Barredo's separate opinion, p. 7). Under Article V of the Constitution, the right of suffrage is limited to qualified and duly registered voters, "who are 21 years of age or over and are able to read and write." Tolentino vs. Comelec, *infra*, in denying reconsideration, prohibited the submittal in an advance election of the Con-Con's Organic Res. No. I proposing to lower the voting-age to 18, as a piece-meal and incomplete amendment and rejected the contention "that the end sought to be achieved is to be desired." As per Barredo, J., "if this kind of amendment is allowed, the Philippines will appear before the world to be in the absurd position of being the only country with a Constitution containing a provision so ephemeral no one knows until when it will be actually in force."

[4] Article VI, Sec. 23, par. 2 of the Constitution, provides that "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

[5] Cf. Tolentino vs. Comelec, L-34150, Oct. 16, 1971 and Resolution on motion for reconsideration with concurring opinions, Nov, 4, 1971.

[6] See text, Presidential Decree No. 73.

[7] Article XVI, Sec. 1, par. 1 of the proposed Constitution.

CONCURRING AND DISSENTING

BARREDO, J.,

With full consciousness of the transcendental consequences of the action the Court is taking in these cases, not only upon me personally and as a member of the Supreme Court but upon the Court itself as the guardian of the Constitution, which all its members have solemnly sworn in the name of God to uphold and defend, and after long and serious consideration of all aspects and angles of the issues submitted for resolution by the parties, I have come to the sincere conviction that the petitions herein should be dismissed, including the supplemental petition filed by petitioners in G.R. No. L-35948, with the consequent denial of the mot on for the issuance of a writ of preliminary injunction or a temporary restraining order enjoining in effect any act which would imply giving force and effect to the 1972 Constitution which President Ferdinand E. Marcos proclaimed as ratified in Proclamation No. 1102 as of twelve o'clock noon on January 17, 1973. Without prejudice to a more extended opinion later, my reasons for this conclusion are as follows:

As of today, two matters present themselves for Our immediate resolution, namely, (1) the petitions in all of these cases praying for a writ of prohibition against the implementation of Presidential Decree No. 73 calling for and setting the date and the manner of holding the plebiscite for the ratification of the Constitution proposed by the 1971 Constitutional Convention, the date set being January 15, 1973, and (2) the supplemental petition, with prayer "or the issuance of a writ of preliminary injunction or a restraining order, in G.R. No. L-35948 to enjoin whatever ratification of the said Constitution would be proposed by the Citizens Assemblies,-established under Presidential Decrees Nos. 86, 86-A, and 86-B, and, correspondingly, any act which would give force and effect to such ratification, should it be proclaimed, which, by the way, everybody knows was already done at about 11:00 o'clock A. M. on January 17, 1973.

As to No. (1), I vote to dismiss the original petitions in all these cases for the simple reason that the alleged grounds thereof are either untenable or have become premature, if not somehow moot and academic, at least, meanwhile that the plebiscite had not been reset.[1]

(a) There is no question that the matter of whether or not Presidential Decree No. 73 is valid is a justiciable one

and not political, hence within the jurisdiction of this Court to resolve. *Tolentino v. Comelec*, G.R. No. L-34150, October 16, 1971, 41 SCRA 702 is sufficient authority for this pose.

(b) On the other hand, I am of the considered view that it is not within the competence of this Court to pass on the propriety or wisdom of any part or provision of the Constitution as proposed by the Convention. The Convention was called for the purpose of proposing amendments to the Constitution, and like any Constitutional Convention it was completely and absolutely free to make any proposal, whether or not consonant with the 1935 Constitution. The theory of ultra-vires proposals advanced by petitioners is to me without sufficient legal basis.

(c) Much less can I accept the view that the Convention's task was limited to proposing specific amendments to become either as new parts of the existing Constitution or as replacements of corresponding portions thereof, for even if there were any theoretical basis for petitioners' posture in this regard, I feel safe in saying that when the people elected the delegates to the Convention and when the delegates themselves were campaigning such limitation of the scope of their function and objective was not in their minds. Withal, considering the number and nature of the proposals already being publicly discussed before and after said election, to follow petitioners' suggestion would have produced confusion and probably insurmountable difficulties even in the framing and phrasing alone of the amendments so that they may easily and clearly jibe with the other parts of the existing Constitution.

(d) Regarding the alleged lack of legislative power of the President to issue Presidential Decree No. 73, I maintain that independently of the issue of whether or not the President may legislate during martial law relative to matters not connected with the requirements of suppressing the armed insurgency and the maintenance of peace and order, it was within the prerogative of the President to issue said decree, considering that in doing so he merely acted as agent for and on behalf of the Constitutional Convention, which, in my opinion written for the Court in the *Tolentino* case, I individually held, had the power to call for a plebiscite, prescribe its terms and appropriate money for the purpose. Disregarding immaterial niceties of form and language, and looking to its obvious intent and purpose, I hold that Resolution No. 5843 of the Convention, approved on November 22, 1972, delegated to the President in plenary terms the calling of the plebiscite, and since the ordinary rules requiring the laying down of standards in the delegation of legislative functions binding Congress do not, to my mind, apply to the Convention, if only because the latter occupies a higher plane of legislative authority than Congress in matters related to the accomplishment of its objectives, it follows that Presidential Decree No. 73 was validly issued.

(e) All the other objections to said decree were rendered premature, if not somehow moot and academic for the time being, because under General Order No. 20, dated January 7, 1973, the President postponed the plebiscite until further notice. Such being the case, nobody could positively say that the President would not allow Congress to pass a plebiscite law or that he would not lift martial law by then or that the contracts, executive orders, treaties; proclamations, decrees, etc. that are supposed to be ratified together with the Constitution itself would not be published for the proper information of all concerned before the next date to be fixed for the plebiscite. In other words, no one could say that appropriate steps would not be taken to meet the objections alleged in the petitions before the plebiscite would be actually held. It is, indeed, judicially improper to pass upon any issue the factual setting whereof may still be materially altered.

(f) On whether or not the holding of the plebiscite during martial law would materially affect proper submission insofar as the freedom supposed to attend it is concerned, I agree with the respondents that this is a question of fact which cannot be pre-determined and that it would, therefore, be the burden of the petitioners to show by evidence that such freedom had been actually and substantially impaired. When one recalls that measures were taken by the President precisely to provide the widest opportunity for free debate and voting, consistent with the nature and purpose of the plebiscite but at the same time safeguarding the objectives of the martial law proclaimed by him, which measures he had to withdraw only when in his judgment he deemed it to be so required by public safety, it does not seem altogether logical to assume that the existence of martial law

per se deprives the people of the essence of free suffrage. Martial law implemented Philippine style, to use an apt expression, does not carry with it necessarily all the implications thereof as these are known in other lands and in the recorded precedents.

Coming now to No. (2), it is evident that under the theory above-referred to that as agent of the Convention, the President could devise other forms of plebiscite to determine the will of the majority of the people vis-a-vis the ratification of the proposed Constitution, I believe that the establishment of the Citizens Assemblies as a mode of such plebiscite cannot be said to be clearly beyond the contemplation of Article XV of the Constitution of 1935. It must be observed, however, that under Article X of the same Constitution, it is the Commission on Elections that is supposed to "have exclusive charge of enforcement and administration of all laws relative to the conduct of elections —." and this function cannot be removed from the Commission whether by Congress or by the President.[2] This constitutional point seems to have been overlooked in the proceedings in the Assemblies, since it does not appear from any of the official documents relative thereto that the same have been undertaken or held under the charge of the Commission.

Besides, I feel I cannot bear evidence to history and the future generations of our people that in fact, the answering of the questions and the canvassing and reporting of the referendum in the Assemblies throughout the country were done exactly in the manner and form that they should have been done, in the light of traditional concepts related to plebiscites as we know them. Otherwise stated, I am not satisfied that Article XV of the 1935 Constitution has been fully complied with. By this, I do not mean that it was not right to use the Assemblies; what I am saying is that, on the basis of facts I am taking judicial notice of, the procedure of answering, canvassing and reporting adopted, which, by the way, was far from being uniform in all the Assemblies, was not up to standard in many places, judged on the basis of the requirements of the pre-'ailing election laws.

On the other hand, in spite of these considerations, I do not find myself in a position to deny the factual assertion in Proclamation 1102 that more than 14 million Filipinos have manifested approval of the proposed Constitution and would consider the same as already ratified by them. I understand that this number was determined on the basis of sworn reports of the respective heads of the Assemblies. Such being the case. I am faced with proof which I have no way of duly controverting that our people have spoken. I consider it undemocratic, impractical and unrealistic to close my eyes to that vital fact. And since in a democracy the will of the people is the supreme law, I hold that it would be improper for the Court to enjoin any act done or to be done pursuant to the proclamation in dispute. I believe that whatever legal flaws there might have been in the procedure pursued leading to the issuance of said proclamation may be deemed already cured by the apparent will of the people however imperfectly, under legal and technical standards, the same has been expressed. To grant the prayer of petitioners now would be tantamount to defying the very sovereign people by whom and for whom the Constitution has been ordained, absent any demonstrated facts showing that they prefer the status quo, which the Convention was precisely called to change meaningfully, to the wide-range reforms everybody can see are being effected in practically all levels of the government and all sectors of society. Withal, to issue any such injunctive writ at this stage of denouement of national events is to court consequences too horrible to imagine.

To the possible stricture that persons less than twenty-one years of age were allowed to participate and vote in said Assemblies, my reaction is that I am not sure that Article V of the 1935 Constitution, viewed in the light of the perceptible universal drift towards the enfranchisement of the youth, may not be construed as permitting legislative enlargement of the democratic base of government authority, since the said Article does not say that those thereby qualified are the only ones who can vote — the language being simply that "suffrage may be exercised by male citizens of the Philippines not otherwise disqualified by law, who are twenty-one years of age or over and are able to read and write, and who shall have resided in the Philippines for one year and in the municipality wherein they propose to vote for at least six months preceding the election, x x x," which, to me,

strictly speaking, only guarantees the right of suffrage to those enumerated but does not deny to the legislature the power to include others who in its wisdom it believes should also enjoy such right. In any event, it is elementary under our election law and jurisprudence "that should it appear that disqualified persons have succeeded in voting in an election, such election is not thereby necessarily rendered wholly illegal, but the votes of such persons are only correspondingly deducted after being duly identified. Accordingly, on the premise that the inclusion of those below 21 is illegal, their votes may be deducted from the 14,000,000 or so aforementioned and I am certain no one will deny that the remainder would still be substantially sufficient to constitute a recognizable mandate of the people, for under normal circumstances which must be presumed, and making the most liberal estimate, the votes of the underaged voters among them could not have been more than one-third of said number. Indeed, at the most, if this point had been considered before the issuance of Proclamation 1102, an injunction might have issued to restrain the underaged persons from participating in the referendum, but now that the result thereof is a fait accompli, I cannot see how such a possible flaw can be of any material consequence.

As may be noted, I have taken it upon myself to rule on the legal issues surrounding Proclamation 1102. Indeed, I feel very strongly that, as a member of the Supreme Court, it is my duty to our people to enlighten them as to said issues. The eyes of the whole country have been pinned on Us since the Convention approved the draft of the Constitution in question on November 30, 1972, and the President called, on December 1, 1972, thru Presidential Decree No. 73, for a plebiscite scheduled to be held on January 15, 1973, for its ratification. Concerned citizens purporting to speak for the people have precisely come to the Court challenging the legality of the procedure thus pursued as not being in consonance with the amending process specified in the 1935 Constitution and praying that the Court enjoin the continued adoption of said procedure. Everybody knows that they came to Us with the conviction that the Court would not hesitate to play its role as the final authority designated by the Constitution itself to interpret and construe its provisions.

Accordingly, We gave due course to their petitions, and for two days, December 18 and 19, We heard brilliant and learned counsel of both sides argue eloquently, even with obvious patriotic fervor, but in view of the circumstances related in the separate opinion of the Chief Justice, We were unable to decide the cases even as late as January 13, 1973. Petitioners then came with motions urgently seeking an early decision, and soon after, or, on January 15, 1973, petitioners in G.R. No. L-35948 filed a supplemental petition relative to the latest developments involving the creation of Citizens Assemblies and the persistent reports indicating almost to a certainty that a proclamation would be issued doing away with the usual plebiscite procedure and already proclaiming the proposed Constitution as ratified and in force, on the basis alone of the favorable result of a referendum in said Assemblies. Their main prayer was for Us to issue a writ of prohibition against the submission and approval of the reports of the results of said referendum. We immediately required the respondents to answer the supplemental petition not later than January 16 and set the case for hearing on January 17 at 9:30 o'clock in the morning.

In closing his arguments before the Court that fateful morning, Senator Lorenzo Tanada, the tenacious counsel for petitioners, pleaded earnestly, even after the Chief Justice had read to him in open session the text of Proclamation 1102 which had just been delivered by the Secretary of Justice, that the Court rule squarely on the issues petitioners have raised. He told Us that it is secondary whether Our judgment should be favorable or unfavorable to petitioners, what is most important is for the people to know whether or not the provisions of the Constitution have been observed.

Indeed, no graver responsibility rests on the shoulders of the Court. And as I see it, We cannot shirk that responsibility by alleging technical excuses which I sincerely believe are the best of controversial tenability.

I cannot share the view that the validity and constitutionality of Proclamation 1102 have not been submitted to Us for resolution in these proceedings. I maintain that for all intents and purposes, the supplemental motion of

Senator Tañada of January 15 placed those transcendental issues before Us. Not only in his pleading but more so in his oral argument, Senator Tañada, with all the vigor of his mind and the sincere patriotism of his heart, contended that with the creation of the Citizens Assemblies and the referendum being conducted therein, and particularly in view of the two questions to be answered, namely, "Do you approve of the proposed constitution?" and "Do you want the plebiscite to be held?," there was no doubt that Article XV of the Constitution was being bypassed and that this Court was being "short-circuited." In terms that could not have been plainer, he pointed to the impending probability of the issuance of a proclamation of the nature of Proclamation 1102, and he prayed eloquently, that We should act without loss of time to stop the purported reports of the referendum so as to remove the basis for such feared eventuality. So much so, that after the Chief Justice read the proclamation to him, he dramatically exclaimed, "I have been confirmed." Others would have said, "Consummatum est."

Under these circumstances, I cannot see how it can be held that We can refrain from ruling on the legal and constitutional significance of Proclamation 1102. At the very least, the present state of the case of Vidal Tan et al. vs. Comelec, et al., G.R. No. L-35948, imposes upon Us the ineludible obligation to rule whether or not We should have enjoined the submission of the reports of the Assemblies, as demanded by petitioners, it being evident that as Senator Tañada contended said reports were to be utilized as basis for the issuance of a proclamation declaring the proposed Constitution as ratified and already in force. In similar past cases too numerous to cite, this Court and all courts in the country, I dare say, have always considered the consummation of a threatened act, after the petition to enjoin it has been submitted to the court's jurisdiction, as fit subject for its disposition, within the same proceedings, to the extent that the courts even issue mandatory injunctions, in appropriate cases, for the respondents to undo what has already been done without having to hold any further hearing. It is claimed that the parties must be fully heard — but have we not heard enough from them? Has not Senator Tañada presented all his arguments in support of his supplemental petition? And if he has not, is it the fault of the Court? Is it fair to all concerned that such possible omission be considered as a ground for Our withholding Our judgment on what under the law and the rules is already properly before Us for resolution? Truth to tell, I cannot imagine a fuller ventilation of the cause of any other petitioner who has come to this Court than petitioners in G.R. No. L-35948. Rarely has the Court held hearings for days and more unusually has it given any counsel almost unlimited time to speak, but these We have done in these cases. Can any party ask for more? If at all, only the respondents have not adequately presented their side insofar as the supplemental petition is concerned, but, again, it cannot be said that they have not had the opportunity to do so. The Acting Solicitor General has unqualifiedly filed his answer on behalf of all the respondents, and to me, his attempt to impress the Court that the new respondents have not been summoned and that the subject petition is premised on probabilities and conjectures is of no moment, considering the grave importance of the issues and the urgent necessity of disposing them expeditiously and without unnecessary loss of fateful time. Of course, I respect the reasons of my colleagues who cannot see it my way, but as far as I am concerned, this is as appropriate a case and an occasion as any can be to resolve all the fundamental issues raised by petitioners, and to leave them unresolved now would be practically inviting some nonconformists to challenge the Constitution and to keep not only the wheels of the transition at a standstill, but worse, also the animus of the people in suspended animation fraught with anxiety, with all the dire consequences such a situation entails.

Some legalists would call the government under the proclaimed Constitution a revolutionary government, but the President denies that it is, because, according to him, it is to operate under a Constitution ratified by the people. At this crucial moment in the history of the nation, We need not bother about variant nomenclatures; these can be subjective and are, in any event, unsubstantial. What is of supreme and utmost importance is that the people be told what exactly the situation is, sans the veneer of what might turn out after all to be an inaccurate appellation. The people must know the real score, and, as a member of the Supreme Court, I do not hesitate to tell them that,

as I have already explained above, in my honest opinion, the purported ratification of the Constitution attested in Proclamation 1102 and based on the referendum among the Citizens Assemblies falls short of being in strict conformity with the requirements of Article XV of the 1935 Constitution. I must hasten to add, however, that such unfortunate drawback notwithstanding, and considering all other relevant circumstances, principally, the naked proof before Us indicating that the people approve of it, I earnestly and sincerely believe that the new Constitution is legally recognizable and should be recognized as legitimately in force.

I reiterate I have no legal means of denying it to be a fact, as stated in the proclamation, that 14,000,000 Filipinos have manifested in the referendum in the Citizens Assemblies their approval of this Constitution. And even if We considered that said referendum was held under the aegis of full implementation of the martial law proclaimed by the President under Proclamation 1081, as mandated by General Order No. 20, We would not be able to ignore that the government under this Constitution is well organized and is in stable, effective and complete control of the whole Philippine territory, and what is more pertinently important, that this Constitution purged as it is now of its Achilles heel, the Interim National Assembly, may fairly be said to be acceptable generally to the people, embodying as it does meaningful reforms designed to check, it not to eradicate, the then prevalent causes of widespread popular restiveness and activism which has already assumed practically the proportions of an armed insurgency or rebellion somehow endangering the security and safety of the constituted government, if not the integrity of the nation. And in connection with the implementation of martial law thus ordered, as I have already noted earlier in this opinion, its being done Philippine style may be of some relevance, since such enforcement is not characterized by the rigor that the usual concept of martial law connotes, hence, any suggestion of constructive duress relative to the proceedings, in the Assemblies and the Barangays may not fully hold water. Upon these premises, it is my considered opinion that if in any sense the present government and Constitution may be viewed as revolutionary, because they came into being, strictly speaking, extra-constitutionally or outside the pale of the 1935 Constitution, they are nonetheless entitled to be accorded legitimate standing, for all intents and purposes and for all concerned, under the universally accepted principle that a revolution, whether violent or bloodless, is illegal only when it fails to gain the support of the people. Indeed, under these circumstances, I cannot resist the temptation of asking, is it juridically possible for this Court to declare unconstitutional and without force and effect the very Constitution under which it presently exists? I am inclined to hold that the answer to this question can only be in the negative. Consequently, petitioners are not entitled to any judicial relief and, I have no alternative but to vote for the dismissal of the supplemental petition of January 15, 1973.

In conclusion, I hold that the 1935 Constitution has pro tanto passed into history and has been legitimately supplanted by the Constitution now in force by virtue of Proclamation 1102, issued pursuant to the certified results of the referendum in the Citizens Assemblies all over the country favoring its adoption and enforcement.

Long live our country, the Philippines! God bless our people, the Filipino people!

[1] It was agreed in the deliberations that the validity of Presidential Decree No. 73 would be passed upon as if Proclamation 1102 did not exist, and afterwards, for those who would like to express their views on the matter, the validity of Proclamation 1102 itself, hence the tenses and moods in this discussion.

[2] Under the Constitution of 1935, both Article X and Article XV use the same word "election," hence, the plebiscite contemplated in the latter Article must be deemed to be charged of the Commission, irrespective of the form to be employed therein.

CONCURRING AND DISSENTING

FERNANDO, J.;

While I am in agreement with the resolution of the Court dismissing the petitions for their being moot and academic, I feel that a brief separate opinion expressing my views on certain legal[^] issues would not be amiss, considering the transcendental character of the suits before us. Indisputably, they involve the crucial role assumed by the Executive in the proposed submission of the new Constitution, perhaps unavoidably thrust upon him in view of the declaration of martial law. It is reassuring that there is a reiteration of the principle that the amending process, both as to proposal and ratification, raises a judicial question. Notwithstanding the vigor and plausibility with which the Solicitor-General stressed what for him is the political nature of the controversy, with considerable support from authorities on constitutional law partial to the judicial restraint approach, it would be, for me, a plain abdication of the trust reposed in this Court, if it would rule itself as devoid of authority to inquire into the validity of the steps taken towards the ratification of the proposed amendments. The most that I can concede is that where the effect of the nullification sought is to prevent the sovereign people from expressing their will, the utmost caution and circumspection should be exercised.

Now, as to the merits of the issues that would have called for resolution, were it not for the matter becoming moot and academic. While not squarely raised, the question of whether or not a constitutional convention could go on meeting with martial law in force has a prejudicial aspect. Following the ruling in *Duncan v. Kahanamoku*[1] that Legislature and courts continue to function even under such period, being not merely cherished governmental institutions but indispensable to the operation of government, there is no doubt in my mind that the same principle should likewise apply to a constituent body. To the contention pressed by Senator Tañada, as counsel, in *Tan v. Commission on Elections*, that the proposed Constitution contains provisions beyond the power of the Constitutional Convention to submit for ratification, it seems to me a sufficient answer that once convened, the area open for deliberation to a Constitutional Convention and thereafter to be embodied in proposed amendments if approved by the majority, is practically limitless.[2] In that sense, it can be truly stated that the Convention can propose anything but conclude nothing. As was intimated by Justice Makasiar, speaking for the Court in *Del Rosario v. Comelec*,[3] "whether the Constitutional Convention will only propose amendments to the Constitution or entirely overhaul the present Constitution and propose an entirely new Constitution based on an ideology foreign to the democratic system, is of no moment; because the same will be submitted to the people for ratification. Once ratified by the sovereign people, there can be no debate about the validity of the new Constitution." [4] Once its Work of drafting has been completed, it could itself direct the submission to the people for ratification as contemplated in Article XV of the Constitution. Here it did not do so. With Congress not being in session, could the President, by the decree under question, call for such a plebiscite? Under such circumstances, a negative answer certainly could result in the work of the Convention being rendered nugatory. The view has been repeatedly expressed in many American state court decisions that to avoid such undesirable consequence, the task of submission becomes ministerial, with the political branches devoid of any discretion as to the holding of an election for that purpose.[5] Nor is the appropriation by him of the amount necessary to be considered as offensive to the Constitution. If it were done by him in his capacity as President, such an objection would indeed have been formidable, not to say insurmountable.[6] If the appropriation were made in his capacity as agent of the Convention to assure that there be the submission to the people, then such an argument loses force. The

Convention itself could have done so.[7] It is understandable why it should be thus. If it were otherwise, then a legislative body, the appropriating aim of the government, could conceivably make use of such authority to compel the Convention to submit to its wishes, on pain of being rendered financially distraught. The President then, if performing his role as its agent, could be held as not devoid of such competence. That brings me to the argument as to the absence of proper submission, developed with the customary learning and persuasiveness by Senators Tanada and Salonga. With all due recognition of their forensic skill, I prefer to rely on what, for me, is the correct principle announced in the opinion of the Chief Justice in *Gonzales v. Commission on Elections*: [8] "A considerable portion of the people may not know how over 160 of the proposed maximum of representative districts are actually apportioned by R. B. H. No. 1 among the provinces -n the Philippines. It is not improbable, however, that they are not interested in the details of the apportionment, or that a careful reading thereof may tend in their simple minds, to impair a clear vision thereof. Upon the other hand, those who are more sophisticated, may enlighten themselves sufficiently by reading the copies of the proposed amendments posted in public places, the copies kept in the polling places and the text of contested resolutions, as printed in full on the back of the ballots they will use. It is, likewise, conceivable that as many people, if not more, may fail to realize or envisage the effect of R. B. H. No. 3 upon the work of the Constitutional Convention or upon the future of our Republic. But, then, nobody can foretell such effect with certainty. From our viewpoint, the provisions of Article XV of the Constitution are satisfied so long as the electorate knows that R. B. H. No. 3 permits Congressmen to retain their seats as legislators, even if they should run for and assume the functions of delegates to the Convention. We are impressed by the factors considered by our distinguished and esteemed brethren, who opine otherwise, but, we feel that such factors affect the wisdom of Republic Act No. 4913 and that of R. B. H. Nos. 1 and 3, not the authority of Congress to approve the same. The system of checks and balances underlying the judicial power to strike down acts of the Executive or of Congress transcending the confines set forth in the fundamental laws is not in derogation of the principle of separation of powers, pursuant to which each department is supreme within its own sphere. The determination of the conditions under which the proposed amendments shall be submitted to the people is concededly a matter which falls within the legislative sphere. We do not believe it has been satisfactorily shown that Congress has exceeded the limits thereof in enacting Republic Act No. 4913." [9]

Nonetheless, were it not for the fact that the matter had become moot and academic, I am for granting the petitions in view of what, for me, is the repugnancy between an election contemplated under Article XV of the Constitution wherein the voters can freely register their will, whether it be for approval or disapproval, and the existence of martial law, with its connotation that dissent may be fraught with unpleasant consequences. While it is to be admitted that the Administration has done its best to alleviate such a state of mind, I cannot in all honesty say, although I am prepared to concede that I may labor under a sense of undue pessimism, that the momentum of fear necessarily incident to such a regime has been reduced to a minimum. I fail to see then the existence of that indispensable condition of freedom that would validate the ratification process as contemplated by the Constitution, As to the validity of Proclamation No. 1102, adherence to what for me are fundamental concepts of judicial review precludes at this stage the expression of any opinion. It would, at the very least, be premature. [10]

[1] 327 US 304 (1946).

[2] Ex parte Kerby, 205 P. 279 (1922).

[3] L-32476, Oct. 20, 1970, 35 SCRA 367.

[4] Ibid., 369.

[5] Cf. *Koehleir v. Hill*, 14 NW 738, 60 Iowa 543 (1883); *Hatch v. Stoneman*, 6 P. 734, 66 CM. 632 (1185); *Macmillan v. Blattaer*, 25 NW 245, 67 Iowa 287 (1895); *State v. Powell*, 27 So 297, 77 Miss. 543 (1900); *Hammond v. Clark*, 71 SE479, 136 Ga. 313 (1911); *State v. Hall*, 171 NW 213, 44 ND 459 (1919); *Hamilton v. Vaughan*, 179 NW 533, 212 Mich. 31 (1920); *State v. Smith*, 138 NE 881, 105 Ohio St. 570 (1922); *Looney v. Leeper*, 292 P. 365, 145 Okl. 202 (1930); *School District v. City of Pontiac*, 247 NW 474, 262 Mich. 338 (1933).

[6] According to Art. VI, Sec. 23, par. 2 of the Constitution: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

[7] Cf. *Hutcheson v. Gonzales*, 71 P. 2d 140 (1937); *Slate v. Smith*, 184 SW 2d 598 (1945).

[8] L-28196 and 28224, November 9, 1967, 21 SCRA 774.

[9] *Ibid.*, 801-802.

[10] Cf. *Angara v. Electoral Commission*, 63 Phil. 139 (1936); *People v. Vera*, 65 Phil. 56 (1937); *Planas v. Gil*, 67 Phil. 62 (1939); *Tan v. Macapagal*, L-24161, Feb. 29, 1972, 43 SCRA 677.

CONCURRING

ANTONIO, J.,

The historical events of the last few days have rendered the petitions (G.R. Nos. L-35925, L-35929, L-35940, L-35941, L-35942, L-35948, L-35953, L-35961, L-35965 and L-35979), including the supplemental petition moot and should be dismissed.

Without prejudice to a more extended opinion later, I concur in the view that implicit in the power of the Constitutional Convention to propose amendments to the Constitution is its authority to order an election at which such amendments are to be submitted to the people for ratification and, within the narrow range implied as necessary for the business of submitting the amendments to the people, the capacity to appropriate money for the expenses necessary to make such submittal effective. Independently therefore of the question, whether or not the President may legislate during martial law, it was certainly within the authority of the President to issue such measures, acting as agent for and in behalf of the Constitutional Convention to call for a plebiscite, prescribe its terms and appropriate money for said purpose.

The opinion that the President, as agent of the Convention, could device other forms of election to determine the will of the majority of the people on the ratification of the proposed Constitution, establishes a principle that is not entirely devoid of precedent. The present Constitution of the United States was ratified in a manner not in accord with the first Constitution of the United States, which was the Article of Confederation. The violation was deliberate, but Madison, however defended the method provided for the adoption of the new Constitution by saying that it was a case "of absolute necessity" which forced the framers of the new Constitution to resort "to the great principle of self-preservation; to the transcendental law of nature and nature's God, which declares that the safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed." While I agree that this precedent is never one that would justify governmental organs in ignoring constitutional restraints, the fact is the people themselves had already acted by adopting the procedure devised in the expression of their sovereign will.

To the contention of one of the petitioners, that the draft of the Constitution contains provisions beyond the power of the Constitutional Convention to submit for ratification, suffice it to state that there is nothing that can legally

prevent a convention from actually revising the entire Constitution for, in the final analysis, it is the approval of the people that gives validity to any proposal of amendment or revision.

I concur in the opinion that martial rule per se, in the light of contemporary events, does not warrant the presumption that the results of the plebiscite of ratification is not a genuine and free expression of the popular will.

It poses a question of fact which, in the absence of any judicially discoverable and manageable standards, or where the access to relevant information is insufficient to assure the correct determination of the issue, I do not feel that this Court is competent to act.

If the ratification of the new Constitution and the new government erected thereon, is not what it is represented to be, the expression of the will of the majority or the people are dissatisfied, they have ample remedy. The instrument itself provides amendment and change. For the only and proper way in which it should be remedied, is the people acting as a body politic. These questions relate to matters not to be settled on strict legal principles, For the new constitution has been promulgated and great interests have already arisen under it. The political organ in the government has recognized it and has commenced the implementation of its provisions. Under such circumstances the Court should therefore refrain from precipitating impossible situations which might otherwise rip the delicate social and political fabric.

The theory of presumptive collective duress under martial rule is perhaps valid in any other clime. In the case at bar, it flies against the stark reality of the factual setting. To insist upon it is to ignore the historical facts that culminated in the national referendum. The people wanted a revolutionary change. They were aware of the manifold problems of the nation — its poverty, corruption, injustice, subversion and insurgency and criminality. The sweeping and dramatic reforms during the last few months buoyed up the hopes of the people that thru the instrumentality of a new charter these gains of the commonweal may be conserved and further enlarged. In the ambience of such a historical, setting, it would have been presumptuous to assume that the qualified voters in the reportedly more than fourteen million Filipinos who voted for the new charter, did so not with freedom but from fear. Such a posture, I cannot accept, for that would demean the courage, integrity and wisdom of the people themselves.

In all other respects, the opinion of Justice Barredo merits my concurrence.

CONCURRING

ESGUERRA, J.,

I vote to deny all petitions seeking to prohibit the holding of the plebiscite on January 15, 1973, on the Constitution of November 30, 1972, as provided for in Presidential Decree No. 73 of December 1, 1972. Specifically, I vote to deny the supplemental petition in G.R. No. L-35948 seeking to restrain the Citizens Assemblies referendum in connection with the ratification of said Constitution.

My reasons are simple and need no elaborate and lengthy discussion.

- In the first place, these cases have become moot and academic as the holding of the plebiscite scheduled for January 15, 1973, has been indefinitely postponed under General Order No. 20 dated January 7, 1973. Consequently, there is nothing more to prohibit or restrain.

- In the second place, the supplemental petition in G.R. No. L-35948 to restrain the respondents, including three additional parties, namely Secretary Jose Rono as head of the Department of Local Governments; Secretary Conrado Estrella, as head of the Department of Agrarian Reforms and Secretary Guillermo de Vega, as Chairman of the National Ratification Coordinating Committee, who were not duly served with summons and have never been heard, has been rendered futile as the Citizens Assemblies have expressed their decisions to ratify the 1972 Constitution and said officers have reported to the President and on the basis thereof he has announced the ratification of said Constitution by Proclamation No. 1102, dated January 17, 1973, effective 12:00 o'clock noon of said date. Hence there is also nothing more to restrain or prohibit as the acts sought to be stopped have been fully accomplished.

I do not attempt to assail the validity of Proclamation No. 1102 as the Court is not in possession of any evidence to overthrow the veracity of the facts therein related, there being no case formally filed with the Court attacking the validity of said Proclamation, and, moreover, the parties responsible for the holding of the referendum or plebiscite by the Citizens Assemblies, which ratified the proposed Constitution, have not been impleaded and afforded a chance to be heard. In brief, there is absolutely no basis for making a pronouncement on the validity of the said proclamation, and to do so would be simply riding rough shod over well-beaten road of due process of law which basically requires notice and full and fair hearing.

Without any competent evidence I do not pretend to know more about the circumstances attending the holding of said referendum or plebiscite and I cannot say that it was not lawfully held. I assume that what the proclamation says on its face is true and until overcome by satisfactory evidence, of which there is absolutely nothing before Us, I cannot subscribe to the claim that such plebiscite was not held accordingly.

At this stage, whether or not there was a valid ratification of the 1972 Constitution cannot be resolved without raising the legality of the Government under which we are now operating as of January 17, 1973. Hence We would be confronted with a political question which is beyond jurisdiction of this Court to settle. I accept as fait accompli that the Constitution adopted on November 30, 1972, has been duly ratified, and I consider that any assault against it as well as the manner of its ratification has become innocuous. Having been invested with full force and effect by the approval of an overwhelming majority of the people, to mount an attack against it now would be nothing less than fighting the windmills in Don Quijote fashion. I do not wish to emulate that unique literary character and I prefer to take things in the light of the stark realities of the present. I have always adhered to the idea that the practical approach to any question yields the happiest solution, instead of soaring in flights of fantasies and losing one's self in idle metaphysical adventures.

DISSENTING

ZALDIVAR, J.,

I cannot agree with my worthy colleagues who hold the view that the petitions in all these cases have become moot and academic simply because the relief prayed for by petitioners cannot be granted after Proclamation No. 1102 was issued by the President of the Philippines. A case does not become moot where there remain substantial rights or issues that are controverted and which are not settled.[1] This Court has decided cases even if no positive relief, as prayed for by a party in the case, could be granted, or even if a party has withdrawn his appeal, if the case presented to the court for resolution is a clear violation of the Constitution or of fundamental personal rights of liberty and property.[2]

In the present cases it is in the public interest that this Court renders a ruling on the transcendental issues brought about by the petition — issues which must be resolved by this Court as the guardian of the Constitution of this Republic.

For a comprehensive appraisal of the facts and circumstances relevant to the resolution of the issues involved in these cases, We shall narrate pertinent events, as shown in the record.

On December 1, 1972 the President of the Philippines, in his capacity as Commander-in-Chief of all the Armed Forces of the Philippines and acting pursuant to Proclamation No. 1081, dated September 21, 1972, issued Presidential Decree No. 73, submitting to the Filipino people for ratification or rejection the Constitution of the Republic of the Philippines proposed by the 1971 Constitutional Convention, and appropriating funds for the purpose. The Decree states that the same was issued pursuant to Resolution No. 5843 of the 1971 Constitutional Convention proposing "to President Ferdinand E. Marcos that a decree be issued calling a plebiscite for the ratification of the proposed new Constitution on such appropriate date as he shall determine and providing for the necessary funds therefor." [3] The decree set the plebiscite for January 15, 1973 and appropriated the sum of P15,000,000.00 to carry out the purpose of the decree. The Decree provided for the publication of the proposed Constitution, the dissemination of information regarding the proposed Constitution, the application of the provisions of the Election Code of 1971 to the plebiscite insofar as they are not inconsistent with the provisions of the decree, specially stating that the provisions of said Code regarding the right and obligations of political parties and candidates shall not apply to the plebiscite. The Decree further provided for a calendar for the plebiscite, for the registration of voters, for the constitution of the board of inspectors, for watchers, for precincts and polling places, for the official ballots to be used, for the preparation and transmission of plebiscite returns, for the canvass of the returns by the city, municipality, and the municipal district board of canvassers, for the canvass by the the Commission on Elections and the proclamation of the results by said Commission, for supplies and services needed for the holding of the plebiscite, and on the authority given to the Commission on Elections to promulgate rules and regulations necessary to carry out the provisions of the Decree.

On December 1, 1972, the President of the Philippines also issued General Order No. 17, ordering and enjoining the Armed Forces of the Philippines and all other departments and agencies of the Government to allow and encourage public and free discussions and debates on the proposed Constitution before the plebiscite set for January 15, 1973.

During the first half of the month of December 1972, the petitioners, in the ten cases now before this Court, filed petitions for prohibition with preliminary injunction, seeking to prevent the holding of the plebiscite on January 15, 1973. The petitioners question validity of Presidential Decree No. 73, principally upon the ground that it is not in the power of the President of the Philippines to call a plebiscite for the ratification or rejection of the proposed Constitution and to appropriate public funds for the purpose. The petitioners also maintain that the period of only about 45 days from the date of the approval of the proposed Constitution by the Constitutional Convention on November 30, 1972 to January 15, 1973, was not a sufficient time for the electorate of this country to be properly informed regarding the provisions of the proposed Constitution, and the electorate could not therefore vote intelligently on whether to ratify or to reject the proposed Constitution, and so there could be no proper submission of the proposed Constitution to the electorate. The petitioners further maintain that the country being under martial law there could not be a free submission of the proposed Constitution to the electorate. In some of the petitions, the petitioners also maintain that the proposed Constitutional contains provisions which are beyond the power of the Constitutional Convention to adopt or to propose. All the petitioners prayed this Court to issue a writ of preliminary injunction or restraining order to prevent the respondents in each of the petitions from implementing Presidential Decree No. 73. This Court, however, did not issue the preliminary injunction, nor the

restraining order, prayed for. This Court required the respondents in each petition to answer the petition, and set the cases for hearing on the petition for preliminary injunction and on the merits of the case for December 18, 1972. Hearings were actually held for two days — on December 18 and 19, 1972.

On December 31, 1972, while these cases were pending before this Court, the President of the Philippines issued Presidential Decree No. 86 creating the Citizens Assemblies throughout the country. Among others, Decree No. 86 provides that there is created a citizen assembly in each barrio in municipalities, and in each district in chartered cities, provided that in the case of Manila and other chartered cities where there are no barrios there shall be a citizen assembly in every ward; that the citizen assemblies shall consist of all persons who are residents of the barrio, district, or ward for at least six months, 15 years of age or over, citizens of the Philippines, and who are registered in the list of citizens assembly members kept by the barrio, district or ward secretary. As stated in the decree, the purpose of establishing the citizens assemblies is to broaden the base of the citizens' participation in the democratic process and to afford ample opportunities for the citizenry to express their views on important national issues.

On January 5, 1973 the President of the Philippines issued Presidential Decree No. 86-A which, among others, provided for the submission to the citizens' assemblies created under Presidential Decree No. 86 questions to be answered, and among those questions are these two: (1) "Do you approve of the new Constitution?"; (2) "Do you still want a plebiscite to be called to ratify this new Constitution?"

On January 7, 1973 the President issued General Order No. 20, ordering the postponement of the plebiscite that had been scheduled for January 15, 1973. Said general order reads as follows:

GENERAL ORDER NO. 20

WHEREAS, pursuant to Presidential Decree No. 73 dated December 1, 1972, a plebiscite has been called on January 15, 1973 at which the proposed Constitution of the Philippines shall be submitted to the people for ratification or rejection;

WHEREAS, Presidential Decree No. 86, dated December 31, 1972, created Citizens Assemblies so as to afford ample opportunities for the citizenry to express their views on important national issues;

WHEREAS, one of the questions presented to the Citizens Assemblies is: "Do you like the plebiscite on the proposed Constitution to be held later?"

WHEREAS, it is necessary to hold in abeyance the plebiscite until the people's preference has been ascertained;

NOW, THEREFORE, I, FERDINAND E. MARCOS, Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21, 1972, do hereby order that the plebiscite scheduled to be held on January 15, 1973, be postponed until further notice.

I further order that the provision of Section 3 of Presidential Decree No. 73 insofar as they allow free public discussion of the proposed Constitution, as well as my order of December 17, 1972, temporarily suspending the effects of Proclamation No. 1081 for the purposes of free and open debate on the proposed Constitution, be suspended in the meantime.

Done in the City of Manila, this 7th day of January, in the year of Our Lord, nineteen hundred and seventy-three.

(Sgd.)

FERDINAND E. MARCOS

President Republic of the Philippines

By the President:

(SGD). ALEJANDRO MELCHOR

Executive Secretary

As of the day when the above-quoted General Order No. 20 was issued these cases were all pending decision before this Court.

At this juncture I am going to particularize my discussion on case G.R. No. L-35948 (Vidal Tan, et al., petitioners vs. Commission on Elections, et al., respondents). What I say in connection with the Vidal Tan case may also be considered in relation with the other cases before Us.

On January 12, 1973 counsel for the petitioners in the Tan case filed an "Urgent Motion For Early Decision/" alleging, among others, that it was announced that voting by the Citizens' Assemblies would be held on January 10 to 15, 1973 whereby the Citizens' Assemblies would be asked a number of questions, among them the following;

- (1) Do you approve of Citizens' Assemblies as the base of popular government to decide issues of national interests?
- (2) Do you approve of the new Constitution?
- (3) Do you want a plebiscite to be called to ratify the new Constitution?
- (4) Do you want the elections to be held in November, 1973 in accordance with the provisions of the 1935 Constitution?
- (5) If the election would not be held, when do you want the next elections to be called?
- (6) Do you want martial law to continue?

Counsel for the petitioners also alleged that petitioners had reasons to fear that the question: "Do you approve of the new Constitution?," in relation to the question following it: "Do you still want a plebiscite to be called to ratify the new Constitution?", would be an attempt to by-pass and short-circuit this Court before which the question regarding the validity of the plebiscite scheduled for January 15, 1973 on the proposed Constitution was pending resolution. Counsel for petitioners also alleged that they had reasons to fear "that if an affirmative answer to the two questions just referred to would be reported then this Honorable Court and the entire nation would be confronted with *fait accompli* which has been attained in a highly unconstitutional and undemocratic manner;" and "the *fait accompli* would consist in the supposed expression of the people approving the proposed Constitution." Counsel further states "that if such event would happen then the case before this Honorable Court could, to all intents and purposes, become moot because, petitioners fear, and they therefore allege, that on the basis of such supposed expression of the will of the people through the Citizens' Assemblies, it would be announced that the proposed Constitution with all its defects, both congenital and otherwise, has been ratified" and "that in such a situation, the Philippines would be facing a real crisis and there is a likelihood of confusion if hot chaos, because then, the people and their officials would not know which Constitution is in force." [4]

On January 13, 1973 this Court ordered the Solicitor General to answer the urgent motion of the petitioners, dated January 12, 1973.

On January 15, 1973 counsel for petitioners filed "A Supplemental Motion for Issuance of Restraining Order and for Inclusion of Additional Respondents." The respondents sought to be added were the Department of Local Governments and its head, Secretary Jose Rono; the Department of Agrarian Reforms and its head, Secretary Conrado Estrella; and the National Ratification Coordinating Committee and its chairman, Guillermo de Vega. In their supplemental motion for the issuance of restraining order enjoining the original respondents, as well as the additional respondents, and their deputies, subordinates and/or substitutes from collecting, certifying, announcing and reporting to the President or other officials concerned, the Citizens' Assembly referendum results that would be obtained in the voting held during the period compromised between January 10 and January 15, 1973, particularly on the two questions: (1) "Do you approve of the new Constitution?", and (2) "Do you still want a plebiscite to be called for the ratification of the new Constitution?" Counsel for petitioners further alleged that for lack of material time the appropriate amended petition to include the new respondents could not be completed because the submission of the proposed Constitution to the Citizens' Assemblies was not made known to the public until January 11, 1973, but nevertheless the new respondents could properly be included because in their petition petitioners prayed "for the annulment not only of Presidential Decree No. 73 but also of any similar decree, proclamation, order or instruction" so that Presidential Decree Nos. 86 (and 86-A) in so far at least as they attempt to submit the proposed Constitution to a plebiscite by the Citizens' Assemblies are properly in issue in the case, and those who enforce, implement and carry out said Presidential decrees and the instructions incidental thereto clearly fall within the scope of the petition. Moreover, counsel for petitioners alleges that in the original petition they prayed for the issuance of a writ of preliminary injunction restraining not only the original respondents, but also their agents from the performance of acts, implementing, or tending to implement, Presidential Decree No. 73 or any other similar decree, order, instructions, or proclamation in relation to the holding of the plebiscite in question on January 15, 1973, and that they had also prayed for such other relief which may be just and equitable. Counsel for petitioners stressed the plea that unless the petition is decided immediately and the respondents were restrained or enjoined from collecting, certifying, reporting, or announcing to the President the result of the alleged voting of the so-called Citizens' Assemblies irreparable damage would be caused to the Republic of the Philippines, to the Filipino people and to the cause of freedom and democracy, because after the result of the supposed voting on the two precise questions that they mentioned shall have been announced, a conflict would arise between those who maintain that the 1935 Constitution is still in force, on the one hand, and those who maintain that the old Constitution is superseded by the proposed Constitution on the other hand, thereby creating confusion if not chaos; and that even the jurisdiction of this Court would be subject to serious attacks because the advocates of the theory that the proposed Constitution had been ratified by reason of the announcement of the results of the proceedings of the Citizens' Assemblies would argue that General Order No. 3, which would also be deemed ratified pursuant to the Transitory Provisions of the proposed Constitution, had placed Presidential Decrees No. 73 and No. 86 (and 86-A) beyond the reach and jurisdiction of this Court.

This Court required the Solicitor General to comment on the supplemental motion and set the said motion for hearing on January 17, 1973.

On January 17, 1973 the urgent motion of January 12, 1973 and the supplemental motion for the issuance of the restraining order and the inclusion of additional respondents were heard on oral arguments by counsel for the petitioners and the Solicitor General. Towards the end of the hearing, and while counsel for the petitioners was answering questions from Members of this Court, the Chief Justice received a copy of Proclamation No. 1102 of the President of the Philippines "announcing the ratification by the Filipino people of the Constitution proposed by the 1971 Constitutional Convention." The Chief Justice read in open court, for the record, Proclamation No.

1102. Said Proclamation reads as follows:

PROCLAMATION NO. 1102

ANNOUNCING THE RATIFICATION BY THE FILIPINO PEOPLE OF THE CONSTITUTION PROPOSED BY THE 1971 CONSTITUTIONAL CONVENTION.

WHEREAS, the Constitution proposed by the nineteen hundred seventy-one Constitutional Convention is subject to ratification by the Filipino people;

WHEREAS, Citizens Assemblies were created in barrios in municipalities and in districts /wards in chartered cities pursuant to Presidential Decree No. 86 dated December 31, 1972, composed of all persons who are residents of the barrio, district or ward for at least six months, fifteen years of age or over, citizens of the Philippines and who are registered in the list of Citizen Assembly members kept by the barrio, district or ward secretary.

WHEREAS, the said Citizens Assemblies were established precisely to broaden the base of citizen participation in the democratic process and to afford ample opportunity for the citizenry to express their views on important national issues;

WHEREAS, responding to the clamor of the people and pursuant to Presidential Decree No. 86-A, dated January 5, 1973, the following questions were posed before the Citizens Assemblies or Barangays; Do you approve of the New Constitution? Do you still want a plebiscite to be called to ratify the new Constitution?

WHEREAS, fourteen million nine hundred seventy-six thousand five hundred sixty one (14,976,561) members of all the Barangays (Citizens Assemblies) voted for the adoption of the proposed Constitution, as against seven hundred forty-three thousand eight hundred sixty-nine (743,869) who voted for its rejection; while on the question as to whether or not the people would still like a plebiscite to be called to ratify the new

Constitution, fourteen million two hundred ninety-eight thousand eight hundred fourteen (14,298,814) answered that there was no need for a plebiscite and that the vote of the Barangays (Citizens Assemblies) should be considered as a vote in a plebiscite;

WHEREAS, since the referendum results show that more than ninety-five (95) per cent of the members of the Barangays (Citizens Assemblies) are in favor of the new Constitution, the Katipunan ng Mga Barangay has strongly recommended that the new Constitution should already be deemed ratified by the Filipino people;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby certify and proclaim that the Constitution proposed by the nineteen hundred and seventy-one (1971) Constitutional Convention has been ratified by an overwhelming majority of all the votes cast by the members of all the Barangays (Citizens Assemblies) throughout the Philippines, and has thereby come into effect.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 17th day of January, in the year of our Lord, nineteen hundred and seventy-three.

FERDINAND E. MARCOS

President of the Philippines

By the President:

ALEJANDROM MELCHOR

Executive Secretary

And so, what the petitioners has feared, as expressed in their urgent motion for early decision and in their supplemental motion to issue restraining order, etc., that the results of the voting in the Citizens' Assemblies might be taken as a basis for proclaiming the ratification of the proposed Constitution, had actually happened. And so, what the petitioners in all the ten cases now before Us — among them civic leaders, newspapermen, Senators and Congressmen, Members of the 1971 Constitutional Convention, and professionals — had tried to prevent from happening; that is, the proclamation of the ratification of the proposed constitution on the basis of the affirmative votes that might be cast in the plebiscite that was set for January 15, 1973 pursuant to Presidential Decree No. 73, the legality of which decree was being questioned by petitioners, had happened.

The crucial question before this Court is whether or not Presidential Proclamation No. 1102 announcing the ratification of the proposed Constitution of 1972 is in accordance with the Constitution and has the effect of making the proposed Constitution of 1972 effective and in force as of January 17, 1973 when the proclamation was issued. This is, I believe, the vital question that this Court is called upon to resolve, and it is for this reason that-I believe that this case has not become moot and academic. While it is true that the relief prayed for by the petitioners, that the original respondents be enjoined from implementing Presidential Decree No. 73, cannot now be granted, Proclamation No. 1102 nevertheless has the effect of consummating the ratification of the proposed Constitution—the very event which the petitioners had precisely sought to prevent from happening when they filed their petitions. Presidential Proclamation No. 1102 has a tremendous effect upon the political, economic and social life of the people of this country. I believe, therefore, that this Court should not indulge in the niceties of procedural technicalities and evade the task of declaring whether or not the Constitution proposed by 1971 Convention has been validly ratified as announced in said Proclamation No. 1102. This Court is called upon to give the people of this Republic the proper orientation regarding the effect of said Proclamation No. 1102. That orientation will only come about when this Highest Court of the land has rendered a ruling on whether or not said Proclamation No. 1102 is valid.

I cannot agree with the view of some of my colleagues that this Court cannot make a ruling on the question of whether or not Proclamation No. 1102 is valid, because the validity of said proclamation is not the matter that is squarely presented to this Court for resolution by the petitions in these cases. I believe, however, that this Court should not close its eyes to the fact that in the ten petitions that are before this Court the uniform prayers of the petitioners are to enjoin the implementation of Presidential Decree-No. 73 and to nullify said decree — precisely in order to prevent the ratification of the Constitution proposed by the 1971 Convention in a manner that is not in accordance with the Constitution and the law. So much so that in G.R. No. L-35948 (Tan, et al., v. Comelec, et al.) the petitioners, among others, prayed that judgment be rendered declaring"... Presidential Decree No. 73 or any similar decree, proclamation, order or instruction unconstitutional, null and void and making the writ of preliminary injunction permanent." It is not difficult to understand that the purpose of the petitioners was to invalidate any and all orders, decrees and proclamations that are corollary or related to Presidential Decree No. 73

which had for its main purpose to submit the Constitution proposed by the 1971 Convention to a plebiscite on January 15, 1973 and thereby determine whether the people approve or reject the proposed Constitution. As We have adverted to, the objective of the petitioners was to prevent the ratification of the proposed constitution in a manner that is offensive to the Constitution and the law. All orders, decrees, instructions, or proclamations made after the issuance of Presidential Decree No. 73, which have for their purpose either to supplement Presidential Decree No. 73 or to accomplish through other means or methods what Presidential Decree No. 73 was issued for, are encompassed within the prayer of petitioners to nullify "any similar decree, proclamation, order, or instruction." Presidential Decrees Nos. 86 and 86-A are such "similar" decrees, because, as it turned out, Presidential Decree No. 86 provided for the organization of the citizens' assemblies which became the forums where the question of whether to ratify or to reject the proposed Constitution was submitted; and, as it turned out, Presidential Decree No. 86-A provided for the very question which otherwise the voters would have been asked to answer "Yes" or "No" in the plebiscite which had been provided for in Presidential Decree No. 73. In other words, Presidential Decree No. 86 supplanted Presidential Decree No. 73 in so far as the latter decree provided for the forum where the question was to be asked; while Presidential Decree No. 86-A supplanted Presidential Decree No. 73 in so far as the latter decree provided for the question to be asked regarding the proposed Constitution. And finally because Presidential Proclamation No. 1102 has for its basis what was done pursuant to Presidential Decrees Nos. 86 and 86-A, it follows that Proclamation No. 1102 is just the "proclamation" that the petitioners sought to nullify or invalidate if issued.

I believe that the effects of Proclamation No. 1102 have an intimate bearing on the objectives of the petitioners when they filed the instant petitions for prohibition, and so said proclamation has to be considered along with all the issues raised by the petitioners in the cases at bar. More so, because said Proclamation No. 1102 was read into the record by the Chief Justice of this Court during the hearing of L-35948 (Tan vs. Comelec), in open court, on January 17, 1973. I believe that this Court must not ignore Proclamation No. 1102 in relation to the matters and to the issues ventilated before this Court. Proclamation No. 1102 was formally brought to the attention of this Court. It is my view that this Court should not evade its duty of defining for the benefit of the people of this Republic the legal and constitutional nature and effects of that proclamation. I, for one, as a humble member of this court, feel it my duty to say what I think, and believe, about Proclamation No. 1102. I do this not because of any desire on my part to obstruct the workings of the agencies and instrumentalities of our Government, or to foster among the people in our country an attitude of disrespect or disloyalty towards the constituted authorities that presently run the affairs of our Government. I am only doing what I believe is my sworn duty to perform.

The ratification of the Constitution proposed by the 1971 Constitutional Convention must be done in accordance with the provisions of Section 1, Article XV of the 1935 Constitution of the Philippines, which reads:

"Section 1. The Congress in joint session assembled by a vote of three fourths of all the Members of the Senate and of the House of Representatives voting separately, may propose amendments to the Constitution or call a convention for that purpose. Such amendments shall be valid as part of this Constitution when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification."

It is in consonance with the above-quoted provision of the 1935 Constitution that on March 16, 1967, the Congress of the Philippines passed Resolution No. 2 calling a convention to propose amendments to the Constitution of the Philippines, Sec. 7 of said Resolution No. 2 reads as follows:

"SECTION 7. The amendments proposed by the Convention shall be valid and considered part of the Constitution when approved by a majority of the votes cast in an election at which they are submitted to the people for their ratification pursuant to Article XV of the Constitution."

It follows that from the very resolution of the Congress of the Philippines which called for the 1971 Constitutional Convention there was a clear mandate that the amendments proposed by the 1971 Convention, in order to be valid and considered part of the Constitution, must be approved by majority of the votes cast in an election at which they are submitted to the people for their ratification as provided in the Constitution.

This Court, in the case of Tolentino vs. Commission on Elections, L-35140, October 16, 1971 (41 SCRA 715), speaking through Mr. Justice Barredo, said:

"The Constitutional Convention of 1971, as any other convention of the same nature, owes its existence and derives all its authority and power from the existing Constitution of the Philippines. This Convention has not been called by the people directly as in the case of a revolutionary convention which drafts the first Constitution of an entirely new government born of either a war of liberation from a mother country or of a revolution against an existing government or of a bloodless seizure of power a la coup d'etat. As to such kind of conventions, it is absolutely true that the convention is completely without restraint and omnipotent all wise, and it is as to such conventions that the remarks of Delegate Manuel Roxas of the Constitutional Convention of 1934 quoted by Senator Pelaez refer. No amount of rationalization can belie the fact that the current convention came into being only because it was called by a resolution of a joint session of Congress acting as a constituent assembly by authority of Section 1, Article XV of the present Constitution x x x."

x x x

x x x

x x x

"As to matters not related to its internal operation and the performance of its assigned mission to propose amendments to the Constitution, the Convention and its officers and members are all subject to the provisions of the existing Constitution. Now we hold that even as to its latter task of proposing amendments to the Constitution, it is subject to the provisions of Section 1 of Article XV. "

In Proclamation No. 1102, issued on January 17, 1973, the President of the Philippines certified that as a result of the voting before the barangays (Citizens Assemblies) 14,976,561 members of the barangays voted for the adoption of the proposed Constitution, as against 743,869 who voted for its rejection, and on the basis of the overwhelming majority of the votes cast by the members of all the barangays throughout the Philippines the President proclaimed that the Constitution proposed by the 1971 Convention has been ratified and has thereby come into effect.

It is very plain from the very wordings of Proclamation No. 1102 that the provisions of Section 1 of Article XV of the Constitution of 1935 was not complied with. It is not necessary that evidence be produced before this Court to show that no elections were held in accordance with the provisions of the Election Code. Proclamation No. 1102 unequivocally states that proposed Constitution of 1972 was voted upon by the barangays. It is "very clear, therefore, that the voting held in these barangays is not the election contemplated in the provisions of Section 1, Article XV, of the 1935 Constitution. The election contemplated in said constitutional provision is an election held in accordance with the provisions of the election law, where only the qualified and registered voters of the country would cast their votes, where official ballots prepared for the purpose are used, where the voters would prepare their ballots in secret inside the voting booths in the polling places established in the different election precincts throughout the country, where the election is conducted by election inspectors duly appointed in accordance with the election law, where the votes are canvassed and reported in a manner provided for in the election law. It was this kind of election that was held on May 14, 1935, when the Constitution of 1935 was ratified; on April 30, 1937,

when the amendment to the Constitution providing for Women's Suffrage was ratified; on June 18, 1940, when the 1940 Amendments to the Constitution were ratified; on March 11, 1947 when the Parity Amendment to the Constitution was ratified; and on November 14, 1967 when the amendments to the Constitution to increase the number of Members of the House of Representatives and to allow the Members of Congress to run in the elections for Delegates to the Constitutional Convention of 1971 were rejected.

I cannot see any valid reason why the practice or procedure in the past, in implementing the constitutional provision requiring the holding of an election to ratify or reject an amendment to the Constitution, has not been followed in the case of the Constitution proposed by the 1971 Constitutional Convention.

It is my view that the President of the Philippines cannot by decree order the ratification of the proposed 1972 Constitution thru a voting in the barangays and make said result the basis for proclaiming the ratification of the proposed constitution. It is very clear, to me, that Proclamation No. 1102 was issued in complete disregard, or in violation, of the provisions of Section 1 of Article XV of the 1935 Constitution.

Proclamation No. 1102 mentions, furthermore, that on the question as to whether or not the people would still like a plebiscite to be called to ratify the new Constitution, 14,298, 814 members of the barangays answered that there was no need for a plebiscite but that the vote of the barangays should be considered a vote in a plebiscite. It would thus appear that the barangays assumed the power to determine whether a plebiscite as ordained in the Constitution be held or not. Indeed, the provision of Section 1, Article XV of the Constitution was completely disregarded.

The affirmative votes cast in the barangays are not the votes contemplated in Section 1 of Article XV of the 1935 Constitution. The votes contemplated in said constitutional provision are votes obtained through the election processes as provided by law.

"An election is the embodiment of the popular will, the expression of the sovereign power of the people. In common parlance an election is the act of casting and receiving the ballots, counting them, and making the return." (*Hontiveros vs. Altavas*, 24 Phil. 632, 637).

"Election" implies a choice by an electoral body at the time and substantially in the manner and with the safeguards provided by law with respect to some question or issue. (*Leffel v. Brown*, Com. Pl., 159 N.E. 2d 807, 808 cited in 29 C.J.S. 13 at footnote 6.5).

"* * * the statutory method whereby qualified voters or electors pass on various public matters submitted to them — the election of officers, national, state, county, township — the passing on various other questions submitted for their determination." (29 C.J.S. 13, citing *Iowa-Illinois Gas & Elec. Co. v. City of Bettendorf*, 41 N.W. 2d 1, 5, 241 Iowa 358).

"Election" is expression of choice by voters of the body politic. (*Ginsburg v. Giles*, 72 S.W. 2d 438, 254 Ky. 720, in *Words and Phrases*, Permanent Edition, p. 234).

"The right to vote may be exercised only on compliance with such statutory requirements as have been set up by the legislature." (*People ex rel. Rago v. Lipsky*, 63 N.E. 2d 642, 327 111. App. 63; *Rothfels v. Southworth*, 356 P. 2d 612, 11 Utah 2d 169 in 29 C.J.S. 38). (Italics supplied)

In this connection I herein quote the pertinent provisions of the Election Code of 1971:

"Sec. 2. Applicability of this Act.— All elections of public officers except barrio officials and plebiscites shall be conducted in the manner provided by this Code."

"Sec. 99. Necessity of registration to be entitled to vote. — In order that a qualified voter may vote in any regular or special election or in any plebiscite, he must be registered in the permanent list of voters for the city,

municipality or municipal district in which he resides: Provided, That no person shall register more than once without first applying for cancellation of his previous registration." (Italics supplied). 3) Please see also Sections 100-102, Election Code of 1971, R.A. No. 6388).

It is stated in Proclamation No. 1102 that the voting was done by the members of citizens assemblies who are 15 years of age or over. Under the provision of Section 1 of Article V of the 1935 Constitution the age requirement to be a qualified voter is 21 years or over.

But what is more noteworthy is the fact that the voting in the barangays, except in very few instances, was done by the raising of hands by the persons indiscriminately gathered to participate in the voting, where even children below 15 years of age were included. This is a matter of common observation, or of common knowledge, which the Court may take judicial notice of. To consider the votes in the barangays as expressive of the popular will and use them as the basis in declaring whether a Constitution is ratified or rejected is to resort to a voting by demonstrations, which would mean the rule of the crowd, which is only one degree higher than the rule by the mob. Certainly, so important a question as to whether the Constitution, which is the supreme law of the land, should be ratified or not, must not be decided by simply gathering people and asking them to raise their hands in answer to the question of whether they vote for or against a proposed Constitution. The election processes as provided by law should be strictly observed in determining the will of the sovereign people in a democracy. In our Republic the will of the people must be expressed through the ballot in a manner that is provided by law.

It is said that in a democracy the will of the people is the supreme law. Indeed, the people are sovereign, but the will of the people must be expressed in a manner as the law and the demands of a well-ordered society require. The rule of law must prevail even over the apparent will of the majority of the people, if that will had not been expressed, or obtained, in accordance with the law. Under the rule of law public questions must be decided in accordance with the Constitution and the law. This is specially true in the case of the adoption of a constitution or in the ratification of an amendment to the Constitution.

The following citations are, to me, very relevant in the effort to determine whether the proposed Constitution of 1972 had been validly ratified, or not:

"When it is said that 'the people' have the right to alter or amend the constitution, it must not be understood that this term necessarily includes all the inhabitants of the state. Since the question of the adoption or rejection of a proposed new constitution or constitutional amendment must be answered by a vote, the determination of it rests with those, who, by the existing constitution, are accorded the right of suffrage. But the qualified electors must be understood in this, as in many other cases, as representing those who have not the right to participate in the ballot. If a constitution should be abrogated, and a new one adopted, by the whole mass of people in a state, acting through representatives not chosen by the 'people' in the political sense of the term, but by the general body of the populace, the movement would be extra-legal." Black's Constitutional Law, Second Edition, pp. 47-48).

The theory of our political system is that the ultimate sovereignty is in the people, from whom springs all legitimate authority. The people of the Union created a national constitution, and conferred upon it powers of sovereignty over certain subjects, and the people of each State created a State government, to exercise the remaining powers of sovereignty so far as they were disposed to allow them to be exercised at all. By the constitution which they establish, they not only tie up the hands of their official agencies, but their own hands as well; and neither the officers of the State, nor the whole people as an aggregate body, are at liberty to take action in opposition to this fundamental law." (Cooley's Constitutional Limitations, 8th Edition, Vol. I, p. 81 cited in *Graham v. Jones*, 3 So. 2d. 761, 782).

"The theory that a favorable vote by the electorate, however unanimous, on a proposal to amend a constitution, may cure, render innocuous, all or any antecedent failures to observe commands of that Constitution in respect

of the formulation or submission of proposed amendments thereto, does not prevail in Alabama, where the doctrine of the stated theory was denied, in obvious effect, by the pronouncement 60 years ago of broad, wholesome constitutional principles in *Collier Frierson*, supra, as quoted in the original opinion, ante. The people themselves are bound by the Constitution; and, being so bound, are powerless, whatever their numbers, to change or thwart its mandates, except through the peaceful means of a constitutional convention, or of amendment according to the mode therein prescribed, or through the exertion of the original right of revolution. 'The Constitution may be set aside by revolution, but it can only be amended in the way it provides,' said Hobson, C.J., in *McCreary v. Speer*, 156 Ky. 783, 791, 162 S.W. 99, 103. (*Johnson v. Craft*, et al., 87 So. 375, 385, 387 On Re-hearing).

"The fact that a majority voted for the amendment, unless the vote was taken as provided by the Constitution, is not sufficient to make a change in that instrument. Whether a proposed amendment has been legally adopted is a judicial question, for the court must uphold and enforce the Constitution as written until it is amended in the way which it provides for. *Wood v. Tooker*, 15 Mont. 8, 37 Pac. 840, 25 L.R.A. 560; *McConaughty v. State*, 106 Minn. 409, 119 N.W. 408; *Oakland Paving Company v. Hilton*, 69 Cal. 499, 11 Pac. 3. *Utter v. Mosely*, 16 Idaho 274, 100 Pac. 1958, 133 Am. St. Rep. 94, 18 Ann. Cas. 723. (*McCreary v. Speer*, 162 S.W. 99, 104).

"Provisions of a constitution regulating its own amendment, * * * are not merely directory, but are mandatory; and a strict observance of every substantial requirement is essential to the validity of the proposed amendment. These provisions are as binding on the people as on the legislature, and the former are powerless by vote of acceptance to give legal sanction to an amendment the submission of which was made in disregard of the limitations contained in the constitution." (16 C.J.S. 35-36 cited in *Graham v. Jones*, 3 So. 2d 761, 782).

"It is said that chaos and confusion in the governmental affairs of the State will" result from the Court's action in declaring the proposed, constitutional amendment void, This statement is grossly and manifestly inaccurate. If confusion and chaos should ensue, it will not be due to the action of the Court but will be the result of the failure of the drafter of the joint resolution to observe, follow and obey the plain essential provisions of the Constitution. Furthermore, to say that, unless the Court disregards its sworn duty to enforce the Constitution, chaos and confusion will result, is an inherently weak argument in favor of the alleged constitutionality of the proposed amendment. It is obvious that, if the Court were to countenance the violations of the sacramental provisions of the Constitution, those who would thereafter desire to violate it and disregard its clear mandatory provisions would resort to the scheme of involving and confusing the affairs of the State and then simply tell the Court that it was powerless to exercise one of its primary functions by rendering the proper decree to make the Constitution effective." (*Graham Jones*, 3 So 2d. 761, 793-794).

In our jurisprudence I find an instance where this Court did not allow the will of the majority to prevail, because the requirements of the law were not complied with. In the case of *Monsale v. Nico*, 83 Phil. 758, *Monsale* and *Nico* were both candidates for the office of Municipal Mayor of *Miagao*, *Iloilo*, in the elections of November 11, 1947. *Monsale* had duly filed his certificate of candidacy before the expiration of the period for the filing of the same. However, on October 10, 1947, after the period for the filing of certificates of candidacy, *Monsale* withdrew his certificate of candidacy. But on November 7, 1947 *Monsale* attempted to revive his certificate of candidacy by withdrawing the withdrawal of his certificate of candidacy. The Commission on Elections, on November 8, 1947, ruled that *Monsale* could no longer be a candidate. *Monsale* nevertheless proceeded with his candidacy. The boards of inspectors in *Miagao*, however, did not count the votes cast for *Monsale* upon the ground that the votes cast for him were stray votes, because he was considered as having no certificate of candidacy. On the other hand, the boards of inspectors credited *Nico* with 2,291 votes, and *Nico* was proclaimed elected. *Monsale* filed a protest against the election of *Nico* in the Court of First Instance of *Iloilo*. In the count of the ballots during the proceedings in the trial court it appeared that *Monsale* had obtained 2,877 votes while *Nico* obtained 2,276 votes, or a margin of 601 votes in favor of *Monsale*. The Court of First Instance of *Iloilo* decided

the election protest in favor of Monsale. Upon appeal by Nico, this Court reversed the decision of the lower court. This Court declared that because Monsale withdrew his certificate of candidacy his attempt to revive it by withdrawing his withdrawal of his certificate of candidacy did not restore the effectiveness of his certificate of candidacy, and this court declared

Nico the winner in spite of the fact that Monsale had obtained more votes than he.

We have cited this Monsale case to show that the will of the majority of the voters would not be given effect, as declared by this Court, if certain legal requirements have not been complied with in order to render the votes valid and effective to decide the result of an election.

And so, in the cases now before this Court, the fact that the voting in the citizens assemblies (barangays) is not the election that is provided for in the 1935 Constitution for the ratification of the amendment to the Constitution, the affirmative votes cast in those assemblies can not be made the basis for declaring the ratification of the proposed 1972 Constitution, in spite of the fact that it was reported that 4,976,561 members of the citizens assemblies voted for the adoption as against 743,869 for the rejection, because the votes thus obtained were not in accordance with the provisions of Section 1 of Article XV of the 1935 Constitution of the Philippines. The rule of law must be upheld.

My last observation: One of the valid grounds against the holding of the plebiscite on January 15, 1973, as provided in Presidential Decree No. 73, is that there is no freedom on the part of the people to exercise their right of choice, because of the existence of martial law in our country. The same ground holds true as regards the voting of the barangays on January 10 to 15, 1973. More so, because by General Order No. 20, issued on January 7, 1973, the President of the Philippines ordered 'that the provisions of Section 3 of Presidential Decree No. 73 in so far as they allow free public discussion of the proposed constitution, as well as my order of December 17, 1972 temporarily suspending the effects of Proclamation No. 1081 for the purpose of free and open debate on the proposed constitution, be suspended in the meantime.' [5] It is, therefore, my view that voting in the barangays on January 10-15, 1973 was not free, and so this is one added reason why the results of the voting in the barangays should not be made the basis for the proclamation of the ratification of the proposed Constitution.

It is my view, therefore, that Proclamation No. 1102 is repugnant to the 1935 Constitution, and so it is invalid, and should not be given effect. The Constitution of 1972 proposed by the 1971 Constitutional Convention should be considered as not yet ratified by the people of this Republic, and so it should not be given force and effect.

During the deliberation of these cases by this Court, a suggestion was made that because of the transcendental effect of Proclamation No. 1102 on the country, the petitioners in these cases, specially the petitioners in L-35948 (Vidal Tan) et al. vs. Comelec, et al.) be given a period of ten days to move in the premises, considering that the issuance of Proclamation No. 1102 came as a surprise to the petitioners and they had no opportunity to define their stand on said Proclamation in relation to their petitions. The majority of the Court, however, were not in favor of the idea. I expressed myself, and I so express now, that I am in favor of granting the petitioners the opportunity to articulate their stand regarding Proclamation No. 1102 so that the objection of some members of this Court to pass upon the validity of said proclamation upon the ground that it is not in issue in these cases may be met, and so that the validity of Proclamation No. 1102, and the question of whether or not the proposed 1972 Constitution has been validly ratified, may be resolved by this Court once and for all.

At any rate, whether the petitioners are granted opportunity to define their stand on Proclamation No. 1102, or not, I humbly submit this opinion for whatever it may be worth, with the hope that the officials and the citizens of this country will take note of it, and ponder over it. I am only doing my duty according to the light that God has given me.

[1] Reserve Lite Ins. Co., Dallas, Tex., v, Franfather, 225 P. 2d 1035, 1036, 123 Colo. 77, 39 A.L.R. 2d 146; Appeal of Frank Foundries Corporation, 56 N.E. 2d 649t 652, 653, 323. III. App. 594 in 27A Words and Phrases, p. 145.

[2] Krivenko vs. Register of Deeds, 79 Phil 461; Philippine Association of Colleges and Universities vs. Secretary of Education, 97 Phil. 806; Hebron vs. Reyes, 104 Phil. 175.

[3] Annex 1 of the Answer of the Respondents in L-35948 shows the resolution of the Constitutional Convention of November 22, 1972, proposing to President Marcos that a decree be issued calling for a plebiscite is Resolution No. 29. "Resolution No. 5843" is as stated in Presidential Decree No. 73.

[4] Words within quotation marks in this paragraph are as quoted from the Urgent Motion For Decision in L-35948, dated January 12, 1973.

[5] As quoted from General Order No. 20, January 7, 1973.

MAKALINTAL and CASTRO, J., concurs:

The principal relief prayed for in the petition in G.R. No. L-35948 is to declare "Sections 2, 3 (par. 2), and 12 of Article XVH of the 1972 Draft on proposed Constitution approved by the 1971 Constitutional Convention on November 30, 1972 as well as Presidential Decree No. 73 or any similar decree, proclamation, order or instruction unconstitutional, null and void, ..." Basically, although couched in different language, it is the same relief sought in the other petitions.

Article XVII contains the transitory provisions. Section 2 thereof refers to the membership of the interim National Assembly, which includes, among others, "those Delegates to the (1971) Constitutional Convention who have opted to serve therein by voting affirmatively for this Article." Section 3 (par. 2) provides that "(A)ll proclamations, orders, decrees, intructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly." And Section 12 states in part: "All treaties, executive agreements, and contracts entered into by the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations, are hereby recognized as legal, valid, and binding ..."

Presidential Decree No. 73 issued on December 1, 1972, called for a plebiscite to be held on January 15, 1973, wherein the proposed Constitution would be submitted for ratification. At the same time it appropriated the sum of P15,000,000.00 for that purpose. It was primarily to stop the said plebiscite from being held that these petitions were filed.

The specific grounds alleged in the petition in G.R. No. L-35948 to support the relief prayed for which are fairly representative of the others, read as follows:

"I. The President of the Philippines has no power to call a plebiscite for the ratification or rejection of the 1972 Draft; neither has he the power to appropriate funds for the holding of the said plebiscite.

"II. The 1972 Draft is vague and incomplete. It makes an unconstitutional delegation of power. And it contains provisions which were beyond the power of the convention to enact. All these have the 1972 Draft unfit for 'proper submission' to the people.

"III. The period of time between November 30, 1972 when the 1972 Draft was approved, and January 15,

1973, the date the plebiscite will be held, is too inadequate for the people to be informed of the contents of the 1972 Draft, and to study and discuss them so that they could thereafter intelligently cast their vote."

Towards the end of December 1972 it was announced in the newspapers that the President had postponed the plebiscite to a date to be fixed later, although tentatively February 19 and March 5, 1973 were mentioned. The announcement was made officially in General Order No. 20, dated January 7, 1973. Then on January 17, 1973 the President issued Proclamation No. 1102, certifying that the proposed Constitution had been ratified by the Citizens Assemblies created under Presidential Decree No. 86, issued on December 31, 1972, and that therefore it had become effective.

In view of the foregoing developments which supervened after the petitions herein and the answers thereto were filed and the cases argued by the parties, the issues raised in grounds Nos. I and III abovequoted have become moot. The plebiscite sought to be enjoined did not take place on January 15, 1973. Indeed, its postponement to some indefinite date in the future rendered the petition also premature. But of course whether the petition is moot or premature makes no material differences as far as these cases are concerned, since the announced ratification of the proposed Constitution by the Citizens Assemblies has made it unlikely that any plebiscite will be held.

With respect to ground No. II we are of the opinion that the question of whether or not the proposals referred to by the petitioners, specifically Sees. 2, 3(par. 2) and 12, were proper for submission to the people for ratification has likewise become moot because of the President's Proclamation No. 1102 certifying that such ratification has already taken place. If they may be assailed at all as invalid it should be not as mere proposals by the Convention but already as provisions of the Constitution, and certainly not in the present cases in the state in which they have been submitted for decision.

There was an attempt on the part of counsel for the petitioner G.R. No. L-35948 during the oral argument on his urgent motion for early decision to question the validity of Proclamation No. 1102. This question is not within the purview of the petition and involves issues which have neither been raised nor argued herein, having arisen in a new and different setting and frame of reference, and hence may only be ventilated, if at all, in an appropriate case or at least through appropriate pleadings so that the parties may be duly heard.

We therefore vote to dismiss the petitions.

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