

# CITIZENS' PARTICIPATION IN GOVERNMENT FROM THE GRASS ROOTS: SOME REFLECTIONS ON THE LEGAL ASPECT OF CONTEMPORARY DEVELOPMENTS\*

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## *Government - people*

Running through constitutions and statutes are concepts of government and people, their relationship varying according to the existing polity.

Enacted laws reflect the dominant thinking in a society, but the terms in which they are phrased not infrequently convey diverse connotations, particularly when expressed in borrowed language. Thus, *government* is used in the 1973 constitution generically<sup>1</sup> to refer to the political organization through which the state acts or in a limited sense as understood in parliamentary systems when referring to the Prime Minister and his cabinet in whose hands the reins of government rest for the time being<sup>2</sup> or to local political subdivision.<sup>3</sup> What subtleties of meaning are intended by the framers of the constitution in the use of the capital letter "G" as against the small letter one,<sup>4</sup> I have yet to discern fully.

The word *people* in the constitution has ever more varied meanings. Depending on the context it may refer to the inhabitants of the country,<sup>5</sup> citizens and non-citizens alike; to all citizens regardless of age, sex or other civil conditions;<sup>6</sup> or only to those who may exercise suffrage.<sup>7</sup>

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<sup>1</sup> 1973 CONST.: Preamble; Art. III, secs. 1 & 2; Art. IV, sec. 9; Art. VII, sec. 4 (1) & (2); Art. VIII, sec. 11 & 13 (3); Art. IX, sec. 13; Art. XII-A, sec. 3; Art. XII-B, secs. 1 (1) & 4; Art. XII-C, secs. 2 (4) & 5; Art. XII-D, secs. 2 (1) & (3); Art. XIV, secs. 4 & 6; Art. XV, sec. 8 (8); and Art. XVII, secs. 9 & 12 are some examples.

<sup>2</sup> 1973 CONST., Art. IX, secs. 1 & 10.

<sup>3</sup> 1973 CONST., Art. XI on Local Government; Art., sec. 1.

<sup>4</sup> Compare the use in Art. II, sec. 1, Art. IX, secs. 10 & 13 in all of Art. XI, Art. XII-B, secs. 1 (1) & 6, Art. XVII, sec. 12, among other provisions.

<sup>5</sup> Art. II, sec. 6; Art. III, sec. 3.

<sup>6</sup> Preamble; Art. II, sec. 1; Art. IV, secs. 6 & 9.

<sup>7</sup> Under the 1935 Constitution for example, the President was elected by direct vote of the people. Art. VII, sec. 2.

In resolutions adopted by legislative bodies of the United Nations *popular participation* is used to refer to three distinct but closely related aspects of the development process: (1) mass sharing of the benefits of development, (2) mass contribution to development and (3) mass involvement in decision-making process for development.<sup>8</sup>

While participation is usually related to the political process, it applies equally to other activities. It is with the former that this lecture will deal primarily. This participation could be direct or indirect, formal or informal. When the citizenry turns out to vote upon a proposed constitution or legislative measure, to elect or recall a public officer, their participation is direct and formal; but when their representatives act for them whether as a board of electors, to draft a constitution or amendments to a constitution, or enact legislation, the people's participation is indirect.

While the functions of government are performed by public functionaries, the people through informal processes may participate in decision or policy-making not by direct action but through methods designed to influence action. Where public opinion is freely expressed, particularly in responsible governments, informal participation is as important as direct exercise of the vote for it may inevitably lead to direct participation.

There is of course another kind of direct participation which legal scholars and theoreticians refer to as direct state action. This occurs when the sovereign people find that a government established to carry out their will has in their judgment failed to do this, reject that government and change it through means other than the regular legal processes. The theory being that a government is no more than an agency of the people, the latter can repudiate it and set up another one in its place.<sup>9</sup> If successful, all acts leading to the change become legitimate. This in so many words is the juristic basis for revolution—or direct state action.<sup>10</sup>

A political scientist could more competently and fruitfully expound on political theories and citizen participation with specific reference to the Philippine situation. This paper proposes simply to draw from the growing number of measures, the state of the law bearing on citizen's participation in government from the smallest units upward and make some appraisal, however tentative, of that participation.

<sup>8</sup> Commission for Social Development, *Popular Participation and its Practical Implications for Development*; Note by the Secretary General, U.N. Doc. E/CN.5/496 (15 Aug. 1974).

<sup>9</sup> Often cited to illustrate this is the American Declaration of Independence of July 4, 1776.

<sup>10</sup> SINCO, *PHILIPPINE POLITICAL LAW* 7 (11th ed., 1962).

At the outset it must be made clear that a legal approach is far from complete in order to obtain an actual picture of citizens' participation. All too frequently, the lawyer is caught in the pitfall of expounding on law as if it were a self-contained, self-sufficient system and upon finding that positive measures backed by the sanction of authority have been taken, considers the matter settled. This is far from reality because oftentimes the enactment of a measure is hardly a beginning. Implementation takes longer, is more difficult and requires periodic assessment. At this stage, as in the initiation of legislation, empirical studies would better gauge the social climate and needs, the operation of the laws, as well as feedback from those over whom the laws operate.

*What has gone before*

For background inquiry in legal studies the usual procedure is to look no further than the colonial experience in tracing the development of legal institutions. Thus, in the area of local government, while some brief reference is made to the barangay it is done only for the purpose of establishing that the Spanish colonizers used it for their own purposes, reduced the chiefs from positions of prestige and power to become subordinates of the clergy, the military and civil administrators in the collection of tributes or transmitting orders. So well did the Spaniards succeed in almost obliterating all traces of the culture and practices of the peoples they found here, that centuries after their regime folded up, the descendants of those people are still seeking their own identities and rediscovering themselves out of scattered evidence of a distinct culture which existed then and traces of which somehow survived.

From vestiges of a little known past, the barangay has risen like the phoenix out of the dust that has gathered on historical tomes, to become one of the most versatile of vehicles for change. First the barrio assembly was transformed to citizens assembly later called *barangay*.<sup>11</sup> Subsequently, the barangay replaced the *barrio*, a term used from colonial days and incorporated in the 1973 constitution.<sup>12</sup>

It is not necessary here to bring out the etymology of the term nor of the development of a unit originally composed of the captain of the boat and his passengers, usually members of the extended family, adventurous settlers from other lands who came to this

<sup>11</sup> Pres. Decree No. 86, (1972), as amended by Pres. Decree No. 86-A (1973).

<sup>12</sup> Pres. Decree No. 557 of September 21, 1974 which effected this cited "various representations from barangays all over the country to declare all barrios as barangays", Art. XI, sec. 1 of the 1973 Constitution specifically provides that "the territorial and political subdivisions of the Philippines are the provinces, cities, municipalities and barrios."

archipelago. In time their settlements grew not only in population but in territory and in influence, so that when the Spaniards came they found powerful chiefs or heads of these barangays with whom they initially had to enter into agreements,<sup>13</sup> (rudimentary treaties, if you will). Eventually, the Spanish advanced war technology effected the chiefs' subjugation.

To go back to the subject citizens' participation, the Spanish colonial era is not the starting point—for whatever indigenous practices of consultation and obtaining consensus existed before their coming, were effectively snuffed out during the period 1521-1898.

Although agitation for Filipino participation in government developed in the later part of the Spanish rule, the only concessions obtained were representation in the Spanish Cortes, for brief periods,<sup>14</sup> and too late to produce any discernible results, the Maura Law of 1893 was applied to Luzon and Visayas which provided for indirect election on the local level. The principalia elected 12 delegates who performed among other duties the election of 5 members of the municipal tribunal (council).<sup>15</sup>

#### FILIPINO CONSTITUTIONAL PLANS

Filipino leaders in the struggle against Spain drew inspiration from the ideas of constitutionalism and popular participation in government developed in the Western World. The constitutional plans drawn up by Filipinos in the later part of the 19th century, particularly the constitution adopted in Malolos unmistakably show this. They chose a system of parliamentary government. On the local level, Article 57 of that Constitution provided:

The administration of the private interests of the towns, provinces and the state correspond respectively to the municipal (populares) assemblies, the provincial assemblies, and the administration in power according to the laws, and upon the basis of the most ample decentralization and administrative autonomy.

Governing principles applicable to provinces and towns were specified, popular and direct election being the basis for the organization of the provincial and municipal corporations.<sup>16</sup> This, of course, did not work out as the Filipinos fervently hoped. The Americans

<sup>13</sup> Treaty of Peace between Miguel Lopez de Legazpi and Tupas, 2 BLAIR & ROBERTSON (EDS.), THE PHILIPPINE ISLANDS 1493-1803, 133-7; Blood Compact between Raja Soliman and Martin de Goite, 3 BLAIR & ROBERTSON, *op. cit.*, p. 97.

<sup>14</sup> 1810-1813; 1820-1834-1837. AGONCILLO & ALFONSO, A SHORT HISTORY OF THE FILIPINO PEOPLE 106 (1960).

<sup>15</sup> REPORT OF THE PHILIPPINE COMMISSION, 1900, 44 *et. seq.*

<sup>16</sup> MALOLOS CONST., Art. 82.

took over instead, bringing their own ideas of government without completely uprooting the organization they found. They retained certain institutions and terminologies: Thus, the *barrios* continued to be referred to as such, and so were the provinces which from the Spanish times were weak links in colonial administration. The *pueblos* were also called *municipios* or municipalities and the highest functionary in the territory was called Governor-General. In the field of public law, it has been aptly observed that what took place at the time was to affix civil law labels to common law concepts.<sup>17</sup>

Early in the American administration a system of popular participation in government was introduced beginning at the town level. President McKinley's Instruction was to afford the people opportunity to manage their own local affairs to the fullest extent of which they are capable, and subject to the least degree of supervision and control which a careful study of their capacities and observation of national control show to be consistent with the maintenance of law, order, and loyalty.<sup>18</sup>

Subsequently, in parallel efforts, mass education in the English language was introduced and suffrage broadened. People's participation in government was gradually expanded with the election of members of the national legislature, first a unicameral body,<sup>19</sup> later a bicameral one<sup>20</sup> performing practically all legislative powers and totally replacing the American colonial administrators appointed directly from Washington, D.C. who earlier played the dual role of acting collectively as upper chamber of the legislature and individually as heads of executive departments. In time, the legislature was wholly composed of Filipinos who, except for a few, were elected by direct vote.

#### *People's participation, 1902-1935*

The American period began with a military occupation, government authority not being completely transferred to civilians until the enactment of the Spooner Amendment by United States Congress in 1901.

The United States had acquired from Spain a territory 6,000 miles removed from its own borders, which had been governed under laws of a completely different system.

There were no serious problems about retaining the laws governing private transactions and relationships; but the laws on

<sup>17</sup> SINCO, *op. cit.*, p. 2.

<sup>18</sup> To the Second Philippine Commission, April 7, 1900.

<sup>19</sup> The Philippine Assembly convened under the Act of the U.S. Congress of July 1, 1902 was the national legislature from 1907-1916.

<sup>20</sup> The Philippine Legislature with a Senate and a House of Representatives, 1916-1935.

political organization of the territory and those relating to the state and the inhabitants of the newly acquired territory had of necessity to be replaced. A fundamental tenet underlying the American governmental system is that governments derive their just powers from the consent of the governed. Leaders of the Philippine revolutionary government had tried to make themselves heard in the peace negotiations resulting in the Treaty of Paris, to no avail.<sup>21</sup> The right of self-determination which less than a quarter of a century later was to become a cornerstone in the treaty ending World War I had not as yet been clearly articulated, and in Americans' first adventure in imperialism, was obscured. Although Filipino leadership may have suffered a setback at this stage, in a relatively short time (as national histories go), it picked up momentum in the quest for self-government. New leaders emerged with some infighting developing among them in the powers game, but the gradual expansion of popular participation in the number of qualified voters, resulting not only from more liberal provisions of law, the spread of mass education, but equally important, from the number of offices made elective.

Early in the American regime, the question of whether or not Filipinos were capable of governing themselves had been debated. Not too many Americans knew about the Philippines. Unfortunately the wrong kind of publicity had been given wide circulation—*e.g.*, of members of primitive tribes in G-strings and in tree dwellings. But the unflagging perseverance of the Philippine struggle for independence went on until a definite date was set.<sup>22</sup> In 1935 the Federal Congress enacted the Tydings-McDuffy Law. Under it a constitution was adopted.

It was in the 1930's that women were enfranchised<sup>23</sup> thus virtually doubling the voting population. It was also at this time that the people began to participate directly in government, through plebiscites on fundamental questions.<sup>24</sup> The 1935 constitution is a

<sup>21</sup> MALCOLM, *THE GOVERNMENT OF THE PHILIPPINE ISLANDS: ITS DEVELOPMENT AND FUNDAMENTALS* 173 (1916).

<sup>22</sup> Manuel L. Quezon, Sergio Osmeña and Manuel A. Roxas are names synonymous with the Filipino struggle for independence during this period.

<sup>23</sup> Act No. 4112 extending suffrage to women was signed into law in December 7, 1933, but before women could enjoy the right, the 1935 Constitution was adopted which required the affirmative vote of 300,000 women at a plebiscite held on the question of whether the vote should be given to them. This was secured in 1936. Women voted for the first time in the 1937 elections.

<sup>24</sup> Plebiscite on the 1935 Constitution pursuant to Act No. 4200 (1935); Plebiscite on women suffrage pursuant to Com. Act No. 34 (1936); Plebiscite on the Amendment to the Ordinances appended to the 1935 Constitution pursuant to Com. Act No. 492 (1939); Plebiscite *re* presidential and vice-presidential terms, bicameral legislature and the Commission on Elections pursuant to Com. Act No. 517 (1940); Plebiscite on the Parity Amendment pursuant to Rep. Act No. 73 (1946); Plebiscite on the apportionment and the members of

landmark in the area of citizens' participation in government for the following reasons:

*First:* It articulated in unequivocal terms the principle that "Sovereignty resides in the people and all government authority emanates from them."<sup>25</sup>

*Second:* It enumerated who are citizens of the Philippines.<sup>26</sup>

*Third:* It determined who may exercise suffrage and set down the conditions under which the vote would extend to women.<sup>27</sup>

*Fourth:* It required the people's ratification of the constitution and any proposed amendments.<sup>28</sup>

*Fifth:* In various other provisions it determined qualifications for office, election to public office and by subsequent amendment established the Commission on Elections as a constitutional agency.<sup>29</sup>

By July 4, 1946, when in accordance with the timetable set the Philippines would attain full sovereignty, the Filipinos had been prepared to govern themselves along the American democratic model. Citizens participated directly and formally in the ratification of the 1935 constitution and of amendments to it by electing officials from the President and Vice-President, down to local councilors, indirectly through their chosen representatives in the legislatures; and informally through lobbies and public opinion.

But the principle that sovereignty resides in the people from whom all government power comes was more an expression of hope than an actuality. For while elections were periodically held from 1936 up to the outbreak of World War II in the Pacific area and resumed after the return of the commonwealth government-in-exile in 1945 through the establishment of the independent Philippine Republic and until a moratorium on elections was declared as an incident of martial law—elections had become less and less an exercise by a sovereign people of direct participation in their own government than a tool among the political elite in the power game.

Citizens' participation to be meaningful must satisfy essential conditions, namely, (1) choice freely and intelligently made, (2)

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Congress could be members of the Constitutional Convention pursuant to Rep. Act No. 4914 (1967); Plebiscite on the 1973 Constitution pursuant to Pres. Decree No. 86-A (1973); and Referendum-Plebiscite on the Amendment of the 1973 Constitution pursuant to Pres. Decree No. 1033 (1976).

<sup>25</sup> Art. II, sec. 1.

<sup>26</sup> Art. IV.

<sup>27</sup> Art. V.

<sup>28</sup> Art. XV.

<sup>29</sup> Art. VI, secs. 7 & 8; art. VII, secs. 2, 3 & 4; art. X.

faithful recording and release of the public verdict; (3) integrity of the electoral process.

While there was no effort spared in formulating legal measures to ensure these during the elections from the time they were first introduced in this country, equally determined efforts were exerted on the part of interested parties to thwart the electoral process. Instead of improving, the situation progressively worsened after independence. It was a matter of notoriety that elections were not decided on issues, but on personalities and it was not the best candidate who won. In too many instances gold, guns, and goons carried the day. By the end of the 1960's the political bailiwicks in many parts of the country were maintained by private armies; voters' support could be obtained for a price; in time a good number of electors expected this and demanded other favors of those in public office. Elections could be hazardous as well as expensive. That the public treasury could be made to yield the return of investment made in running for elective office was a consequence not the least surprising. There were, of course, among persons in public office those untouched with the same taint—unfortunately, there were not enough of them. Constituents too could impose burdensome demands on office holders. Legislation protecting public office, ensuring efficiency, honesty and integrity of public officials and of safeguarding the electoral process were adopted. There was no lack of these.

In the meantime, the agitation for revising the 1935 constitution bore fruit and a convention was elected in 1971. Among the major changes introduced in the revision was the adoption of a system of responsible government—where the citizens' participation would come in, not only at specified periods as it is done in the system of government patterned after the American presidential type, but would make governments stand or fall on vital issues, the ultimate judge in case of disagreement in the political leadership, being the people. But before the convention could complete its work conditions further deteriorated. Acting on provisions of the 1935 constitution, the President declared martial law.<sup>30</sup> This declaration lent urgency to the work of the convention which by then had begun to slow down. In less than three months after Proclamation No. 1081, the convention completed its work and submitted it for ratification. The manner this was carried out has been the subject of much discussion in and out of court, in this country and abroad. The final dispositive statement in *Javellana v. Executive Secretary*<sup>31</sup> continues to provoke comment. But not in

<sup>30</sup> Proclamation No. 1081 on September 21, 1972, 68 O.G. 7624 (Sept., 1972).

<sup>31</sup> G.R. No. L-36142, March 31, 1973, 50 SCRA 30 (1973).



this lecture. I shall refrain from joining that exercise but will refer to the case only because it must become the starting point of what this inquiry is all about: a consideration of the legal implications of contemporary developments in citizens' participation in government from the grass roots. The rather lengthy treatment of what went before is by way of showing that citizens' participation was part of the plan of government under the Malolos constitution, had its beginnings and started to develop under the American administration and continued under the government of the Republic of the Philippines.

There was one weakness which subsequently proved to be the undoing of the governmental structure built up along the American model, and this was the inability to develop strong local government on the basis of people's support and initiative. From the early schemes adopted, under Acts Nos. 82 and 83<sup>32</sup> subsequently under the Revised Administrative Code<sup>33</sup> the local government structure remained essentially the same. While legally recognizing the dual character of local governments as bodies corporate, *first* representing the inhabitants within the territory much in the same way as a corporation acts for its members or shareholders to promote the common concern, the local governments operated hardly ever in this capacity to innovate or initiate measures. Through the years, it is the *second* category of functions that local governments have concentrated on, namely as *agency* of the state, a unit of the central government in carrying out laws and policies. It is of course true that legally these local governments are regarded as creations of law, with limited powers and that any acts done beyond these limits can be nullified. But in spite of the grant of more liberal powers,<sup>34</sup> of legislation on local autonomy,<sup>35</sup> it is a rare instance when a local government will strike out on its own along permissible areas. The easier, more comfortable way, has been to wait for action from the national government.

There is no lack of examples of previous efforts to draw out local initiative, develop in the people from the grass roots the desire to help themselves, and determine what they want and how to get it done. Thus, from geographic units without legal personality, the barrios were constituted into quasi-municipal corporations un-

<sup>32</sup> Both adopted by the Philippine Commission in 1901; earlier municipalities were governed under General Order No. 43, series of 1899 superseded by General Order No. 40, series of 1900 promulgated by the military governor.

<sup>33</sup> Book III—Government of Provinces and other Political Subdivisions.

<sup>34</sup> REV. ADM. CODE, secs. 2065-2324; Rep. Act No. 2370 (1959), as amended by Rep. Act No. 3590 (1963).

<sup>35</sup> Rep. Act No. 2264 (1959), as amended by Rep. Act Nos. 4497 (1965) and 5752 (1969), Pres. Decree Nos. 145 (1973) and 526 (1974); Rep. Act No. 5185 (1967).

der a charter,<sup>36</sup> the barrio resident voters to meet as an assembly and elect its officials and pass upon its programs. The law endowed it with certain functions including a limited power to tax.<sup>37</sup> Better ways of achieving local autonomy for municipalities, chartered cities and provinces were also adopted.<sup>38</sup> The legislature reversed the restrictive rule of interpretation in case doubt arose regarding the existence or scope of local powers and explicitly provided that doubts were to be resolved in favor of the validity of the exercise of power.<sup>39</sup> The policy to stimulate local initiative and broader involvement of people in their own affairs was consistently pursued, but the results as of 1972 were not as yet discernible. The tendency to wait until the central government acted and to seek assistance from there before doing anything locally had become too much part of the system to change overnight.

There were legal difficulties posed by the constitutional policy on national-local government relationship. In the 1935 constitution the only reference to local governments was a clause which gave the President general supervision over local governments as may be provided by law.<sup>40</sup> The application and interpretation of this provision was made in numerous decisions of the Supreme Court, principally delineating the extent of the powers the President could exercise under general supervision compared with control.<sup>41</sup> The

<sup>36</sup> Rep. Act No. 3590 (1963), sec. 2.

<sup>37</sup> Rep. Act No. 3590 (1963), sec. 5.

<sup>38</sup> Rep. Act No. 2264 (1959), as amended; Rep. Act No. 5185 (1967).

<sup>39</sup> *Cuunjieng v. Patstone*, 42 Phil. 818 (1922); *Icard v. City of Baguio*, 83 Phil. 870 (1949); *De la Rosa v. City of Baguio*, 91 Phil. 720 (1952); *We Wa Yu v. City of Lipa*, 99 Phil. 975 (1956); *Saldaña v. City of Iloilo*, 104 Phil. 28 (1958); *Golden Ribbon Lumber Co., Inc. v. City of Butuan*, G.R. No. L-18534, December 24, 1964, 12 SCRA 611 (1964); *Aboitiz Shipping Corp. v. City of Cebu*, G.R. No. L-14526, March 31, 1965, 13 SCRA 499 (1965); *Everett Steamship Corp. v. Municipality of Medina*, G.R. No. L-21191, April 30, 1966, 16 SCRA 978 (1966). Section 12 of Republic Act No. 2264 (1959) provides for the following rules for the interpretation of the Local Autonomy Act:

"1. Implied power of a province, a city or municipality shall be liberally construed in its favor. Any fair and reasonable doubt as to the existence of the power should be interpreted in favor of the local government and it shall be presumed to exist.

2. The general welfare clause shall be liberally interpreted in case of doubt so as to give more power to local governments in promoting the economic condition, social welfare and material progress of the people in the community.

3. Vested rights at the time of the promulgation of this arising out of a contract between a province, city municipality on one hand and a third party on the other, should be governed by the original terms and provisions of the same, and in no case would this act infringe existing rights."

<sup>40</sup> Art. VII, sec. 10 (1).

<sup>41</sup> *Planas v. Gil*, 67 Phil. 62 (1939); *Villena v. Secretary*, 67 Phil. 451 (1939); *Lacson v. Roque*, 92 Phil. 456 (1953); *Rodriguez v. Montinola*, 94 Phil. 964 (1954); *Mondano v. Silvosa*, 97 Phil. 143 (1955); *Hebron v. Reyes*, 104 Phil. 175 (1958); *Pelaez v. Auditor General*, G.R. No. L-23825, December 24, 1965, 15 SCRA 569 (1965).

need for greater local government autonomy and responsibility was of much concern and within constitutional limits, legislation to achieve these were adopted.<sup>42</sup> In the 1973 constitution, local autonomy is one of the changes introduced. A declaration of principles and state policies announces:<sup>43</sup>

"The state shall guarantee and promote the autonomy of local government units, especially the barrio, to ensure their fullest development as self-reliant communities."

One whole article consisting of five sections gives the constitutional framework of local government.<sup>44</sup>

Some idea of the status of local government is necessary for a better understanding of citizens' participation from the grass roots since this starts with their involvement in matters of local concern.

#### *The Contemporary Scene*

One of the more notable developments produced after the proclamation of martial law is the cultivation of people's participation particularly through the barangay. Proclamation No. 1081 began with a virtual take over of governmental powers. General Order No. 1 proclaimed that the President as Commander-in-Chief "shall govern the nation and direct the operation of the entire Government, including all its agencies and instrumentalities."<sup>45</sup>

As the new dispensation became more established, controls were slowly relaxed. In the meantime, the 1971 constitutional convention completed its work<sup>46</sup> and the process of obtaining the people's ratification of the proposed constitution was set in motion. On November 30th, Presidential Decree No. 73 was issued submitting the proposed constitution for ratification and appropriating funds for the purpose.

Citizens assemblies were created on December 31, 1972 "to broaden the base of citizen participation in the democratic pro-

<sup>42</sup> Examples are earlier mentioned.

<sup>43</sup> Art. II, sec. 10.

<sup>44</sup> Art. XI-Local Government.

<sup>45</sup> General Order No. 1 issued 22 September 1972 in its penultimate paragraph reads:

"Now THEREFORE, I, Ferdinand E. Marcos, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of the Armed Forces of the Philippines, do hereby proclaim that I shall govern the nation and direct the operation of the entire government, including all its agencies and instrumentalities, in my capacity and shall exercise all the powers and prerogatives appurtenant and incidental to my position as such Commander-in-Chief of all the armed forces of the Philippines."

<sup>46</sup> November 29, 1972.

cess and to afford ample opportunities for the citizenry to express their views on important national issues."<sup>47</sup> Not only did membership include those of the barrio assemblies<sup>48</sup> which meant citizens 18 years or over, residents for at least six months in the barrio but was expanded to include citizens from age fifteen.

This decree was next amended,<sup>49</sup> with a new appellation for the assemblies, namely, *barangays*, and conferring on them a legal status as "the base for citizen participation in governmental affairs and their collective views (shall be) considered in the formulation of national policies or programs." Specifically the barangays were authorized to conduct between January 10 and 15, 1973, a referendum on important national issues including (1) the holding of the plebiscite on the new constitution; (2) the continuation of martial law; (3) the convening of Congress on January 22, 1973; (4) the holding of elections in November 1973; and (5) others in the future to serve as guide or basis for action or decision by the national government.

Presidential Decree No. 86-A is noteworthy for several reasons. *First*, it articulated the thinking of the President as Commander-in-Chief, exercising martial law powers on people's participation in governmental matters over which at this early phase of the martial law regime he had absolute control; *second*, it was issued contemporaneously with the submission to the people of the proposed constitution; *third*, subsequent events demonstrated that the referendum would be employed at regular intervals; and *fourth*, the results of the referendum would be acted upon.

The implications of these submissions to the people have been scrutinized in and out of court in public forums and private studies. Referendums have been distinguished from plebiscites, plebiscite from elections, referendum and plebiscite have been combined.

The decree sets down the frame of reference of the barangay as base for citizens' participation. By its terms a distinction is drawn between a referendum on the one hand, the collective views resulting from which will be considered in the formulation of nation policies and programs and translated to concrete and specific decision, and plebiscite on the other, the holding of which was an issue to be considered. Referendums, are in other words consultative, the ultimate decision being elsewhere. They are not intended to be decisions, but basis for making decisions—a method of determining the thinking of people on diverse matters. They could refer to a

<sup>47</sup> Pres. Decree No. 86 (1972).

<sup>48</sup> Rep. Act No. 3590 (1963).

<sup>49</sup> Pres. Decree No. 86-A (1973).

specific issue: *e.g.*, should martial law be continued? Or they could invite opinions on any question the voter may wish to bring out. The remarks in the February 1975 referendum sheets revealed they could be on prices, on official or private shortcomings, on personalities, and things pertinent or otherwise.

A plebiscite on the other hand as referred to in the decree is used in a limited sense—to approve or disapprove a proposal, usually on the constitution. It differs from elections as generally understood, in that the latter refers to the process of choosing persons to fill public office.

The *barangay*, a term resuscitated from the name of local units in pre-colonial days, was used at first interchangeably with citizens assemblies as forum for discussion of public issues. Subject to the supervision of the Department of Local Governments and Community Development, the barangay conducted the first referendum under martial law. Subsequent referendums in the barangays were held in July 1973,<sup>50</sup> February 1975,<sup>51</sup> and October 1976,<sup>52</sup> under the supervision of the Commission on Elections.

Later, the barangay replaced the *barrio* as local unit of government.<sup>53</sup> It has since become the vehicle through which varied policies of government of a political, social, economic and other character such as those on local government, population, health, nutrition, green revolution, cooperatives, tourism, education, etc., are sought to be implemented. In the public mind, however, it is the political aspect of barangay participation that overshadows its others roles.

How the first referendum was conducted, the results, and their effect are thoroughly dissected in the separate opinions registered in *Javellana v. Executive Secretary*. Former Chief Justice Roberto Concepcion's summing up and the last clause included in that opinion are part of this country's history. This case represents the first step in the judicial imprimatur on the institutionalization of the barangay as a vehicle for citizens' participation in government.

#### *Broadening the Base of Citizen Participation*

Among the changes first adopted by the 1971 constitutional convention were those relating to suffrage. But for an adverse deci-

<sup>50</sup> Pres. Decree Nos. 228 (1973), 228-A (1973), 229 (1973) & 256 (1973).

<sup>51</sup> Pres. Decree No. 629 (1975).

<sup>52</sup> Pres. Decree No. 991 (1976), as amended by Pres. Decree Nos. 1031 (1976), 1032 (1976) & 1033 (1976).

<sup>53</sup> Pres. Decree No. 557 (1974).

sion of the Supreme Court they would have been submitted ahead of all proposals.<sup>54</sup> The 1973 constitution extends the right of suffrage by removing the literacy qualification and lowering the voting age to eighteen.<sup>55</sup> It also imposes on qualified citizens the obligation to register and vote.<sup>56</sup> And when parliamentary government begins to operate the scope of citizens' participation should likewise widen.

But even before the constitution went into effect, Presidential decrees were promulgated to afford ample opportunities for the citizenry to express their views on important national issues.<sup>57</sup>

*The barangay and expression of the popular will*

When at the end of 1972, the citizens assemblies were created and their views of public issues sought, martial law was hardly three months in operation. The convention had completed its work and the President submitted the proposed constitution for popular ratification, suspending temporarily the effects of martial law to bring about free and open discussion of the temporary lifting of the effects of Proclamation No. 1081 was also suspended. The referendum set for January 10 to 15, 1973, was announced as being in answer to the desire of the people expressed in the barangays "to decide for themselves questions or issues, both local and national . . . that they be given legal status and due recognition as constituting the genuine, legitimate and valid expression of the popular will."<sup>58</sup>

The report and recommendations on this referendum were submitted by the *Katipunan ng Mga Barangay* to the President on January 19, 1973. On the same day, the President acting on these, issued three proclamations:

<sup>54</sup> Tolentino v. Commission on Elections, G.R. No. L-34150, October 16, 1971, 41 SCRA 702 (1971).

<sup>55</sup> Art. VI.

<sup>56</sup> Art. V, sec. 4.

<sup>57</sup> Pres. Decree Nos. 86 (1972) & 86-A (1973). The preamble of Pres. Decree No. 86-A reads as follows:

"WHEREAS, on the basis of preliminary and initial reports from barangays (citizens assemblies) that have so far been established, the people would like to decide for themselves questions or, issues, both local and national, affecting their day-to-day lives and their future;

WHEREAS, the barangays (citizens assemblies) would like themselves to be the vehicle for expressing the views of the people on important issues;

WHEREAS, such barangays (citizens assemblies) desire that they be given legal status and due recognition as constituting the genuine, legitimate and valid expression of the popular will; and

WHEREAS, the people would like the citizens assemblies to conduct immediately a referendum on certain specified questions such as the ratification of the New Constitution, continuance of martial law, the convening of Congress on January 22, 1973; and the elections in November 1973 pursuant to the 1935 Constitution."

<sup>58</sup> Pres. Decree No. 86-A (1973).

1. No. 102 announcing the ratification by the Filipino people of the Constitution proposed by the 1971 convention. In this proclamation, the President reiterated the reason for the creation of the barangay and referred to their clamor to express their views on important national issues, specifically on (1) whether they still wanted a plebiscite to be called to ratify the new constitution. He cited the overwhelming majority of affirmative votes cast on the first issue, and of negative votes on the second. With these results as basis, the President certified and proclaimed the ratification of the new constitution. In *Javellana v. Executive Secretary*, the Supreme Court refused to disturb this certification and declared that there remained no legal obstacle to the constitution being considered in force and effect.

2. Proclamation No. 1103 declaring that the Interim National Assembly provided in the constitution would not be convened. Reiterating the premises of the Proclamation No. 1102, he stated that the constitution gave him the authority though not the obligation to convene the interim National Assembly but in deference to the sovereign will of the Filipino people expressed in the referendum, the interim National Assembly "shall not be convened."

3. Proclamation No. 1104 declared the continuation of martial law "in accordance with the needs of the time and the desire of the Filipino people."

A noteworthy feature of these proclamations is that in issuing them the President did not invoke his Commander-in-Chief powers under martial law but powers vested by the Constitution in the President of the Philippines. In each of the proclamations the President stated that it was issued in response to the will expressed by the people in the referendum. The question of whether any desire expressed by the people can be sufficient justification for any action has naturally arisen. It came up in the *Javellana* case, again in the *Sanidad*<sup>59</sup> case. Whether, if the people so wish, a constitution can be amended according to a procedure other than that constitutionally prescribed is an issue not easily resolved. In the ratification case, the theory that a revolutionary government having been set up, the old rules are replaced and the new dispensation may prescribe its own, the test of legitimacy being its success, was rejected outright. Hence, every departure from procedures heretofore followed under the constitution could be challenged.

The July 1973 referendum once more consulted the barangays as to their stand on the continuation of martial law and the per-

<sup>59</sup> *Sanidad v. Commission on Elections*, G.R. Nos. L-44640, 44684 & 44714, October 12, 1976, 73 SCRA 333 (1976).

formance of President Marcos in office. Both received the support of an overwhelming majority of votes cast. At this referendum, the compulsory voting requirements was put in effect, with penal sanctions for failure to register and/or vote.<sup>60</sup>

The Commission on Elections recommended prosecution of those who kept away from the referendum<sup>61</sup> but early in January 1974, the President declared a general amnesty considering that it was the first time in the history of the country's political development that such acts were being penalized. It was announced that the concern of the national leadership was to unite the nation and to encourage the citizens to pursue constructive activities without distraction.<sup>62</sup>

The legal shortcomings of the January 1973 referendum were forestalled by placing subsequent ones under the conduct and administration of the Commission on Elections.

The 1975 referendum was judicially challenged and upheld,<sup>63</sup> the issues raised being, among others, the authority of the President to call it and appropriate funds for the purpose as well as the sufficiency of the time given to the people to discuss the issues referred to them. At this referendum, the form of local government for the Metropolitan Manila area,<sup>64</sup> and the manner of filling up the posi-

<sup>60</sup> Pres. Decree No. 210 (1973), secs. 6 & 11. Section 11 enumerates the following punishable acts:

*"Penal Provisions.* — (a) Failure of any registration officer to comply with this duties and functions within the period prescribed shall be ground for disciplinary action in accordance with the revised Barrio Charter: *Provided, however,* that when a registration officer refuses to perform certain acts required of him under this Decree, the penalty shall be a fine of not less than fifty pesos but not more than two hundred pesos or an imprisonment of not less than one month but not more than one year, or both fine and imprisonment in the discretion of the Court;

(b) Any qualified person who fails without justifiable excuse to register within the period prescribed by law shall be guilty of an offense punishable with a fine of twenty pesos;

(c) The following shall be guilty of an offense punishable with imprisonment of not less than one month nor more than six months:

(1) Any person who registers more than once.

(2) Any registering officer who knowingly registers a person not duly qualified to be registered or who refuses to accept any application for registration.

(3) Any person who delays, hinders or obstructs another from registering."

<sup>61</sup> "Is Religious Belief enough? Veloso Report Urges Prosecution of Poll Defaulters", 1 Comelec Barangay Newsletter 4-5 (Dec., 1973); Magawang, "Witnesses' lose poll case", Bulletin Today, September 20, 1973, p. 1 (1974).

<sup>62</sup> Pres. Decree No. 364 (1974).

<sup>63</sup> Aquino, Jr. v. Commission on Elections, G.R. No. L-40004, January 31, 1975, 62 SCRA 275 (1975).

<sup>64</sup> Pres. Decree No. 637 (1975), as amended by Pres. Decree No. 637-A (1975), section 1 of which provides:

"For Greater Manila Area:

I. On Local Government and Officials



tions of local officials throughout the country whose terms were expiring were referred to the people.<sup>65</sup> As in the earlier referendums the people's view on other questions were invited and for this purpose remark sheets were supplied. For the first time a systematic random sampling of these remarks were made and analyzed by a multidisciplinary panel of the University of the Philippines and the Commission on Elections. The report was submitted and early in 1976 the President and some members of the cabinet were briefed on the significant findings.

The latest in this area of citizen participation was the October 1976 referendum-plebiscite<sup>66</sup> where proposed amendments<sup>67</sup> to the

1. Do you want the present Mayor-Council form of government now existing in the cities and municipalities of Greater Manila to continue?
2. If you do not want the Mayor-Council type to continue, do you favor of the President exercising his powers to restructure the local governments in Greater Manila into an integrated system like a Manager or Commission form under terms and conditions as he may decide?

#### II. On Martial Law

1. Do you approve of the manner President Marcos has been exercising his powers under martial law and the Constitution, including the power to issue proclamations, orders, decrees, and instructions with the force of law?
2. Do you want the President to continue exercising the same powers?"

<sup>65</sup> Pres. Decree No. 637 (1975), as amended by Pres. Decree No. 637-A (1975), section of which provides:

"For Areas outside of the Greater Manila area:

#### I. On Local Officials

At the expiration of the terms of office of your local elective officials on December 31, 1975, how do you want their successors chosen: to be appointed by the President or elected in accordance with the Election Code?

#### II. On Martial Law

Same as for the Greater Manila Area."

<sup>66</sup> Pres. Decree No. 1033 (1976).

<sup>67</sup> Proposed Amendments:

1. There shall be, in lieu of the Interim National Assembly, an Interim Batasang Pambansa. Members of the Interim Batasang Pambansa which shall not be more than 120, unless otherwise provided by law, shall include the Incumbent President of the Philippines, Representatives elected from the different regions of the nation, those who shall not be less than eighteen years of age elected by their respective sectors, and those chosen by the Incumbent President from the members of the Cabinet. Regional Representatives shall be apportioned among the regions in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio while the sectors shall be determined by law. The number of representatives from each region or sector and the manner of their election shall be prescribed and regulated by law.
2. The Interim Batasang Pambansa shall have the same powers and its members shall have the same functions, responsibilities, rights, privileges, and disqualifications as the Interim National Assembly and the regular national Assembly and the members thereof. However, it shall not exercise the power provided in Article VIII, section 14 (1) of the Constitution.

constitution were submitted along with the question of whether martial law should be continued. A petition<sup>68</sup> filed with the Supreme Court raised the fundamental issues of whether an amendment can be proposed and adopted in a manner different from the procedure prescribed by the constitution. By an eight to two vote the Supreme Court held that during the transition period and under martial law, the procedure followed passed muster.

What emerges from these instances of referendums among barangay members is that since Proclamation No. 1081, this has become *the* vehicle for citizen participation. Notwithstanding the judicially tested and upheld temporary concentration of powers in the President,<sup>69</sup> he has fallen back and drawn upon the support of the barangays, representing the citizenry. The legal implications of this action have been explored. To begin with, where the consti-

3. The Incumbent President of the Philippines shall, within 30 days from the election and selection of the members, convene the Interim Batasang Pambansa and preside over its session until the speaker shall have been elected. The Incumbent President of the Philippines shall be the Prime Minister and he shall continue to exercise all his powers even after the Interim Batasang Pambansa is organized and ready to discharge its functions and likewise he shall continue to exercise his powers and prerogatives under the nineteen hundred and thirty five Constitution and the powers vested in the President and the Prime Minister under this Constitution.
4. The President (Prime Minister) and his Cabinet shall exercise all the powers and functions, and discharge the responsibilities of the regular President (Prime Minister) and his cabinet, and shall be subject only to such disqualifications as the President (Prime Minister) may prescribe. The President (Prime Minister) if he so desires may appoint a Deputy Prime Minister or as many Deputy Prime Ministers as he may deem necessary.
5. The Incumbent President shall continue to exercise legislative powers until Martial Law shall have been lifted.
6. Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the Interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, order or letters of instructions, which shall form part of the law of the land.
7. The Barangays and Sanggunians shall continue as presently constituted but their functions, powers, and composition, may be altered by law.

Referenda conducted thru the Barangays and under the supervision of the Commission on Elections may be called at any time the government deems it necessary to ascertain the will of the people regarding any important matter whether of national or local interest.

8. All provisions of this Constitution not inconsistent with any of these amendments shall continue in full force and effect.
9. These amendments shall take effect after the Incumbent President shall have proclaimed that they have been ratified by a majority of the votes cast in the Referendum-Plebiscite.

<sup>68</sup> Sanidad v. Commission on Elections, *supra*, note 59.

<sup>69</sup> Aquino, Jr., v. Commission on Elections, *supra*, note 63 citing Section 3 (2) of art. XVII of the New Constitution.

tution has placed both the authority and responsibility squarely on the President's shoulder, as in the matter of declaring or lifting martial law, the responsibility is his alone. The referendum can only be advisory. Again, in the case of the initial convening of the interim National Assembly, the Transitory Provision of the 1973 constitution reposed that prerogative on the President<sup>70</sup>—the decision was his to make—and precedents support the view that such a function is discretionary not ministerial.<sup>71</sup> Ultimately, only the sovereign people can call the official to account for its performance or lack of performance. It has time and again been remarked that under the legal system this country has followed for three quarters of a century every debate on issues of public moment eventually comes before the Supreme Court.<sup>72</sup> The heavy responsibility the highest tribunal bears continues as fresh issues arise. Not infrequently divided as to fundamental questions, decisions reached do not fully put to rest in many minds the controversies generated. But dissent serves a useful purpose—it lends credibility where full unanimity may fail. And so, as each case is decided, the next step in the transition can be taken and the phasing out of martial law, hopefully, can proceed.

*Local governing bodies and citizens' participation*

The 1975 referendum cleared some legal obstacles for innovations in local government.

The President restructured the government of four cities and thirteen municipalities and created Metropolitan Manila as an integrated unit under a commission form of government, with the governments of the component cities and municipalities continuing to exist.

In Metro Manila and in each city, province and municipality throughout the country, a *Sanggunian Bayan* (*Panglungsod*, or *Panalalawigan*) was created. The members of the city and municipal councils at the time were to become members until March 1976

<sup>70</sup> Art. XVII, sec. 3 (1).

<sup>71</sup> *Lansang v. Garcia*, G.R. Nos. L-33964-65, 33973, 33982, 40004, 34039, 34265 & 34339, December 11, 1971 42 SCRA 448 (1971); *Aquino, Jr. v. Ponce Enrile*, G.R. Nos. 3538-40, 3546-47, 35571-73, September 17, 1974, 59 SCRA 183 (1974); *Aquino, Jr. v. Commission on Elections*, *supra*, note 62.

<sup>72</sup> Examples of controversies through the years are: Parity rights — *Mananag v. Lopez Vito*, 78 Phil. 1 (1948); Party split-up — *Avelino v. Cuenco*, 83 Phil. 17 (1949); Reapportionment — *Macias v. Commission on Elections*, G.R. No. L-18684, September 14, 1961, 3 SCRA 1 (1961); Plebiscite — *Planas v. Commission on Elections*, G.R. Nos. L-35925, 35929, 35940-42, 35948, 35953, 35961, 35965 & 35979, January 22, 1973, 49 SCRA 105 (1973); Habeas Corpus — *Lansang v. Garcia*, *supra*, note 70; Martial Law — *Aquino, Jr. v. Ponce Enrile*, *supra*, note 70.

and to these were added *barangay* captains and other representatives from four sectors of the society.<sup>73</sup>

In Metropolitan Manila, the Sanggunian Panglunsod has only a recommendatory function, the local legislative powers being lodged in the Commission.<sup>74</sup>

The manner of choosing representatives to the Sanggunian Bayan is spelled out.<sup>75</sup> Thus, in the municipalities, the President of the *Pambayang Katipunan ng mga Barangay* and the President of the *Katipunan ng Kabataang Barangay* are automatically members; and a representative is elected by each of four sectors, namely, capital, professional, industrial labor, and agricultural labor groups. These have their counterparts in the cities. The provincial *Sanggunian Panlalawigan* is composed of the governor, provincial board members reappointed by the President, a representative from each municipality and the president of the provincial youth *barangay*.

The *Sanggunian* increases the membership of and replaces the local law-making bodies in provinces, municipalities and cities. It also brings into being on the provincial level what had been proposed in the past namely,<sup>76</sup> an assembly in which the various municipalities of the province are represented. Through a federation of a *Katipunan ng mga Sanggunian*<sup>77</sup> to meet at least annually in a national conference, representatives from the local units are given the opportunity to perceive and identify problems not only on a local but more importantly on a national perspective and provide for their proper solution. An Executive Committee of this body to act when it is not in session is constituted out of five representatives from each region of the country (Metro Manila being considered a separate region) composed of a governor or city mayor, a president of the federation and two representatives chosen from the members of the *Katipunan ng mga Sanggunian* in the region.<sup>78</sup>

All the members of the *Sangguniang Panlalawigan* and *Sangguniang Panglunsod* in each of the twelve regions with Metro Manila considered as another region, have been organized into a *Pampook na Katipunan ng mga Sanggunian* with the presiding officer of the *Sanggunian Bayans* in each region included as members. An executive

<sup>73</sup> Pres. Decree No. 824 (1975); Pres. Decree No. 877 (1976), sec. 1.

<sup>74</sup> Pres. Decree No. 824 (1975), sec. 9.

<sup>75</sup> Pres. Decree No. 826 (1975); DLGCD Memorandum Circular No. 75-86, dated December 4, 1975.

<sup>76</sup> In the U.P. Law Center Administrative Code Revision Project, one of the plans presented for example, was a provincial assembly. The Malolos Constitution likewise made reference to one.

<sup>77</sup> Created by Pres. Decree No. 877 (1976).

<sup>78</sup> Pres. Decree No. 877 (1976), as implemented by DLGCD Circular No. 76-8 dated February 10, 1976.

committee of seven will act when the body is not in session. There is thus established a network of sanggunians at different levels and for the whole nation—for municipalities, provinces, cities, regions and finally the country as a whole. It institutionalizes citizen participation, and the *pulong-pulong*,<sup>79</sup> together with a whole new vocabulary in political organizational set-up is introduced.

How has it worked? It is probably too soon to say. But the *Sanggunians* in the municipalities and cities (outside of Metro Manila) began to operate first. Next the *Pampook ng Katipunan ng mga Sanggunian* met simultaneously in the different regions.<sup>80</sup> At the end of January 1976, the *Sanggunian* members from all over the country, some 3,600 of them, met in Manila.<sup>81</sup> One of the national issues they considered was the interim National Assembly on which subject they reiterated the January 1973 popular view—it should not be convened. This national conference of *Sanggunian Bayans* also urged that the *Sanggunian* be formally organized on the national level and on the basis of this manifestation, the President created the *Batasan Bayan*<sup>82</sup> as a legislative advisory body.

#### *Batasan Bayan*

The 1973 constitution had placed in the President the authority to initially convene the interim National Assembly. Stating that he was deferring to the desire manifested by the people in the referendum of January 1973<sup>83</sup>—he had not done so. However, on September 10, 1976, he issued Presidential Decree No. 995 creating the *Batasan Bayan*. The preamble announces that the people through their respective Barangays and Sanggunians had made known their desire for the creation of a legislative advisory body to assist the President in the exercise of legislative functions pending the establishment of a Legislative Assembly. It also declared that the opportune time had come “to accomplish the people’s *mandate* by the organization . . . and initially give meaning to the establishment of a parliamentary system of government as adopted under the constitution.”

The *Batasan Bayan* as constituted has the following members: the President of the Republic of the Philippines, the members of the Cabinet, including officials with cabinet rank, members of the

<sup>79</sup> Meeting. PANGANIBAN, DIKSIYONARIO-TESAURO PILIPINO-INGLES 827 (1972).

<sup>80</sup> Ng, “13 Sanggunian Federations up in City, Regions,” *Bulletin Today*, April 25, 1976, p. 1.

<sup>81</sup> “3,600 members of Sanggunian called to Manila,” *Bulletin Today*, January 1, 1976, p. 1.

<sup>82</sup> Pres. Decree No. 995 (1976).

<sup>83</sup> See Preamble of Pres. Decree No. 86-A (1973).

*Lupong Tagapagpaganap*<sup>84</sup> and such others as may from time to time be appointed by the President.<sup>85</sup>

The *Batasan Bayan* convened initially on the 21st day of September, 1976. At this first session it considered various measures including the budget. It also joined the *Sanggunians* and the *Barangays* in urging that appropriate steps be taken to amend the 1973 constitution. The deliberations of this body was extensively covered on television.

*The Referendum-Plebiscite, 1976*

Probably more issues of fundamental character have arisen during the last four years than at any comparable period in Philippine history. Without elaborate citation one need only refer to the *Plebiscite cases*, the *Ratification Cases*, the *Habeas Corpus Cases*, the *Martial Law Cases* and the latest *Referendum-Plebiscite Cases* to evoke in legal as well as informed non-legal circles the more relevant issues involved. The opinions in most of these make frequent reference to the exercise of the people's sovereign will. Contemporary developments in the Philippine setting have dislodged assumptions and well-learned concepts, particularly in a system of constitutional law drawn from the American pattern. The process of reexamination, the discovery of gaps, differences, and nice distinctions as well as what seem to be improvisations, go on. The Supreme Court at the vortex of the legal controversies passes upon each constitutional issue, in theory as the final arbiter, but in reality conscious that every pronouncement it makes is open for all time to analysis and criticism by legal scholars here and abroad. It would be presumptuous at this stage to attempt any in-depth treatment of these constitutional questions. Years of thorough study when the time comes will be required for this exercise; scholars individually and in teams will be needed to study various facets of this period of our constitutional development. This paper attempts nothing more ambitious than to piece out trends in the total effort at developing citizens' participation from the grass roots.

As earlier mentioned although lip service was paid to the principle that sovereignty resides in the people, the political system ignored if not debased it outright. Elections were won not infrequently through the corruption of the electoral process. The constitution under which this could be brought to pass was superseded, but the new one could not altogether shed off what in the

<sup>84</sup> As determined under Pres. Decree No. 925 organizing the Pampook na Katipunan ng mga Sanggunian.

<sup>85</sup> Sec. 2. Among the appointees was Metropolitan Manila Governor, Imelda Romualdez Marcos.

public mind was the canker of that system for it provided in the transition period an interim National Assembly which not only retained a good many of the less desirable members of the old Congress but also increased their number from the very authors of the constitution who thus also became suspect.<sup>86</sup> I venture to say that even the most severe critics of the present dispensation would be reluctant to advocate a return to the old days of the Philippine political arena. In the referendum of January 1973, the barangays declared that they did not want the interim National Assembly convened and that they wanted a moratorium on elections. The opinion against the interim National Assembly has not only been reiterated since, but a move to scrap it finally came to a head this year. The stumbling block was the procedure for amendment prescribed in the constitution.<sup>87</sup>

The *Sanidad v. Commission on Elections*<sup>88</sup> squarely presented the issue of whether during this transition period, the President may propose constitutional amendments. In that case Mr. Justice Martin who wrote the majority opinion carefully pointed out:

"The President's action is not a unilateral move. As early as the referendums of January 1973 and February 1975, the people had already rejected the calling of the interim National Assembly. The *Lupong Tagapagpaganap of the Katipunan ng mga Sanggunian*, the *Pambansang Katipunan ng mga Barangay*, and the *Pambansang Katipunan ng mga Barangy*, representing 42,000 barangays, about the same number of Kabataang Barangay organizations, *Sanggunians* in 1,458 municipalities, 72 provinces, 3 sub-provinces, and 60 cities had informed the President that the prevailing sentiment of the people is for the abolition of the *interim* National Assembly. Other issues concerned the lifting of martial law and amendments to the Constitution. The national organizations of *Sangguniang Bayan* presently proposed to settle the issues of martial law, the *interim* Assembly, its replacement, the period of its existence, the length of the period for the exercise by the President of its present powers in a referendum to be held on October 16. The *Batasang Ba-*

<sup>86</sup> Art. XVII, sec. 1.

<sup>87</sup> Pertinent portions of Art. XVII, Transitory Provisions provide:

"SEC. 15. The *Interim* National Assembly, upon special call by by *interim* Prime Minister, may by a majority vote of all its members, propose amendments to this Constitution. Such amendments shall take effect when ratified in accordance with Article Sixteen hereof.

SEC. 16. This Constitution shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite called for the purpose and, except as herein provided, shall supersede the Constitution of nineteen hundred and thirty-five and all amendments thereto."

<sup>88</sup> *Supra*, note 59.

yan (legislative council) created under Presidential Decree 995 of September 10, 1976, composed of 19 cabinet members, 9 officials with cabinet ranks, 91 members of the *Lupong Tagapagpaganap* (executive committee) of the *Katipunan ng mga Sangguniang Bayan* voted in session to submit directly to the people in a plebiscite on October 16, the previously quoted proposed amendments to the Constitution, including the issue of martial law. Similarly, the "barangays" and the "sanggunians" endorsed to the President the submission of the proposed amendments to the people on October 16. All the foregoing led the President to initiate the proposal of amendments to the Constitution and the subsequent issuance of Presidential Decree No. 1033 on September 22, 1976 submitting the questions (proposed amendments) to the people in the National Referendum-Plebiscite on October 16."

The participation of fifteen year olds was likewise explained as the referendum part of the exercise, which is consultative, their votes being separately canvassed.

The amendment (which went into effect on October 28, 1976) replaces the interim National Assembly with the *Batasan Pambansa* to be composed of not more than 120 members (unless otherwise provided by law) including the incumbent President of the Philippines, representatives elected from the different regions, and those chosen by the President from among members of the cabinet. Election of regional representatives will be apportioned in accordance with the number of their respective inhabitants on a uniform progressive ratio with sectoral representation to be determined by law.<sup>89</sup>

A date is also set within which the interim *Batasan Pambansa* shall be convened by the incumbent President, namely: within 30 days from the election of the members.<sup>90</sup> When the body shall have elected its Speaker, the President shall take on the office of Prime Minister while retaining the position of President together with the powers of that office under the 1935 and 1973 constitutions.<sup>91</sup> The legislative powers of President under martial law likewise remain.<sup>92</sup>

The amendment confers constitutional standing on the barangays and sanggunians as well as referendums conducted through the barangays under the supervision of the Commission on Elections.<sup>93</sup>

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<sup>89</sup> Sec. 1 of the Amendment.

<sup>90</sup> Sec. 3 of the Amendment.

<sup>91</sup> Sec. 3 of the Amendment.

<sup>92</sup> Sec. 5 of the Amendment.

<sup>93</sup> Sec. 7 of the Amendment.



The next step then in the onrush of development is the election of representatives to the *Batasan Pambansa*. Two features of the representation scheme are worth noting: *first*, it will be regional and *second*, it makes provision for sectoral representation. The sectoral scheme has been initially tried in the sanggunians. The confined, often family political dynasties of the fragmented representative districts which proved too entrenched and almost impossible to re-apportion<sup>94</sup> are avoided at the start. How long this can be kept remains to be seen. The potential for a more realistic participation in the choice of representatives in the system followed in the past legislative assemblies appears to be in the plan.

#### *The Barangay in Other Activities*

Efforts at drawing out and developing citizen participation are made simultaneously in other fields. Some idea of this can be gathered from the words President Ferdinand E. Marcos at the second anniversary of the constitution and the oath taking of barangay leaders on January 17, 1975. Emphasizing the importance of the barangay as an institution, he said:

...the barangays have been the most sensitive to all the problems affecting our country and people, for it is on of the axioms of our modern society, in any country that whenever there is suffering, the first to suffer are the poor.

... Whenever there is any problem about changing the feudalistic land tenure system, to whom do we go? The barangay. When we want to establish cooperatives in order that we can grant to any small group of farmers or tenants the privileges and advantages of large scale farming, where do we go? To the barangays. Whenever peace and order is threatened in any locality, where do we go? When the police need help? The barangays. Whenever we seek to increase the production of food, where do we go? To the barangay. When we seek to establish cottage industries on small and medium scale industries in the countryside, where do we go? The barangays. And when we seek to cut down on drug addiction and criminality in general, whose help do we seek? The barangays.<sup>95</sup>

To this enumeration can be added many more government programs, the viability of which rest on people participation through the barangay: the efforts at energy conservation, population and

<sup>94</sup> Art. VI, sec. 5 of the 1935 Constitution providing for apportionment was never really implemented as the framers of the Constitution envisioned. The provisional basis of representation existing at the time of its adoption was supposed to give way to a reapportionment. But when Congress got around to adopting a reappointment law, Rep. Act No. 3040 in 1961, the Supreme Court found that there was such disproportion of representation as to render the law unconstitutional (*Macias v. Commission on Elections*, *supra*, note 71). The insuperable obstacle to reapportionment was the "vested interest" of political dynasties and other factions.

<sup>95</sup> 71 O.G. 384-E (Jan., 1975); See also Cavera, "Barangays: the Elite of the New Society," *Phil. Daily Express*, September 21, 1976, p. 3.

family planning, nutrition, fishing, reforestation, flood control, education, health among others.<sup>96</sup> The number and variety of Presidential issuances not to mention other circulars, rules, regulations, from

<sup>96</sup> A. Presidential Decrees on Barangays:

- Pres. Decree No. 86—Creating Citizens Assemblies. Took effect on December 31, 1972.
- Pres. Decree No. 86-A—Strengthening and defining the roles of *barangays*. Took effect on January 5, 1973.
- Pres. Decree No. 134—Setting the guidelines for *barangays'* (citizens assemblies) participation on local issues. Took effect on February 21, 1973.
- Pres. Decree No. 144—Revising the present system of national internal revenue allotments to local governments. Took effect on March 3, 1973.
- Pres. Decree No. 175—Strengthening the cooperative movement. Took effect on April 14, 1973.
- Pres. Decree No. 210—Providing for a system of registration for members of the *barangays*. Took effect on June 8, 1973.
- Pres. Decree No. 228—Setting July 27, 1973, as the date for the holding of a national referendum for *barangays*. Took effect on June 26, 1973.
- Pres. Decree No. 228-A—Declaring July 24, 1973 as additional referendum day in the Philippines. Took effect on July 20, 1973.
- Pres. Decree No. 229—Providing for the manner of voting and canvass of votes in *barangays*. Took effect on July 9, 1973.
- Pres. Decree No. 231—Local Tax Code. Took effect on July 1, 1973.
- Pres. Decree No. 256—Authorizing *barangay* members to cast their votes in the *Barangay* centers nearest their residence. Took effect on July 27, 1973.
- Pres. Decree No. 299—Amending article 152 of Act No. 3815, as amended, entitled the Revised Penal Code. Took effect on September 19, 1973.
- Pres. Decree No. 310—Providing for the creation of an individual decoration to be known as *Kagitingan sa Barangay* and the *Barangay* Presidential Unit Citation Badge. Took effect on October 17, 1973.
- Pres. Decree No. 426—Amending certain provisions of the Local Tax Code enacted under Presidential Decree No. 231. Took effect on March 30, 1974.
- Pres. Decree No. 477—Decree on Local Fiscal Administration. Took effect on June 3, 1974.
- Pres. Decree No. 501—Amending certain provisions of Presidential Decree No. 175. Took effect on June 28, 1974.
- Pres. Decree No. 557—Declaring all barrios in the Philippines as *barangays*, and for other purposes. Took effect on September 21, 1974.
- Pres. Decree No. 558—Amending section 3 of Presidential Decree No. 436 by allocating a share in highway special fund to the *barangays*. Took effect on September 21, 1974.
- Pres. Decree No. 559—Amending sections two, three and five of Presidential Decree No. 144. Took effect on September 21, 1974.
- Pres. Decree No. 629—Setting January 7 to 21, 1975 as the period for registration of *Barangay* members for purposes of January 30, 1975 referendum prescribing the methods for such registration, and appropriating funds therefor. Took effect on January 4, 1975.
- Pres. Decree No. 630—Prescribing rules and regulations to govern the conduct of the national referendum on January 30, 1975 and appropriating funds therefor. Took effect on January 6, 1975.
- Pres. Decree No. 684—Strengthening and defining the role of the *barangay* youth in every *barangay*. Took effect on April 15, 1975.

- Pres. Decree No. 826—Changing the names of provincial boards and city or municipal boards of councils into *Sangguniang Bayan*, and increasing the membership thereof. Took effect on November 14, 1975.
- Pres. Decree No. 869—Amending section fifteen of Republic Act No. 3590 otherwise known as the Revised Barrio Charter as amended, in order to provide for rural postal circuits in the barrio. Took effect on January 6, 1976.
- Pres. Decree No. 877—Organizing the *Katipunan ng mga Sanggunian*. Took effect on January 21, 1976.
- Pres. Decree No. 925—Organizing the *Pampook ng Katipunan ng mga Sanggunian*. Took effect on April 24, 1976.
- Pres. Decree No. 935—Extending the term of office of the present *Kabataang Barangay*. Took effect on May 15, 1976.
- Pres. Decree No. 937—Amending section 4 of Presidential Decree No. 144. Took effect on May 27, 1976.
- Pres. Decree No. 991—Calling a National Referendum on October 16, 1976 providing for a period of educational and informational campaign on the issues; and establishing the mechanics and manner for the holding thereof. Took effect on September 2, 1976.
- Pres. Decree No. 995—Creating the *Batasang Bayan*, defining its functions and powers, and appropriating funds therefor. Took effect on September 10, 1976.
- Pres. Decree No. 1000—Amending section four of Presidential Decree No. 925, entitled "Organizing the *Pampook ng Katipuna ng mga Sanggunian*." Took effect on September 16, 1976.
- Pres. Decree No. 1002—Amending section 94 of Presidential Decree No. 464 otherwise known as the Real Property Tax Code. Took effect on September 22, 1976.
- Pres. Decree No. 1031—Amending Presidential Decree No. 991 by declaring the provisions of Presidential Decree No. 229 entitled "Providing for the manner of voting and canvass of votes in *barangays*" applicable to the National Referendum-Plebiscite of October, 1976, and for other purposes. Took effect on September 22, 1976.
- Pres. Decree No. 1032—Setting September 21 to October 7, 1976 as the period for the registration of barangay voters for the October 1976 Referendum-Plebiscite, prescribing the rules and regulations for said registration, and for other purposes in connection therewith. Took effect on September 22, 1976.
- Pres. Decree No. 1033—Stating the questions to be submitted to the people in the Referendum-Plebiscite on October 16, 1976.

**B. Letters of Instructions and Letters of Implementation on *Barangays*:**

- Letter of Implementation No. 23—Implementing Presidential Decree No. 175 dated April 14, 1973 governing the organization, administration and supervision of *Samahang Nayon* (barrio associations) and *Kilusang Bayan* (cooperatives). Dated July 9, 1973.
- Letter of Instruction No. 252—Leave with pay of *barangay* chairmen together with *barangay* captains employed in public and private entities during the actual period of registering the members of the various *barangays* in connection with the holding of a referendum. Dated February 18, 1975.
- Letter of Instruction No. 329—Directing the Department of Local Government and Community Development, through the *barangays* to assist in the implementation of the government programs on energy conservation by instituting a comprehensive nationwide information and education campaign. Dated October 27, 1975.
- Letter of Instruction No. 335—Assistance in the leadership training program of all *Kabataang Barangay* chairmen. Dated November 10, 1975.

Executive Departments, particularly the DLGCD affecting the barangay like Alice just "grewed" and keeps growing.

In the judicial sector, more conservative than the political, stirrings of awareness of the potential of people's participation may be discerned. Thus, the Chief Justice in addressing a Seminar for Action Officers recently<sup>97</sup> spoke of the possibilities of a neighborhood para-

Letter of Instruction No. 337—Directing the *Barangay* Captains, the *Barangay* Chairman, Council members and leaders to report immediately the occurrence of any crime, accident, public disturbance, existence of crime-breeding areas, presence of escaped prisoners or criminal elements of which they have personal knowledge or which may have been brought to their attention; and to assist law-enforcement officers and other competent authorities in tracing the whereabouts of missing persons, recovering stolen properties or confiscating contrabands, and in the service or execution of warrants and other judicial processes. Dated November 17, 1975.

Letter of Instruction No. 373—Accreditation of *Kabataang Barangay* activities. Dated February 15, 1976.

Letter of Instruction No. 401—Directing the Department of Local Government and Community Development to implement the Manila Urban Development Project to provide technical assistance and logistic support for the implementation of the Community Organization and Development Program and of the Community Training Program particularly in the organization and development of cooperatives, leadership and citizenship training program and other matters pertaining to *barangay* affairs. Dated May 13, 1976.

Letter of Instruction No. 402—Planning and implementation of the municipal fisheries program in Alicia, Zamboanga del Sur and the eventual expansion of the program to other parts of Mindanao. Dated May 14, 1976.

Letter of Instruction No. 404—Directing the Secretary of Local Government and Community Development to see to it that all provincial, city, and municipal government maintain nurseries so that they shall be able to provide the necessary seeds or seedlings for distribution to the *barangays* within their jurisdiction. Each *barangay* member shall be required to plant at least ten trees every year and to give these trees proper and adequate care to ensure their growth. Dated May 19, 1976.

Letter of Instruction No. 410—Involving the vast network of *barangays* and coordinating their efforts in the maintenance and protection of said flood control systems, especially in the proper disposal of garbage. Dated May 29, 1976.

Letter of Instruction No. 424—Organizing provincial, municipal and *barangay* Program for Forest Ecosystem Management (PRO-FEM). Dated July 6, 1976.

Letter of Instruction No. 435—Directing the integration of population and family planning in the overall socio-economic development plans of all provincial governors, all city mayors, all municipal mayors and all *barangay* heads/captains. Dated July 20, 1976.

Letter of Instruction No. 441—Directing the Department of Local Government and Community Development to establish functioning nutrition committees in every region, province, city, municipality, and most particularly, to assist the *sub-barangay* nutrition unit composed of twenty household each, with its own unit leader to implement a national nutrition plant. Dated July 31, 1976.

<sup>97</sup> November 10, 1976.

legal system to help in the decongestion of dockets in the lower courts by utilizing the barangays in the arbitration of cases.<sup>98</sup> The legal profession concerned about the availability and adequacy of judicare, will have to come to grips with the need for legal services at the barangay level particularly in remote parts of the country. A little explored area, now beginning to get attention is the potential of indigenous methods of conflict settlement as well as the role that social pressures in the community play, in crime prevention, peace and order or drug abuse drivers. The starting point again for all these would be the barangay.

#### *What of the Future?*

If the *barangay* is to become the fountainhead of citizens' participation in government it will have to be developed on sound foundations. It is not enough to heap upon it one assignment after another in the multifarious areas in which government now operates. For the barangay whether taken as an assembly or as a unit of local government can only be as strong as the individuals who compose it.

The organization of the *Kabataang Barangay*<sup>99</sup> along parallel lines with the barangay and sanggunians is one of the steps taken to ensure continuity and to strengthen the foundations of the institutions on which citizens' participation is made to rest. It is also part of the educational and leadership training program for the youth whose vital role in nation-building is acknowledged.<sup>100</sup>

The architects of the structure set up to institutionalize citizens' participation have a blue-print for a tight and efficient organization with the barangays at the base growing upwards to the *sanggunians* at various levels: the *bayan*, *panlalawigan*, *panlungsod*, *pampook*, and finally, the *Katipunan ng mga Sanggunian Bayan* at the apex. This structure is a source of strength for it ensures a communication system that could be effectively put in operation. Where efforts are forth right and sincere to develop intelligent and free participation the integrity of which is jealously guarded, "participatory democracy" can become an established reality. On the other hand, the process could by manipulation be subverted and result in the wiping out of whatever gains in developing the *barangays'* interest and involvement in local and national programs, considering and reacting to public issues, and cooperating among themselves may have so far been achieved.

<sup>98</sup> Bulletin Today, November 11, 1976, p. 1.

<sup>99</sup> Pres. Decree No. 684 (1975).

<sup>100</sup> CONST., Art. II, sec. 5.

There is a very real danger of giving such emphasis on the organizational aspect that the heart of reform efforts, namely the human factor, could be overlooked. Lasting results can only be achieved if the members (and that includes you and me) of the 42,000 barangays were to make participation in these diverse activities a part of their being and internalize, so to speak, citizen participation. Structures can be changed as the need arises but when citizen participation has become a way of life, then the sovereign people can impose their will.

For too long has such participation been beyond reach of a vast majority of our people. The measures discussed in this lecture are aimed at developing that participation from the grass roots, their final goal — a better life for all.<sup>101</sup>

It may be premature to determine how well these measures operate, how much initiative has come from the citizens themselves and what achievements in this participation there are. Other studies employing more appropriate methodologies should bring these out.

The return to the barangay should not be mere nostalgia for the past of our ancestors. How to mobilize human energy, invest in human potential and elicit popular participation are concerns widely shared in this day.

Popular participation in the form of reaction to policies already made, as feedback mechanism that confirms decisions may be participation of sorts. But until initiative comes from the people themselves, their voices heard in policy and decision making and their will faithfully carried out, participation will not have truly come of age.

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<sup>101</sup> U.N. ECOSOC COUNCIL OFF. REC. 54th Sess., Supp. No. 5, par. 33 (E/5252). (E/CN.5/493) (1973).