

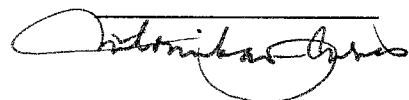
EN BANC

G.R. No. 245981 – NERI J. COLMENARES, BAYAN MUNA PARTYLIST REPRESENTATIVE CARLOS ISAGANI T. ZARATE, ANAKPAWIS PARTYLIST REPRESENTATIVE ARIEL B. CASILAO, GABRIELA WOMEN'S PARTYLIST REPRESENTATIVE ARLENE D. BROSAS, ACT TEACHERS PARTYLIST REPRESENTATIVE ANTONIO L. TINIO, ACT TEACHERS PARTYLIST REPRESENTATIVE FRANCISCA L. CASTRO, KABATAAN PARTYLIST REPRESENTATIVE SARAH JANE I. ELAGO, KILUSANG MAGBUBUKID NG PILIPINAS CHAIRPERSON DANILO H. RAMOS, and ELMA A. TUAZON, *petitioners*, v. RODRIGO R. DUTERTE, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEPARTMENT OF FINANCE SECRETARY CARLOS G. DOMINGUEZ III, NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY SECRETARY ERNESTO M. PERNIA, DEPARTMENT OF JUSTICE SECRETARY MENARDO I. GUEVARRA, NATIONAL IRRIGATION ADMINISTRATION ADMINISTRATOR RICARDO R. VISAYA, *respondents*.

G.R. No. 246594 – NERI J. COLMENARES, BAYAN MUNA PARTYLIST REPRESENTATIVE CARLOS ISAGANI T. ZARATE, ANAKPAWIS PARTYLIST REPRESENTATIVE ARIEL B. CASILAO, GABRIELA WOMEN'S PARTYLIST REPRESENTATIVE EMMI A. DE JESUS, GABRIELA WOMEN'S PARTYLIST REPRESENTATIVE ARLENE D. BROSAS, ACT TEACHERS PARTYLIST REPRESENTATIVE ANTONIO L. TINIO, ACT TEACHERS PARTYLIST REPRESENTATIVE FRANCE L. CASTRO, KABATAAN PARTYLIST REPRESENTATIVE SARAH JANE I. ELAGO, CASEY ANNE CRUZ, FRANCISCA TOLENTINO, APRIL PORTERIA, JOSE DE LEON A. DULCE, MARIA FINESA COSICO, and FR. ALEX BERCASIO, CSSR, *petitioners*, v. RODRIGO R. DUTERTE, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM ADMINISTRATOR REYNALDO V. VELASCO, DEPARTMENT OF FINANCE SECRETARY CARLOS G. DOMINGUEZ III, NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY SECRETARY ERNESTO M. PERNIA, OFFICE OF THE GOVERNMENT CORPORATE COUNSEL ELPIDIO J. VEGA and DEPARTMENT OF JUSTICE SECRETARY MENARDO I. GUEVARRA, *respondents*.

Promulgated:

August 9, 2022



X-----X

DISSENTING OPINION**LEONEN, J.:**

Philippine history tells us that an unbridled discretion on the part of the government to enter into a foreign loan and contracting agreements have often led to the imposition of more burden on the Filipinos, which we carry to this day. To protect against these dangers, the 1987 Constitution has placed several safeguards that will ensure transparency and accountability in the government. These also guarantee that all undertakings of the government will always be in the best interest of the Filipino people.

Petitioners assail the constitutionality of the Preferential Buyer's Credit Loan Agreements on the Chico River Pump Irrigation Project (Chico River Pump Loan Agreement), and the New Centennial Water Source-Kaliwa Dam Project (New Centennial Loan Agreement) (collectively, the Loan Agreements) entered into by the Philippine government and the Chinese-government owned Export-Import Bank of China (EXIM Bank). They argue that the Loan Agreements violate several provisions of the 1987 Constitution, such as the provisions on prior concurrence from the Monetary Board and the Filipino First policy.¹

The majority has chosen to uphold the loan agreements' constitutionality by ruling that the process involved in finalizing these contracts complied with the prevailing measures set by the Constitution and procurement laws. However, a reading of the Loan Agreements shows that these contain glaring defects that transgress the very safeguards placed by the Constitution to protect against disadvantageous transactions for the Filipino people.

On this account and with respect to my colleagues, I disagree with the majority's position. The execution of the Loan Agreements failed to comply not only with the Constitution, but applicable laws as well. It must be stricken down as unconstitutional.

I

Article VIII, Section 1 of the 1987 Constitution provides the definition and scope of this Court's power of judicial review. It states:

¹ *Ponencia*, p. 1.

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Francisco, Jr. v. House of Representatives,² citing Justice Jose P. Laurel, characterized judicial review as the “moderating power” to “determine the proper allocation of powers of the different branches of government[.]”³ It includes the duty of this Court to determine whether the acts of the “two coordinate branches have adhered to the mandate of the fundamental law.”⁴

In *Angara v. Electoral Commission*,⁵ this Court clarified that in exercising its power of judicial review, the judiciary is not asserting superiority over the other branches of the government but merely ensures that the allocated constitutional boundaries are followed. Its checks and balance mechanism guarantees that no department exceeds its constitutionally allocated power, thus:

But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.

As any human production, our Constitution is of course lacking perfection and perfectibility, but as much as it was within the power of our people, acting through their delegates to so provide, that instrument which is the expression of their sovereignty however limited, has established a republican government intended to operate and function as a harmonious whole, under a system of checks and balances, and subject to specific limitations and restrictions provided in the said instrument. The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the

² 460 Phil. 830 (2003) [Per J. Carpio-Morales, En Banc].

³ Id. at 880.

⁴ J. Fernando, Dissenting and Concurring Opinion in *In re Aquino, Jr. v. Enrile*, 158-A Phil. 1 (1974) [Per C.J. Makalintal, En Banc].

⁵ 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitations and restrictions embodied in our Constitution are real as they should be in any living constitution. In the United States where no express constitutional grant is found in their constitution, the possession of this moderating power of the courts, not to speak of its historical origin and development there, has been set at rest by popular acquiescence for a period of more than one and a half centuries. In our case, this moderating power is granted, if not expressly, by clear implication from section 2 of article VIII of our Constitution.

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed “judicial supremacy” which properly is the power of judicial review under the Constitution. Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.⁶

Under the present constitution, judicial review is no longer limited to the authority to settle actual controversies. It now includes the power “to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.” The incorporation of this new power was meant to narrow the reach of the political question doctrine and “[to] broaden the scope of judicial inquiry[.]”⁷ *Saguisag v. Ochoa, Jr.*,⁸ teaches:

The power of judicial review has since been strengthened in the 1987 Constitution. The scope of that power has been extended to the determination of whether in matters traditionally considered to be within the sphere of appreciation of another branch of government, an exercise of discretion has been attended with grave abuse. The expansion of this power has made the political question doctrine “no longer the insurmountable obstacle to the exercise of judicial power or the

⁶ Id. at 157.

⁷ *Marcos v. Manglapus*, 258 Phil. 479, 506 (1989) [Per J. Cortes, En Banc].

⁸ 777 Phil. 280 (2016) [Per C.J. Sereno, En Banc].

impenetrable shield that protects executive and legislative actions from judicial inquiry or review.”⁹ (Citations omitted)

Nonetheless, this Court’s power of judicial review is not without limitations. Redress from this Court may be had only upon a showing of the existence of the following requisites:

Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.¹⁰ (Citations omitted)

Among these requisites, the existence of an actual case or controversy is the most crucial and a requirement demanded by the Constitution itself.

Jurisprudence dictates an actual case or controversy arises when the proceedings present “a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.”¹¹ The requirement was explained in *Guingona, Jr. v. Court of Appeals*.¹²

An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims, which can be resolved on the basis of existing law and jurisprudence. A justiciable controversy is distinguished from a hypothetical or abstract difference or dispute, in that the former involves a definite and concrete dispute touching on the legal relations of parties having adverse legal interests. A justiciable controversy admits of specific relief through a decree that is conclusive in character, whereas an opinion only advises what the law would be upon a hypothetical state of facts.¹³ (Citations omitted)

The requirement of an actual case demands that the issues presented must not be conjectural or speculative. Nor must it have been rendered moot by the occurrence of supervening events making the resolution of the case of no practical value. *Reyes v. Insular Life Assurance Co., Ltd.*¹⁴ teaches:

⁹ Id. at 347–348.

¹⁰ *Biraogo v. The Philippine Truth Commission of 2010*, 651 Phil. 374, 438 (2010) [Per J. Mendoza, En Banc].

¹¹ *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, 589 Phil. 387, 481 (2008) [Per J. Carpio-Morales, En Banc].

¹² 354 Phil. 415 (1998) [Per J. Panganiban, First Division].

¹³ Id. at 481.

¹⁴ 731 Phil. 155 (2014) [Per J. Brion, Second Division].

The existence of an actual case or controversy is a condition precedent for the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. In negative terms, a justiciable controversy must neither be conjectural nor moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts. The disposition of the case would not have any practical use or value as there is no actual substantial relief to which the applicant would be entitled to and which would be negated by the dismissal or denial of the petition.¹⁵ (Citations omitted)

The danger in deciding a case that has been rendered moot is that the ruling would be a mere "academic disquisition on a hypothetical problem."¹⁶ Further, "[t]he judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced."¹⁷

Apart from avoiding the rendition of advisory opinions, the need for an actual case or controversy is based on the respect for the principle of separation of powers¹⁸ which "ordains that each of the three great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere."¹⁹

For these reasons, courts generally decline to assume jurisdiction over cases that do not present judicial controversy and are deemed moot. However, the rule admits exceptions. In *Republic v. Moldex Realty, Inc.*,²⁰ we held:

It is true that this court does not always refuse to assume jurisdiction over a case that has been rendered moot and academic by supervening events. Courts assume jurisdiction over cases otherwise rendered moot and academic when any of the following instances are present:

- (1) Grave constitutional violations;

¹⁵ Id. at 160.

¹⁶ *Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 420 (1998) [Per J. Panganiban, First Division].

¹⁷ *Philippine Savings Bank v. Senate Impeachment Court*, 699 Phil. 34, 36 (2012) [Per J. Perlas-Bernabe, En Banc].

¹⁸ J. Leonen, Separate Opinion in *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, G.R. Nos. 216930, 217451, 217752, 218045, 218098, 218123, & 218465, October 9, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64679>> [Per J. Caguioa, En Banc]. See also J. Leonen, Separate Opinion in *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, G.R. No. 234448, November 6, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64748>> [Per J. Tijam, En Banc].

¹⁹ *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 107 (2005) [Per J. Austria-Martinez, En Banc].

²⁰ 780 Phil. 553 (2016) [Per J. Leonen, Second Division].

- (2) Exceptional character of the case;
 - (3) Paramount public interest;
 - (4) The case presents an opportunity to guide the bench, the bar, and the public; or
 - (5) The case is capable of repetition yet evading review.²¹
- (Citations omitted)

In this case, I agree with the majority that petitioners' plea for producing relevant documents relating to the loan agreements has been rendered moot²² since respondents gave them copies of the requested documents, and the loan agreements are now available online.²³

I further agree that the exceptional character of the case and the paramount public interest involved warranting the resolution of the issue regarding petitioners' right to access and production of the requested documents.²⁴ The loan agreements involve significant amounts of public funds, which will be used to finance the construction of an irrigation project and the development of a new source of water.²⁵

Additionally, it must be stressed that the Loan Agreements subject of this case were executed pursuant to the Memorandum of Understanding on Financing Cooperation (Memorandum of Understanding) between the Republic of the Philippines and EXIM Bank. The majority pointed out the Memorandum of Understanding between is a "precursor agreement" to more detailed loan agreements involving Philippine infrastructure projects.²⁶ As there is a possibility that new loan agreements will be executed pursuant to the Memorandum of Understanding, this case presents an opportunity for this Court to "formulate controlling principles relative to the issues raised herein to guide the bench, the bar, and the public[.]"²⁷ The need to craft guiding principles will aid the government in resolving the issue concerning access to new loan agreements executed under the Memorandum of Understanding.

Accordingly, while the issue is rendered moot, it is appropriate to discuss the alleged violation of petitioners' right to information.

²¹ Id. at 561.

²² *Ponencia*, pp. 13–14.

²³ Id. at 23.

²⁴ Id. at 14.

²⁵ *New Centennial Water Source – Kaliwa Dam Project* <<https://mwss.gov.ph/projects/new-centennial-water-source-kaliwa-dam-project/>> (last accessed, July 8, 2022)

²⁶ *Ponencia*, p. 3.

²⁷ *Belgica v. Ochoa*, 721 Phil. 416, 524 (2013) [Per J. Perlas-Bernabe, En Banc].

P

II

I agree with the majority that the Confidentiality Clauses contained in the Loan Agreements violate the right to information. Article III, Section 7 of the 1987 Constitution provides for the right of the people to information. It states:

ARTICLE III

Section 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

This provision is complemented by Article II, Section 28 which expresses the State's "policy of public disclosure" of all the transactions of the Government:²⁸

ARTICLE II

Section 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving following public interest.

According to petitioners, these constitutional provisions are violated by the Confidentiality Clauses found in the Loan Agreements.

Respondents counter that the provisions pertaining to the right to information are not immediately operational and cannot be invoked directly by petitioners to dispute the constitutionality of the Confidentiality Clause absent an enabling law.

The language of the contentious clauses of the Loan Agreement state:

The Borrower shall keep all the terms, conditions and the standard fees hereunder or in connection with this Agreement, strictly confidential. Without the prior written consent of the Lender, the Borrower shall not disclose any information hereunder or in connection with this Agreement to any third party unless required to be disclosed by the Borrower to any courts of competent jurisdiction, relevant regulatory bodies, or any

²⁸ *Bantay Republic Act or BA-RA 7941 v. Commission on Elections*, 551 Phil. 1,12 (2007) [Per J. Garcia, En Banc].

government institution and/or instrumentalities of the Borrower in accordance with any applicable Philippine law.²⁹

In my dissenting opinion in *De-Leon v. Duterte*,³⁰ I highlighted the significant purpose of the constitutional guarantee to information on matters relating to public concern:

The freedom of information is the instrument that empowers the people. The right to information is so central to a representative government such as ours that it was integrated as an enforceable constitutional right. It was enunciated in *Legaspi v. Civil Service Commission*:

The incorporation in the Constitution of a guarantee of access to information of public concern is a recognition of the essentiality of the free flow of ideas and information in a democracy[.] In the same way that free discussion enables members of society to cope with the exigencies of their time[,] access to information of general interest aids the people in democratic decision-making. . . by giving them a better perspective of the vital issues confronting the nation.

It is the access to information that apprises the people of their leader's actions and gives the citizens an opportunity to shape the landscape they live in by making informed decisions. It makes them capable of exercising their rights and protecting the same against actions of the state. The access of a citizen to information is a basic requirement for the functioning of a democratic society.³¹ (Citations omitted)

Transparency in government dealings, such as contracting foreign loans, is pivotal in implementing the public policy of "full public disclosure"³² and ensuring that the Filipino people remain knowledgeable and involved in the transactions entered into by the government.

The scope of this constitutional guarantee to the right to information covers matters of public concern. In *Legaspi v. Civil Service Commission*,³³ this Court explained what matters may be the subject of this provision:

In determining whether or not a particular information is of public concern there is no rigid test which can be applied. 'Public concern' like 'public interest' is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters

²⁹ The wording of the Confidentiality Clause for both the Credit Loan Agreements on the Chico River Pump Irrigation Project and the New Centennial Water Source-Kaliwa Dam Project Loan Agreement are identical.

³⁰ G.R. No. 252118, May 8, 2020 <<https://sc.judiciary.gov.ph/12172/>> [En Banc].

³¹ J. Leonen, Dissenting Opinion in *De Leon v. Duterte*, G.R. No. 252118, May 8, 2020 <<https://sc.judiciary.gov.ph/12172/>> [En Banc].

³² CONST., art. III sec. 7.

³³ 234 Phil. 521 (1987) [Per J. Cortes, En Banc].

naturally arouse the interest of an ordinary citizen. *In the final analysis, it is for the courts to determine on a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public.*³⁴ (Emphasis supplied)

Though the scope of matters covering public concern may be broad, *Chavez v. Presidential Commission on Good Governance*³⁵ identifies certain topics that may not be divulged to the public, namely: national security matters, trade secrets, banking transactions, criminal matters, and other confidential matters such as diplomatic correspondence,³⁶ closed-door Cabinet meetings, and Supreme Court deliberations.³⁷

As these present Petitions deal with foreign loans, it cannot be denied that these are matters of public concern as it will directly affect the lives of the Filipinos who are effectively carrying the responsibility to repay these debts. Foreign loans are not within those identified in jurisprudence as a limitation to the right to information. No less than the Constitution requires that information regarding foreign loans should be made accessible to the public:

ARTICLE XII

Section 21. Foreign loans may only be incurred in accordance with law and the regulation of the monetary authority. *Information on foreign loans obtained or guaranteed by the government shall be made available to the public.*³⁸ (Emphasis supplied)

It must be stressed that contrary to respondents' position, there is no need for an enabling law to invoke the aforementioned constitutional provision. The language of the Constitution is clear and without any ambiguity. Copies of the documents pertaining to foreign loan transactions that the government ought to incur should always remain accessible to the public. It is the public's, as taxpayers, hard-earned money that is at stake. As the public is a crucial participant in meeting the obligations involved in foreign loans, they are entitled, under the Constitution, to know the process involved in contracting these loans.

III

Petitioners next allege that the public respondents failed to secure the prior concurrence of the Monetary Board in undertaking the Loan Agreements. They pointed out that there appears to be a circumvention in the stipulations in the Loan Agreements where the parties may belatedly

³⁴ Id. at 535

³⁵ 360 Phil. 133 (1998) [Per J. Panganiban, First Division].

³⁶ Id. at 160.

³⁷ Id. at 162.

³⁸ CONST., art. XII, sec. 12.

obtain the approval of the Monetary Board, thus negating the requirement of prior concurrence under the 1987 Constitution.

Respondents countered these arguments by contending that they followed the process of obtaining the approval of the Monetary Board as outlined in the relevant regulations.

I have to strongly disagree with the position of the majority that “[i]t is only the Approval-in-Principle, which strictly speaking, entails prior action from the “[Monetary Board].”³⁹ This statement makes it appear that the participation of the Monetary Board is only confined during the Approval-in-Principle stage, where only indicative financial terms have been discussed. I fear this interpretation will greatly undermine the Final Approval stage, where the parties’ actual agreements and source of obligation exist.


Prior to the 1987 Constitution, the only limitations placed on the power of the President to contract foreign loans on behalf of the Philippines were those provided by law.⁴⁰ At that time, the prevailing regulations on contracting foreign loans were Republic Act No. 4860⁴¹ and Letter of Instructions No. 158, series of 1974. The salient provisions of Republic Act No. 4860 state:

SECTION 1. The President of the Philippines is hereby authorized in behalf of the Republic of the Philippines to contract such loans, credits and indebtedness with foreign governments, agencies or instrumentalities of such foreign governments, foreign financial institutions, or other international organizations, with whom, or belonging to countries with which, the Philippines has diplomatic relations, as may be necessary and upon such terms and conditions as may be agreed upon, to enable the Government of the Republic of the Philippines to finance, either directly or through any government office, agency or instrumentality or any government-owned or controlled corporation, industrial, agricultural or other economic development purposes or projects authorized by law: *Provided*, That at least seventy-five per cent shall be spent for purposes or projects which are revenue-producing and self-liquidating, such as electrification, irrigation, river control and drainage, telecommunication, housing, construction and improvement of highways and bridges, airports, ports and harbors, school buildings, waterworks and artesian wells, air navigation facilities, development of fishing industry, and others: *Provided*, That such foreign loans shall be used to meet the foreign exchange requirements or liabilities incurred in connection with said

³⁹ *Ponencia*, p. 20.

⁴⁰ CONST. (1973) art. VII, sec. 12.

⁴¹ An Act Authorizing the President of the Philippines to Obtain Such Foreign Loans And Credits, or to Incur Such Foreign Indebtedness, As May Be Necessary To Finance Approved Economic Development Purposes Or Projects, And To Guarantee, In Behalf of the Republic Of The Philippines, Foreign Loans Obtained Or Bonds Issued By Corporations Owned or Controlled by the Government of the Philippines For Economic Development Purposes Including Those Incurred For Purposes Of Re-Lending To The Private Sector, Appropriating The Necessary Funds Therefor, And For Other Purposes



development projects to cover the cost of equipment, related technical services and supplies, where the same are not obtainable within the Philippines at competitive prices as well as part of the pesos costs, other than working capital and operational expenses not exceeding twenty per cent of the loan: *Provided, further*, That in the case of roads, bridges, irrigation, portworks, river control, airports, and power, the amount shall not exceed seventy per cent of the loan.

The authority of the President of the Philippines as herein provided shall include the power to issue, for the purposes hereinbefore stated, bonds for sale in the international markets the income from which shall be fully tax-exempt in the Philippines.

SECTION 2. The total amount of loans, credit and indebtedness, excluding interests, which the President of the Philippines is authorized to incur under this Act shall not exceed one billion United States dollars or its equivalent in other foreign currencies at the exchange rate prevailing at the time the loans, credits and indebtedness are incurred: *Provided*, however, That the total loans, credits and indebtedness incurred under this Act shall not exceed two hundred fifty million in the fiscal year of the approval of this Act, and two hundred fifty million every fiscal year thereafter, all in United States dollars or its equivalent in other currencies.

All loans, credits and indebtedness under the preceding section shall be incurred only for particular projects in accordance with the approved economic program of the Government and after the plans of such projects shall have been prepared by the offices or agencies concerned, recommended by the National Economic Council and the Monetary Board of the Central Bank of the Philippines, and approved by the President of the Philippines.

Meanwhile, Letter of Instructions No. 158, series of 1974, provides:

1. All foreign borrowing proposals of the Government, Government Agencies and government financial institutions shall be submitted to the Central Bank for approval in principle by the Monetary Board as to purpose and credit terms among others, before commencement of actual negotiations.
2. Actual negotiations for such foreign credits and/or accommodations shall be conducted by the Secretary of Finance and/or Central Bank Governor of their duly authorized representatives of the Government, government agencies and government financial institutions or entities concerned.

A reading of these policies would show that the participation of the Monetary Board in contracting foreign loans was already sought in relation to the other conditions prescribed by law even before the President may contract foreign loans. However, these restrictions proved futile as the country became largely indebted to various foreign banks. This resulted from the massive loans incurred by then President Ferdinand Marcos with

little or no oversight, even with the involvement of the Monetary Board.⁴²

To protect the country from being gravely indebted once again, the 1987 Constitution placed safeguards that would ensure accountability on the part of the President and transparency regarding the status of the foreign loans.

Article VII, Section 20 of the Constitution provides:

Section 20. The President may contract or guarantee foreign loans in behalf of the Republic of the Philippines *with the prior concurrence of the Monetary Board* and subject to such limitations as may be provided under law. The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on applications for loans to be contracted or guaranteed by the government or government-owned and controlled corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law. (Emphasis supplied)

Article XII, Section 21 of the Constitution states:

Section 21. *Foreign loans may only be incurred in accordance with law and the regulation of the monetary authority.* Information on foreign loans obtained or guaranteed by the Government shall be made available to the public. (Emphasis supplied)

By codifying the role of the Monetary Board in contracting foreign loans, the 1987 Constitution recognized the responsibility of the Monetary Board to ensure the capacity of the country to meet its obligations and to alleviate the burden of the Filipino public in paying back the loans that the government has incurred. Thus, the Monetary Board is also bound by the measures established by law before it provides its prior concurrence.

The majority enumerates the various regulations in implementing the authority of the Monetary Board to provide its prior concurrence to a foreign loan.⁴³ Republic Act No. 7653,⁴⁴ as amended by Republic Act No. 11211,⁴⁵ requires that before a foreign loan may be contracted, the Monetary Board shall release an opinion, upon the request of the government through the Secretary of Finance, regarding “the probable effects of the proposed operation on monetary aggregates, the price level, and the balance of

⁴² JOAQUIN G. BERNAS, S.J. THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 934 (2009 ED.)

⁴³ *Ponencia*, pp. 20–21.

⁴⁴ The New Central Bank Act.

⁴⁵ An Act Amending Republic Act Number 7653, Otherwise Known as “The New Central Bank Act”, and for Other Purposes.

payments”⁴⁶ which shall be based on “on the gold and foreign exchange resources and obligations of the nation and on the effects of the proposed operation on the balance of payments and on monetary aggregates.”⁴⁷

In relation, the Monetary Board shall also comply with the procedure established under the Bangko Sentral ng Pilipinas (Bangko Sentral) Rules on Foreign Exchange Transactions⁴⁸ (Foreign Exchange Regulations),⁴⁹ which outlines the three stages involved in the approval of public sector foreign loans, namely:

- a. Approval-In-Principle – which refers to the approval granted by the Monetary Board (MB) to the indicative financial terms and purpose of the loan. Prior to commencement of actual negotiations or issuance of a mandate of commitment to foreign funders/arrangers, the borrower is required to secure the BSP approval-in-principle of its proposed foreign loan;
- b. Finalization and clearance of loan documents; and
- c. Final Approval – which refers to the approval granted by the [Monetary Board] to a loan previously approved-in-principle after its terms have been finalized and found consistent with the terms approved-in-principle, the covering loan agreement signed, and other preconditions for final approval have been complied with. The MB final approval authorizes the borrower to draw on the loan/issue the bonds/notes/securities involved.⁵⁰

The majority states that among the stages in approving foreign loans, it is “only the Approval-in-Principle, which strictly speaking, entails prior action from the [Monetary Board.]”⁵¹ However, to my mind, this may have diminished the crucial role imposed by the 1987 Constitution on the Monetary Board in providing prior concurrence.

Although the 1973 Constitution does not explicitly mention the involvement of the Monetary Board in contracting foreign loans, its approval was still sought under Letter of Instructions No. 158, series of 1974. In particular, the regulation directed that “[a]ll foreign borrowing proposals of the Government, Government Agencies and government financial institutions shall be submitted to the Central Bank for approval in principle

⁴⁶ Republic Act No. 7653, as amended by Republic Act No. 11211, Section 123.

⁴⁷ Republic Act No. 7653, as amended by Republic Act No. 11211, Section 123.

⁴⁸ Bangko Sentral ng Pilipinas Rules on Foreign Exchange Transactions, part V(B), 23 available at https://www.bsp.gov.ph/Media_and_Research/Primers%20Faqs/faqfxreg.pdf (last accessed August 19, 2022).

⁴⁹ Bangko Sentral ng Pilipinas Rules on Foreign Exchange Transactions, part V(B), 23 available at https://www.bsp.gov.ph/Media_and_Research/Primers%20Faqs/faqfxreg.pdf (last accessed August 19, 2022).

⁵⁰ Bangko Sentral ng Pilipinas Rules on Foreign Exchange Transactions, part V(B), 23 available at https://www.bsp.gov.ph/Media_and_Research/Primers%20Faqs/faqfxreg.pdf (last accessed August 19, 2022).

⁵¹ *Ponencia*, p. 20.

by the Monetary Board as to purpose and credit terms, among others, before the commencement of actual negotiations.”⁵²

It is worthy to note that the phrase “approval in principle” already appeared in the language of the Letter of Instruction No. 158, series of 1974, in that the Monetary Board has been providing these even prior to the 1987 Constitution. However, as previously discussed, the volume of foreign loans incurred was not controlled despite the Monetary Board’s approval in principle. The amounts of indebtedness ballooned to the point that the obligation of the Filipino people to repay these loans persists to this day. As such, the 1987 Constitution rectified this by imposing that the prior concurrence of the Monetary Board shall be first secured before the government enters into a foreign loan agreement.

If it is indeed only the “approval in principle” that would suffice in the process of securing the prior concurrence of the Monetary Board, then the 1987 Constitution would not have placed great emphasis on the role of the Monetary Board in the process of contracting public sector foreign loans.

The regulations enacted after the promulgation of the 1987 Constitution prove the Monetary Board’s increased role in obtaining foreign loans that would not only be confined to approving the foreign loan proposals. Under Republic Act No. 7653, as amended by Republic Act No. 11211, the Monetary Board is required to study the terms of the proposal and provide an opinion. The Foreign Exchange Regulations also directed the Monetary Board to provide a Final Approval to complete the process of giving its prior concurrence.

These are in line with the mandate of the Bangko Sentral to “(1) maintain price stability and financial stability; and (2) promote and maintain monetary stability and convertibility of the peso.”⁵³ Thus, the Monetary Board of the Bangko Sentral is responsible in monitoring the country’s repayment capacity. It carefully reviews and analyzes the foreign loan proposals and their implications for the economy.⁵⁴

It would then be difficult to state that the crucial role of the Monetary Board is only required at the first stage or when it gives it Approval-in-Principle. At this point, only the “indicative financial terms and purpose of the loan” are available. In applying for the Approval-in-Principle, the

⁵² Letter of Instructions No. 158, 1 (1984).

⁵³ Bangko Sentral ng Pilipinas, International Operations Department, Primer on Foreign/Foreign Currency Loans/Borrowings, *available at* https://www.bsp.gov.ph/Lists/Download%20Section/Attachments/104/fxloan_primer.pdf (last accessed August 19, 2022)

⁵⁴ Bangko Sentral ng Pilipinas, International Operations Department, Primer on Foreign/Foreign Currency Loans/Borrowings, *available at* https://www.bsp.gov.ph/Lists/Download%20Section/Attachments/104/fxloan_primer.pdf (last accessed August 19, 2022)

government agency in charge is tasked to submit forms prescribed by the Bangko Sentral, which only require minimal details regarding the proposed loan.⁵⁵ No actual negotiations of the actual terms of the loan contract have been conducted. The Approval-in-Principle only allows the implementing agency of the government, as the borrower, to commence the negotiations with the lending institution.

A reading of Resolution Nos. 305 and 1581, which embody the Approval-in-Principle of the Monetary Board for the Chico River Pump Loan Agreement and New Centennial Loan Agreement, respectively, show that only bare information of the loan proposals was provided, such as (1) the identity of the borrower and creditor; (2) loan amount; (3) brief description of the project; (4) maturity; and (5) interest rate. Actual payment terms and other obligations of the Philippines, as the borrower, were not yet provided.

Thus, the third stage — Final Approval — is the most critical in obtaining the prior concurrence of the Monetary Board under the 1987 Constitution. At this point, the actual loan contract exists where the terms are established and the obligations of the Philippines, as the borrower, are determined.⁵⁶ This is where the Monetary Board conducts its full review of the loan contract to be undertaken by the Philippine government. Without a contract, the Monetary Board cannot be considered to have given its prior concurrence as contemplated under the 1987 Constitution.

The danger in pronouncing that it is only the Approval-in-Principle that is necessary to comply with the requirement under the 1987 Constitution is that it weakens the importance of the Final Approval stage and the presence of an actual contract before the Monetary Board provide its prior concurrence. The Final Approval may be mistakenly understood as an automatic action or even an after-thought on the part of the Monetary Board when there are still numerous factors to be analyzed at this stage, such as the compliance of the terms of the final loan contract with the preconditions provided by the Monetary Board, among others.

In addition, there is nothing in the relevant laws and regulations that would suggest that it is only at the Approval-in-Principle stage where prior action from the Monetary Board is needed.

The inclusion in the 1987 Constitution of the requirement regarding the prior concurrence of the Monetary Board in contracting foreign loans must be viewed as an important protection against the possibility that the

⁵⁵ Bangko Sentral ng Pilipinas, Manual on Foreign Exchange Transactions, Section 23.3, available at <https://www.bsp.gov.ph/Regulations/MORFXT/MORFXT.pdf> (last accessed August 19, 2022).

⁵⁶ Bangko Sentral ng Pilipinas Rules on Foreign Exchange Transactions, part V(B), 23 available at https://www.bsp.gov.ph/Media_and_Research/Primers%20Faqs/faqfxreg.pdf (last accessed July 7, 2022).

country may be gravely indebted again. Therefore, the Monetary Board must be considered a significant actor in every stage of the negotiation and approval process, and not only at the Approval-in-Principle stage where no actual contract yet exists.

IV

Finally, I am likewise unable to join the majority in its ruling that the Loan Agreements do not violate the constitutional policy of giving preference to qualified Filipinos. The preference given to Chinese contractors contravenes the Filipino First Policy enshrined in our fundamental law.

Article XII, Section 10 of the 1987 Constitution expresses the policy of our State to ensure that qualified Filipinos are given preference in granting rights and privileges, among others. It states:

Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

Dubbed the Filipino First Policy, this Constitutional provision is not merely a guiding principle,⁵⁷ but a positive command addressed to all branches of the government. It is a directive that must be brought into play not only in legislative acts, but in every undertaking of the State.⁵⁸

This Constitutional policy results from our nationalism, a concept inherent in our democratic and republican forms of government. It is a notion that instills the attitude of ensuring that our country's development and the Filipino's welfare are the primordial considerations.⁵⁹ The policy

⁵⁷ J. Puno, Dissenting Opinion in *Manila Prince Hotel v. Government Service Insurance System*, 335 Phil. 82, 141 (1997) [Per J. Bellosillo, En Banc].

⁵⁸ Id. at 141-142.

⁵⁹ J. Padilla, Separate Opinion in *Manila Prince Hotel v. Government Service Insurance System*, 335 Phil. 82, 120 (1997) [Per J. Bellosillo, En Banc].

was discussed in *Manila Prince Hotel v. Government Service Insurance System*.⁶⁰

The Filipino First Policy is a product of Philippine nationalism. It is embodied in the 1987 Constitution not merely to be used as a guideline for future legislation but primarily to be enforced; so must it be enforced. This Court as the ultimate guardian of the Constitution will never shun, under any reasonable circumstance, the duty of upholding the majesty of the Constitution which it is tasked to defend. It is worth emphasizing that it is not the intention of this Court to impede and diminish, much less undermine, the influx of foreign investments. Far from it, the Court encourages and welcomes more business opportunities but avowedly sanctions the preference for Filipinos whenever such preference is ordained by the Constitution. The position of the Court on this matter could have not been more appropriately articulated by Chief Justice Narvasa [.]

....

Privatization of a business asset for purposes of enhancing its business viability and preventing further losses, regardless of the character of the asset, should not take precedence over non-material values. A commercial, nay even a budgetary, objective should not be pursued at the expense of national pride and dignity. For the Constitution enshrines higher and nobler non-material values. Indeed, the Court will always defer to the Constitution in the proper governance of a free society; after all, there is nothing so sacrosanct in any economic policy as to draw itself beyond judicial review when the Constitution is involved.

Nationalism is inherent in the very concept of the Philippines being a democratic and republican state, with sovereignty residing in the Filipino people and from whom all government authority emanates. In nationalism, the happiness and welfare of the people must be the goal. The nation-state can have no higher purpose. Any interpretation of any constitutional provision must adhere to such basic concept. Protection of foreign investments, while laudable, is merely a policy. It cannot override the demands of nationalism.⁶¹ (Emphasis supplied and citations omitted.)

It must, however, be clarified that “[n]ationalism is not a mindless ideal.” The constitutional mandate of giving preference to qualified Filipinos does not constitute a prohibition on the entry of foreign investment in the Philippines.⁶² *Tañada v. Angara*⁶³ teaches:

All told, while the Constitution indeed mandates a bias in favor of Filipino goods, services, labor and enterprises, at the same time, it recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are

⁶⁰ 335 Phil. 82 (1997) [Per J. Bellosillo, En Banc].

⁶¹ Id. at 116–118.

⁶² *National Federation of Hog Farmers, Inc. v. Board of Investments*, G.R. No. 205835, June 23, 2020 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343>> [Per J. Leonen, En Banc].

⁶³ 338 Phil. 546, 585 (1997) [Per J. Panganiban, En Banc].

unfair. In other words, the Constitution did not intend to pursue an isolationist policy. It did not shut out foreign investments, goods and services in the development of the Philippine economy. While the Constitution does not encourage the unlimited entry of foreign goods, services and investments into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair. (Citations omitted)

Likewise, in *National Federation of Hog Farmers, Inc. v. Board of Investments*.⁶⁴

Nationalism is not a mindless ideal. It should not unreasonably exclude people of a different citizenship from participating in our economy. If it were so, nationalism will not foster social justice; rather, it will sponsor a kind of racism quite like what our ancestors had suffered from in our colonial past.⁶⁵

That our fundamental law does not foster an isolationist policy is further reinforced by the following constitutional provisions:

ARTICLE II STATE POLICIES

Section 7. The State shall pursue an independent foreign policy. In its relations with other states, the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination.

ARTICLE XII NATIONAL ECONOMY AND PATRIMONY

Section 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full of efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

⁶⁴ G.R. No. 205835, June 23, 2020 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343>> [Per J. Leonen, En Banc].

⁶⁵ Id.

Section 13. The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity.

These constitutional provisions tacitly recognize the need for foreign investment as a means to achieve our goal of economic development. These provisions demonstrate that “the Philippines adopts a liberal approach in allowing foreign investments to enter the country.”⁶⁶ Accordingly, I agree with the majority that the mere awarding of the projects to foreign investors does not constitute a violation of the Filipino First Policy.⁶⁷ To reiterate, while the Constitution mandates that preference be given to qualified Filipinos, it “recognizes the need for business exchange with the rest of the world[.]”⁶⁸

This notwithstanding, it is my opinion that limiting the projects to Chinese contractors without giving qualified Filipinos an equal opportunity to participate constitutes a violation of the Filipino First Policy under Article XII, Section 10.

To my mind, this constitutional mandate of giving preference to qualified Filipinos will be rendered nugatory if in the field of public bidding involving projects of wide magnitude and primordial concern to our country, qualified Filipinos will not be permitted to at least be given the same prerogative of participating. In any case, individuals or corporations who wish to participate in the bidding process will be required to comply with certain requirements to ascertain their capability.

Manila Prince Hotel expounded on the importance of this constitutional provision.⁶⁹ The case involved the sale of 51% of the shares of the Manila Hotel Corporation through close bidding participated by petitioner and Renong Berhad (Berhad), a Malaysian firm. During the bidding conducted by Government Service Insurance System, the price per share tendered by Berhad was considered higher than that offered by petitioner.⁷⁰

Subsequently, petitioner wrote to Government Service Insurance System offering to match the tendered bid price of Berhad. When Government Service Insurance System refused to accept, petitioner filed before this Court a petition for prohibition and mandamus, seeking, among

⁶⁶ G.R. No. 205835, June 23, 2020 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343>> [Per J. Leonen, En Banc].

⁶⁷ *Ponencia*, p. 26.

⁶⁸ *Tañada v. Angara*, 338 Phil. 546, 584 (1997) [Per J. Panganiban, En Banc].

⁶⁹ *Manila Prince Hotel v. Government Service Insurance System*, 335 Phil. 82 (1997) [Per J. Bellosillo, En Banc].

⁷⁰ *Id.* at 99.

others, to enjoin respondent Government Service Insurance System from perfecting and consummating the sale of the shares to Berhad.⁷¹

In ruling for petitioner, this Court decreed that Article XII, Section 10 of the Constitution is deemed a sufficient reason not to award the shares to the foreign bidder notwithstanding its submission of the highest price, thus:

It should be stressed that while the Malaysian firm offered the higher bid it is not yet the winning bidder. The bidding rules expressly provide that the highest bidder shall only be declared the winning bidder after it has negotiated and executed the necessary contracts, and secured the requisite approvals. Since the *Filipino First Policy* provision of the Constitution bestows preference on *qualified Filipinos* the mere tending of the highest bid is not an assurance that the highest bidder will be declared the winning bidder. Resultantly, respondents are not bound to make the award yet, nor are they under obligation to enter into one with the highest bidder. For in choosing the awardee respondents are mandated to abide by the dictates of the 1987 Constitution the provisions of which are presumed to be known to all the bidders and other interested parties.

Adhering to the doctrine of constitutional supremacy, the subject constitutional provision is, as it should be, impliedly written in the bidding rules issued by respondent GSIS, lest the bidding rules be nullified for being violative of the Constitution. It is a basic principle in constitutional law that all laws and contracts must conform with the fundamental law of the land. Those which violate the Constitution lose their reason for being.

Paragraph V. J. 1 of the bidding rules provides that *[i]f for any reason the Highest Bidder cannot be awarded the Block of Shares, GSIS may offer this to other Qualified Bidders that have validly submitted bids provided that these Qualified Bidders are willing to match the highest bid in terms of price per share.* Certainly, the constitutional mandate itself is reason enough not to award the block of shares immediately to the foreign bidder notwithstanding its submission of a higher, or even the highest, bid. In fact, we cannot conceive of a *stronger reason* than the constitutional injunction itself.

In the instant case, where a foreign firm submits the highest bid in a public bidding concerning the grant of rights, privileges and concessions covering the national economy and patrimony, thereby exceeding the bid of a Filipino, there is no question that the Filipino will have to be allowed to match the bid of the foreign entity. And if the Filipino matches the bid of a foreign firm the award should go to the Filipino. It must be so if we are to give life and meaning to the *Filipino First Policy* provision of the 1987 Constitution. For, while this may neither be expressly stated nor contemplated in the bidding rules, the constitutional fiat is omnipresent to be simply disregarded. To ignore it would be to sanction a perilous skirting of the basic law.

This Court does not discount the apprehension that this policy may discourage foreign investors. But the Constitution and laws of the Philippines are understood to be always open to public scrutiny. These are given factors which investors must consider when venturing into business

⁷¹ Id. at 98.

in a foreign jurisdiction. Any person therefore desiring to do business in the Philippines or with any of its agencies or instrumentalities is presumed to know his rights and obligations under the Constitution and the laws of the forum.⁷² (Emphasis in the original and citations omitted)

Notably, in resolving the issue in *Manila Prince Hotel*, this Court applied the doctrine of constitutional supremacy, which dictates that the Constitution is the fundamental law of the land that establishes not only our governmental framework, the duties and responsibilities of each department but likewise, the “principles on which [our] government is founded.”⁷³ Being the paramount and supreme law of the nation, its provisions are “deemed written in every statute and contract.” All laws, rules, and contracts, regardless if “promulgated by the legislative or by the executive branch or entered into by private persons for private purposes,”⁷⁴ must be in conformity with the Constitution. Otherwise, they shall be deemed “void and without any force and effect.”⁷⁵

The doctrine of constitutional supremacy likewise applies to treaties and other agreements entered into by the executive branch of the government. In *Pangilinan v. Cayetano*,⁷⁶ this Court discussed:

The Constitution is the fundamental law of the land. It mandates the president to “ensure that the laws be faithfully executed.” Both in negotiating and enforcing treaties, the president must ensure that all actions are in keeping with the Constitution and statutes. Accordingly, during negotiations, the president can insist on terms that are consistent with the Constitution and statutes, or refuse to pursue negotiations if those negotiations’ direction is such that the treaty will turn out to be repugnant to the Constitution and our statutes. Moreover, the president should not be bound to abide by a treaty previously entered into should it be established that such treaty runs afoul of the Constitution and our statutes.⁷⁷ (Citations omitted)

In this regard, while I agree with the majority that Republic Act No. 9184 or the Government Procurement Reform Act and its implementing rules and regulations recognize that a different procurement procedure may be applied if agreed upon through a treaty or executive agreement, the wordings of the treaty or executive agreements must be in accordance with the provisions of the Constitution.⁷⁸ The alternative procedure adopted must conform with the constitutional mandate, particularly that which gives preference to qualified Filipinos.

⁷² Id. at 114–115.

⁷³ Id. at 101.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ G.R. Nos. 238875, 239483, & 240954, March 16, 2021, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67374>> [Per J. Leonen, En Banc].

⁷⁷ Id.

⁷⁸ *Ponencia*, pp. 27–32.

Considering that no Filipino was given an opportunity to participate in the procurement process and only Chinese contractors were allowed to take part in the project, it is my opinion that the alternative mode of bidding procedure adopted by the parties is unconstitutional for being violative of the Filipino First Policy.

Let it not be forgotten that Filipino nationalism has always been a moving force within the annals of our history. It has evolved from being a rudimentary call for independence against external forces to being a disposition of ensuring that the welfare and development of the Philippines, and its citizens, be the State's primary objectives. Filipino nationalism has shaped our social, economic, and political identity. It ties every citizen into a mutual affinity, regardless of place and time.

Accordingly, I vote to **GRANT** the petitions.



MARVIC M.V.F. LEONEN
Senior Associate Justice

CERTIFIED TRUE COPY



MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court