Republic of the Philippines
Supreme Court
Manila

EN BANC

SOCIAL JUSTICE SOCIETY (SJS) OFFICERS, NAMELY, SAMSON S. ALCANTARA, and VLADIMIR ALARIQUE T. CABIGAO,
Petitioners,

-versus-

ALFREDO S. LIM, in his capacity as mayor of the City of Manila,
Respondent.

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G.R. No. 187836

JOSE L. ATIENZA, JR., BIENVINIDO M. ABANTE, MA. LOURDES M. ISIP-GARCIA, RAFAEL P. BORROMEO JOCELYN DAWIS-ASUNCION, minors MARIAN REGINA B. TARAN, MACAILA RICCI B. TARAN, RICHARD KENNETH B. TARAN, represented and joined by their parents RICHARD AND MARITES TARAN, minors CZARINA ALYSANDRA C. RAMOS, CEZARAH ADRIANNA C. RAMOS, and CRISTEN AIDAN C. RAMOS represented and joined by their mother DONNA C. RAMOS, minors JAZMIN SYLLITA T. VILA AND ANTONIO T. CRUZ IV, represented and joined by their mother MAUREEN C. TOLENTINO,
Petitioners,

G.R. No. 187916

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,*
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN, and
JARDELEZA *JJ.*

-versus-

MAYOR ALFREDO S. LIM, VICE MAYOR FRANCISCO DOMAGOSO, COUNCILORS ARLENE W. KOA, MOISES T. LIM, JESUS FAJARDO LOUISITO N. CHUA, VICTORIANO A. MELENDEZ, JOHN MARVIN C. NIETO, ROLANDO M. VALERIANO, RAYMUNDO R. YUPANGCO, EDWARD VP MACEDA, RODERICK D. VALBUENA, JOSEFINA M. SISCAR, SALVADOR PHILLIP H. LACUNA, LUCIANO M. VELOSO, CARLO V. LOPEZ, ERNESTO F. RIVERA,[1] DANILO VICTOR H. LACUNA, JR., ERNESTO G. ISIP, HONEY H. LACUNA-PANGAN, ERNESTO M. DIONISO, JR. and ERICK IAN O. NIEVA,

Respondents.

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CHEVRON PHILIPPINES INC., PETRON CORPORATION AND PILIPINAS SHELL PETROLEUM CORPORATION,

Intervenors.

Promulgated:

NOVEMBER 25, 2014

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DECISION

PEREZ, *J.*:

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* On leave.

1 In a Resolution dated 21 July 2009, the Court granted the motion to drop respondent Ernesto Rivera as a party-respondent on the ground that he actually voted against the enactment of the assailed ordinance. *Rollo* in G.R. No. 187916, Vol. I, (no proper pagination, should be pp. 148-149).

Challenged in these consolidated petitions[2] is the validity of Ordinance No. 8187[3] entitled "AN ORDINANCE AMENDING ORDINANCE NO. 8119, OTHERWISE KNOWN AS 'THE MANILA COMPREHENSIVE LAND USE PLAN AND ZONING ORDINANCE OF 2006,' BY CREATING A MEDIUM INDUSTRIAL ZONE (1-2) AND HEAVY INDUSTRIAL ZONE (1-3), AND PROVIDING FOR ITS ENFORCEMENT" enacted by the *Sangguniang Panlungsod* of Manila (*Sangguniang Panlungsod*) on 14 May 2009.

The creation of a medium industrial zone (1-2) and heavy industrial zone (1-3) effectively lifted the prohibition against owners and operators of businesses, including herein intervenors Chevron Philippines, Inc. (Chevron), Pilipinas Shell Petroleum Corporation (Shell), and Petron Corporation (Petron), collectively referred to as the oil companies, from operating in the designated commercial zone – an industrial zone prior to the enactment of Ordinance No. 8027[4] entitled "AN ORDINANCE RECLASSIFYING THE LAND USE OF THAT PORTION OF LAND BOUNDED BY THE PASIG RIVER IN THE NORTH, PNR RAILROAD TRACK IN THE EAST, BEATA ST. IN THE SOUTH, PALUMPONG ST. IN THE SOUTHWEST AND ESTERO DE PANDACAN IN THE WEST, PNR RAILROAD IN THE NORTHWEST AREA, ESTERO DE PANDACAN IN THE NORTHEAST, PASIG RIVER IN THE SOUTHEAST AND DR. M. L. CARREON IN THE SOUTHWEST, THE AREA OF PUNTA, STA. ANA BOUNDED BY THE PASIG RIVER, MARCELINO OBRERO ST., MAYO 28 ST. AND THE F. MANALO STREET FROM INDUSTRIAL II TO COMMERCIAL I," and Ordinance No. 8119[5] entitled "AN ORDINANCE ADOPTING THE MANILA COMPREHENSIVE LAND USE PLAN AND ZONING REGULATIONS OF 2006 AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT AND AMENDMENT THERETO."

The Parties

Petitioners allege the parties' respective capacity to sue and be sued, *viz*:

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2 *Rollo* in G.R. No. 187836, Vol. I, pp. 3-20. Petition (for Prohibition) filed on 1 June 2009; *rollo* in G.R. No. 187916, Vol. I, pp. 11-115. Urgent Petition for Prohibition, *Mandamus* and *Certiorari* (*with Application for an Injunction and Temporary Restraining Order*) filed on 5 June 2009. *Id.* at 116. Resolution dated 9 June 2009 consolidating G.R. No. 187916 with G.R. No. 187836.

3 Approved by former Mayor Alfredo S. Lim on 28 May 2009. *Rollo* in G.R. No. 187916, Vol. I, pp. 70-75. Annex "A" of the Urgent Petition for Prohibition, *Mandamus* and *Certiorari*.

4 Approved by former Mayor Jose L. Atienza, Jr. on 28 November 2001. *Id.* at 76-77. Annex "B" of the Urgent Petition for Prohibition, *Mandamus* and *Certiorari*.

5 Approved by former Mayor Jose L. Atienza on 16 June 2006. *Id.* at 78-115. Annex "C" of the Urgent Petition for Prohibition, *Mandamus* and *Certiorari*.

Petitioners	Residence in Manila	Suing capacity aside from being residents of Manila/ other personal circumstances
G.R. No. 187836		
SJS Officer Samson S. Alcantara (Alcantara)	Not mentioned in the petition; holding office in Ermita, Manila	Manila taxpayer; One of the petitioners in *SJS v. Atienza* (G.R. No. 156052);* Pesident of ABAKADA GURO PARTY LIST with members who are residents of the City of Manila
SJS Officer Vladimir Alarique T. Cabigao (Cabigao)	Pandacan	One of the petitioners in *SJS v. Atienza* (G.R. No. 156052)
G.R. No. 187916		
Former Mayor Jose L. Atienza, Jr. (Mayor Atienza)	San Andres	Former Mayor of Manila; Secretary of Department of Environment and Natural Resources (DENR)
Bienvinido M. Abante	Sta. Ana	Citizen and taxpayer; member of the House of Representatives
Ma. Lourdes M. Isip-Garcia	San Miguel	Incumbent City Councilor of the City of Manila
Rafael P. Borromeo	Paco	Incumbent City Councilor of the City of Manila
Jocelyn Dawis-Asuncion	Sta. Mesa	Incumbent City Councilor of the City of Manila
Minors Marian Regina B. Taran, Macalia Ricci B. Taran, Richard Kenneth B. Taran, represented and joined by their parents Richard and Marites Taran	Paco	Citizens, real estate owners and taxpayers
Minors Czarina Alysandra C. Ramos, Cezarah Adrianna C. Ramos, and Cristen Aidan C. Ramos represented and joined by their mother Donna c. Ramos	Tondo	Citizens, real estate owners and taxpayers
Minors Jasmin Syllita T. Vila and Antonio T. Cruz IV, represented and joined by their mother Maureen C. Tolentino	Sta. Ana	Citizens, real estate owners and taxpayers

Respondents	Sued in their capacity as
G.R. Nos. 187836 and 187916	
Former Mayor Alfredo S. Lim (Mayor Lim)	Incumbent Mayor of Manila at the time of the filing of the present petitions

* The allegation is inaccurate. SJS Officer Alcantara is actually one of the counsels for petitioner SJS in G.R. No. 156052. The petitioners in that case are the SJS itself, Cabigao and Bonifacio S. Tumbokon (Tumbokon).

Respondents	Sued in their capacity as
G.R. No. 187916	
Vice-Mayor Francisco Domagoso (Vice-Mayor Domagoso)	Vice-Mayor and Presiding Officer of the City Council of Manila
Arlene Woo Koa	Principal author of City Ordinance No. 8187
Moises T. Lim, Jesus Fajardo, Louisito N. Chua, Victoriano A. Melendez, John Marvin Nieto, Rolando M. Valeriano, Raymondo R. Yupangco, Edward VP Maceda, Roderick D. Valbuena, Josefina M. Siscar, Phillip H. Lacuna, Luciano M. Veloso, Carlo V. Lopez, Ernesto F. Rivera,[6] Danilo Victor H. Lacuna, Jr., Ernesto G. Isip, Honey H. Lacuna-Pangan, Ernesto M. Dionisio, Jr., Erick Ian O. Nieva	Personal and official capacities as councilors who voted and approved City Ordinance No. 8187

The following intervenors, all of which are corporations organized under Philippine laws, intervened:[7]

Intervenors	Nature of Business
Chevron Philippines, Inc. (CHEVRON)	importing, distributing and marketing of petroleum products in the Philippines since 1922
Pilipinas Shell Petroleum Corporation (SHELL)	manufacturing, refining, importing, distributing and marketing of petroleum products in the Philippines
Petron Corporation (PETRON)	manufacturing, refining, importing, distributing and marketing of petroleum products in the Philippines

They claim that their rights with respect to the oil depots in Pandacan would be directly affected by the outcome of these cases.

The Antecedents

These petitions are a sequel to the case of *Social Justice Society v. Mayor Atienza, Jr.*[8] (hereinafter referred to as G.R. No. 156052), where the Court found: (1) that the ordinance subject thereof – Ordinance No. 8027 –

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6 In a Resolution dated 21 July 2009, the Court granted the motion to drop respondent Ernesto Rivera as a party-respondent on the ground that he actually voted against the enactment of the assailed ordinance. *Rollo* in G.R. No. 187916, Vol. I, (no proper pagination, should be pp. 148-149).

7 *Rollo* in G.R. No. 187836, Vol. III, pp. 917-1065, Motion for Leave to Intervene filed by Petron on 1 December 2009; pp. 1234-1409, Urgent Motion for Leave to Intervene and to Admit Attached Comment-in-Intervention filed by Shell on 15 December 2009; *rollo* in G.R. No. 187916, Vol. II, pp. 367-373, Motion for Leave to Intervene and Admit Attached Consolidated Comment in Intervention filed by Chevron on 25 November 2009.

8 546 Phil. 485 (2007). Decision and Resolution 568 Phil. 658 (2008).

was enacted "to safeguard the rights to life, security and safety of the inhabitants of Manila;"[9] (2) that it had passed the tests of a valid ordinance; and (3) that it is not superseded by Ordinance No. 8119.[10] Declaring that it is constitutional and valid,[11] the Court accordingly ordered its immediate enforcement with a specific directive on the relocation and transfer of the Pandacan oil terminals.[12]

Highlighting that the Court has so ruled that the Pandacan oil depots should leave, herein petitioners now seek the nullification of Ordinance No. 8187, which contains provisions contrary to those embodied in Ordinance No. 8027. Allegations of violation of the right to health and the right to a healthful and balanced environment are also included.

For a better perspective of the facts of these cases, we again trace the history of the Pandacan oil terminals, as well as the intervening events prior to the reclassification of the land use from Industrial II to Commercial I under Ordinance No. 8027 until the creation of Medium Industrial Zone and Heavy Industrial Zone pursuant to Ordinance No. 8187.

History of the Pandacan Oil Terminals

We quote the following from the Resolution of the Court in G.R. No. 156052:

> Pandacan (one of the districts of the City of Manila) is situated along the banks of the Pasig [R]iver. At the turn of the twentieth century, Pandacan was unofficially designated as the industrial center of Manila. The area, then largely uninhabited, was ideal for various emerging industries as the nearby river facilitated the transportation of goods and products. In the 1920s, it was classified as an industrial zone. Among its early industrial settlers were the oil companies. x x x
>
> On December 8, 1941, the Second World War reached the shores of the Philippine Islands. x x x [I]n their zealous attempt to fend off the Japanese Imperial Army, the United States Army took control of the Pandacan Terminals and hastily made plans to destroy the storage facilities to deprive the advancing Japanese Army of a valuable logistics weapon. The U.S. Army burned unused petroleum, causing a frightening conflagration. Historian Nick Joaquin recounted the events as follows:

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9 *Social Justice Society v. Hon. Atienza, Jr.*, 568 Phil. 658, 703 (2008).
10 *Id.* at 684.
11 *Id.* at 699.
12 *Id.* at 723.

> After the USAFFE evacuated the City late in December 1941, all army fuel storage dumps were set on fire. The flames spread, enveloping the City in smoke, setting even the rivers ablaze, endangering bridges and all riverside buildings. … For one week longer, the "open city" blazed—a cloud of smoke by day, a pillar of fire by night.

The fire consequently destroyed the Pandacan Terminals and rendered its network of depots and service stations inoperative.

After the war, the oil depots were reconstructed. Pandacan changed as Manila rebuilt itself. The three major oil companies resumed the operation of their depots. But the district was no longer a sparsely populated industrial zone; it had evolved into a bustling, hodgepodge community. Today, Pandacan has become a densely populated area inhabited by about 84,000 people, majority of whom are urban poor who call it home. Aside from numerous industrial installations, there are also small businesses, churches, restaurants, schools, daycare centers and residences situated there. Malacañang Palace, the official residence of the President of the Philippines and the seat of governmental power, is just two kilometers away. There is a private school near the Petron depot. Along the walls of the Shell facility are shanties of informal settlers. More than 15,000 students are enrolled in elementary and high schools situated near these facilities. A university with a student population of about 25,000 is located directly across the depot on the banks of the Pasig [R]iver.

The 36-hectare Pandacan Terminals house the oil companies' distribution terminals and depot facilities. The refineries of Chevron and Shell in Tabangao and Bauan, both in Batangas, respectively, are connected to the Pandacan Terminals through a 114-kilometer underground pipeline system. Petron's refinery in Limay, Bataan, on the other hand, also services the depot. The terminals store fuel and other petroleum products and supply 95% of the fuel requirements of Metro Manila, 50% of Luzon's consumption and 35% nationwide. Fuel can also be transported through barges along the Pasig [R]iver or tank trucks via the South Luzon Expressway.[13] (Citations omitted)

Memorandum of Agreement (MOA) dated 12 October 2001 between the oil companies and the Department of Energy (DOE)

On 12 October 2001, the oil companies and the DOE entered into a MOA[14] "in light of recent international developments involving acts of

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13 *Id.* at 673-676.

14 *Rollo* in G.R. No. 187916, Vol. II, pp. 428-432. Annex "1" of the Urgent Petition for Prohibition, *Mandamus* and *Certiorari*.

terrorism on civilian and government landmarks,"[15] "potential new security risks relating to the Pandacan oil terminals and the impact on the surrounding community which may be affected,"[16] and "to address the perceived risks posed by the proximity of communities, businesses and offices to the Pandacan oil terminals, consistent with the principle of sustainable development."[17] The stakeholders acknowledged that "there is a need for a comprehensive study to address the economic, social, environmental and security concerns with the end in view of formulating a Master Plan to address and minimize the potential risks and hazards posed by the proximity of communities, businesses and offices to the Pandacan oil

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The MOA reads:

x x xx

1. Immediately upon the execution of this Agreement, CALTEX, PETRON and SHELL shall jointly undertake a comprehensive and comparative study of the various alternatives to minimize the potential risks and hazards posed by the proximity of communities, businesses and offices to the Pandacan oil terminals and to respond to such risks and hazards to the satisfaction of the relevant stakeholders. The study shall include the preparation of a Master Plan, whose aim is to determine the scope and timing of the feasible relocation of the Pandacan oil terminals and all associated facilities and infrastructure including government support essential for the relocation such as the necessary transportation infrastructure, land and right of way acquisition, resettlement of displaced residents and environmental and social acceptability which shall be based on mutual benefit of the Parties and the public.

The study and Master Plan shall also take into full consideration (i) the integrity, reliability and security of supply and distribution of petroleum products to Metro Manila and the rest of Luzon as well as the interest of consumers and users of such petroleum products; (ii) the impact of relocation on the other depots/terminals similarly situated in other parts of the country; (iii) the security, safety and welfare of the inhabitants around the current site and those of the proposed sites; and (iv) the incremental investment, operating and other related costs for the proposed relocation.

The study and Masterplan shall be completed within twelve (12) months from the date of execution of this Agreement.

2. The DOE shall participate in the presentation of the study and Master Plan by, among others, providing the policy framework and recommending the necessary infrastructure, fiscal and non-fiscal, investment incentives and other support measures as enumerated in paragraph 1 above including the promotion of appropriate legislative proposals, coordination with other government agencies, identification of the necessary governmental resources and the provision of other measures that would facilitate the attainment of objectives of this Agreement.

3. Subject to paragraphs 1 & 2 hereof, the Master Plan shall be implemented in phases to be completed within a period of no more than five (5) years from the date of execution of this Agreement; provided, that the commencement of the first phase shall occur within 2003.

4. The relocation of the Pandacan liquefied petroleum gas (LPG), facilities of CALTEX, PETRON and SHELL shall form part of the first phase of relocation.

x x x x

15 *Id.* at 429.

16 *Id.*

17 *Id.*

terminals without adversely affecting the security and reliability of supply and distribution of petroleum products to Metro Manila and the rest of Luzon, and the interests of consumers and users of such petroleum products in those areas."[18]

The enactment of Ordinance No. 8027 against the continued stay of the oil depots

The MOA, however, was short-lived.

On 20 November 2001, during the incumbency of former Mayor Jose L. Atienza, Jr. (Mayor Atienza) – now one of the petitioners in G.R. No. 187916 – the *Sangguniang Panlungsod* enacted Ordinance No. 8027[19] reclassifying the use of the land in Pandacan, Sta. Ana, and its adjoining areas from Industrial II to Commercial I.

The owners and operators of the businesses thus affected by the reclassification were given six months from the date of effectivity of the Ordinance within which to stop the operation of their businesses.

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18 *Id.*

19 *Rollo* in G.R. No. 187916, Vol. I, p. 76.

The Ordinance reads:

ORDINANCE NO. 8027

AN ORDINANCE RECLASSIFYING THE LAND USE OF THAT PORTION OF LAND BOUNDED BY THE PASIG RIVER IN THE NORTH, x x x FROM INDUSTRIAL II TO COMMERCIAL I

Be it ordained by the City Council of Manila, THAT:

SECTION 1. For the purpose of promoting sound urban planning and ensuring health, public safety, and general welfare of the residents of Pandacan and Sta. Ana as well as its adjoining areas, the land use of [those] portions of land bounded by the Pasig River in the north, PNR Railroad Track in the east, Beata St. in the south, Palumpong St. in the southwest, and Estero de Pandacan in the west[,] PNR Railroad in the northwest area, Estero de Pandacan in the northeast, Pasig River in the southeast and Dr. M.L. Carreon in the southwest. The area of Punta, Sta. Ana bounded by the Pasig River, Marcelino Obrero St., Mayo 28 St., and F. Manalo Street, are hereby reclassified from Industrial II to Commercial I.

x x x x

SEC. 3. Owners or operators of industries and other businesses, the operation of which are no longer permitted under Section 1 hereof, are hereby given a period of six (6) months from the date of effectivity of this Ordinance within which to cease and desist from the operation of businesses which are hereby in consequence, disallowed.

Nevertheless, the oil companies were granted an extension of until 30 April 2003 within which to comply with the Ordinance pursuant to the following:

(1) Memorandum of Understanding (MOU)[20] dated 26 June 2002 between the City of Manila and the Department of Energy (DOE), on the one hand, and the oil companies, on the other, where the parties agreed that "the scaling down of the Pandacan Terminals [was] the most viable and practicable option"[21] and committed to adopt specific measures[22] consistent with the said objective;

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20 *Rollo* in G.R. No. 187916, Vol. II, pp. 434-440. Annex "2" of the Consolidated Comment in Intervention.

21 *Id.* at 435.

22 *Id.* at 435-436.

The oil companies undertook to do the following:

> **Section 1.** - Consistent with the objectives stated above, the OIL COMPANIES shall, upon signing of this MOU, undertake a program to scale down the Pandacan Terminals which shall include, among others, the immediate removal/decommissioning process of TWENTY EIGHT (28) tanks starting with the LPG spheres and the commencing of works for the creation of safety buffer and green zones surrounding the Pandacan Terminals. x x x
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> **Section 2.** – Consistent with the scale-down program mentioned above, the OIL COMPANIES shall establish joint operations and management, including the operation of common, integrated and/or shared facilities, consistent with international and domestic technical, safety, environmental and economic considerations and standards. Consequently, the joint operations of the OIL COMPANIES in the Pandacan Terminals shall be limited to the common and integrated areas/facilities. A separate agreement covering the commercial and operational terms and conditions of the joint operations, shall be entered into by the OIL COMPANIES.
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> **Section 3.** - The development and maintenance of the safety and green buffer zones mentioned therein, which shall be taken from the properties of the OIL COMPANIES and not from the surrounding communities, shall be the sole responsibility of the OIL COMPANIES.

The City of Manila and DOE, on the other hand, tasked themselves to:

> **Section 1.** - The City Mayor shall endorse to the City Council this MOU for its appropriate action with the view of implementing the spirit and intent thereof.
>
> **Section 2.** - The City Mayor and the DOE shall, consistent with the spirit and intent of this MOU, enable the OIL COMPANIES to continuously operate in compliance with legal requirements, within the limited area resulting from the joint operations and the scale down program.
>
> **Section 3.** - The DOE and the City Mayor shall monitor the OIL COMPANIES' compliance with the provisions of this MOU.
>
> **Section 4.** - The CITY OF MANILA and the national government shall protect the safety buffer and green zones and shall exert all efforts at preventing future occupation or encroachment into these areas by illegal settlers and other unauthorized parties.

(2) Resolution No. 97 dated 25 July 2002[23] of the *Sangguniang Panlungsod*, which ratified the 26 June 2002 MOU but limited the extension of the period within which to comply to six months from 25 July 2002; and

(3) Resolution No. 13 dated 30 January 2003[24] of the *Sanguniang Panlungsod*, which extended the validity of Resolution No. 97 to 30 April 2003, authorized then Mayor Atienza to issue special business permits to the oil companies, and called for a reassessment of the ordinance.

Social Justice Society v. Atienza (G.R. No. 156052): The filing of an action for mandamus before the Supreme Court to enforce Ordinance No. 8027

In the interim, an original action for *mandamus* entitled *Social Justice Society v. Atienza, Jr.* docketed as G.R. No. 156052[25] was filed on 4 December 2002 by Tumbokon and herein petitioners SJS and Cabigao against then Mayor Atienza. The petitioners sought to compel former Mayor Atienza to enforce Ordinance No. 8027 and cause the immediate removal of the terminals of the oil companies.[26]

Issuance by the Regional Trial Court (RTC) of writs of preliminary prohibitory injunction and preliminary mandatory injunction, and status quo order in favor of the oil companies

Unknown to the Court, during the pendency of G.R. No. 156052, and before the expiration of the validity of Resolution No. 13, the oil companies filed the following actions before the Regional Trial Court of Manila: (1) an action for the annulment of Ordinance No. 8027 with application for writs of preliminary prohibitory injunction and preliminary mandatory injunction – by Chevron; (2) a petition for prohibition and *mandamus* also for the annulment of the Ordinance with application for writs of preliminary prohibitory injunction and preliminary mandatory injunction – by Shell; and (3) a petition assailing the validity of the Ordinance with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order (TRO) – by Petron.[27]

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23 *Id.* at 580-581. Annex "6" of the Consolidated Comment in Intervention.
24 *Id.* at 582.
25 *Supra* note 8.
26 *Id.* at 490.
27 *Social Justice Society v. Hon. Atienza, Jr.*, *supra* note 9 at 671.

Writs of preliminary prohibitory injunction and preliminary mandatory injunction were issued in favor of Chevron and Shell on 19 May 2003. Petron, on the other hand, obtained a *status quo* order on 4 August 2004.[28]

The Enactment of Ordinance No. 8119 defining the Manila land use plan and zoning regulations

On 16 June 2006, then Mayor Atienza approved Ordinance No. 8119 entitled "An Ordinance Adopting the Manila Comprehensive Land Use Plan and Zoning Regulations of 2006 and Providing for the Administration, Enforcement and Amendment thereto."[29]

Pertinent provisions relative to these cases are the following:

(a) Article IV, Sec. 7[30] enumerating the existing zones or districts in the City of Manila;

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28 *Id.*

29 *Rollo* in G.R. No. 187916, Vol. I, pp. 78-115. Annex "C" of the Urgent Petition for Prohibition, *Mandamus* and *Certiorari*.

30 *Id.* at 79-80.
SEC. 7. Division into Zones or Districts – To effectively carry out the provisions of this Ordinance, the City of Manila is hereby divided into the following zones or districts as shown in the Official Zoning Maps.

A. General Residential Zone:
1. High Density Residential/Mixed Use Zone (R-3/MXD)
B. Commercial Zones:
2. Medium Intensity Commercial/Mixed Use Zone (C-2/MXD)
3. High Intensity Commercial/Mixed Use Zone (C-3/MXD)
C. Industrial Zone:
4. Light Industrial Zone (I-1)
D. Institutional Zones:
5. General Institutional Zone (INS-G)
6. University Cluster Zone (INS-U)
E. Public Open Space Zones:
7. General Public Open Space Zone (POS-GEN)
7.a Parks and Plazas (POS-PP)
7.b Playground and Sports Field/Recreation Zone (POS-PSR)
8. Cemetery Zone (POS-CEM)
F. Others
9. Utility Zone (UTL)
10. Water Zone (WTR)
11. Overlay Zones:
11.1 Histo-Cultural Heritage Overlay Zone (O-HCH)
11.2 Planned Unit Development Overlay Zone (O-PUD)
11.3 Buffer Overlay Zone (O-BUF) (Emphasis supplied)

(b) Article V, Sec. 23[31] designating the Pandacan oil depot area as a "Planned Unit Development/Overlay Zone" (O-PUD); and

(c) the repealing clause, which reads:

> SEC. 84. *Repealing Clause*. – All ordinances, rules, regulations in conflict with the provisions of this Ordinance are hereby repealed; *PROVIDED*, That the rights that are vested upon the effectivity of this Ordinance shall not be impaired.[32]

7 March 2007 Decision in G.R. No. 156052; The mayor has the mandatory legal duty to enforce Ordinance No. 8027 and order the removal of the Pandacan terminals

On 7 March 2007, the Court granted the petition for *mandamus*, and directed then respondent Mayor Atienza to immediately enforce Ordinance No. 8027.[33]

Confined to the resolution of the following issues raised by the petitioners, to wit:

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31 *Id.* at 92.

> SEC. 23. Use Regulations in Planned Unit Development/Overlay Zone (O-PUD). – O-PUD Zones are identified specific sites in the City of Manila wherein the project site is comprehensively planned as an entity via unitary site plan which permits flexibility in planning/design, building siting, complementarily of building types and land uses, usable open spaces and the preservation of significant natural land features, pursuant to regulations specified for each particular PUD. Enumerated below are identified PUD:
>
> x x x x
>
> 6. **Pandacan Oil Depot Area**
>
> x x x x
>
> Enumerated below are the allowable uses:
>
> 1. all uses allowed in all zones where it is located
> 2. the [Land Use Intensity Control (LUIC)] under which zones are located shall, in all instances be complied with
> 3. the validity of the prescribed LUIC shall only be [superseded] by the development controls and regulations specified for each PUD as provided for each PUD as provided for by the masterplan of respective PUDs. (Emphasis supplied)

32 *Id*. at 114.

33 *Social Justice Society v. Mayor Atienza, Jr. supra* note 8 at 494.

1. whether respondent [Mayor Atienza] has the mandatory legal duty to enforce Ordinance No. 8027 and order the removal of the Pandacan Terminals, and
2. whether the June 26, 2002 MOU and the resolutions ratifying it can amend or repeal Ordinance No. 8027.[34]

the Court declared:

> x x x [T]he Local Government Code imposes upon respondent the duty, as city mayor, to "enforce all laws and ordinances relative to the governance of the city." One of these is Ordinance No. 8027. As the chief executive of the city, he has the duty to enforce Ordinance No. 8027 as long as it has not been repealed by the *Sanggunian* or annulled by the courts. He has no other choice. It is his ministerial duty to do so. x x x
>
> x x x x
>
> The question now is whether the MOU entered into by respondent with the oil companies and the subsequent resolutions passed by the *Sanggunian* have made the respondent's duty to enforce Ordinance No. 8027 doubtful, unclear or uncertain. x x x
>
> We need not resolve this issue. Assuming that the terms of the MOU were inconsistent with Ordinance No. 8027, the resolutions which ratified it and made it binding on the City of Manila expressly gave it full force and effect **only until April 30, 2003.** Thus, at present, there is nothing that legally hinders respondent from enforcing Ordinance No. 8027.
>
> Ordinance No. 8027 was enacted right after the Philippines, along with the rest of the world, witnessed the horror of the September 11, 2001 attack on the Twin Towers of the World Trade Center in New York City. **The objective of the ordinance is to protect the residents of Manila from the catastrophic devastation that will surely occur in case of a terrorist attack on the Pandacan Terminals. No reason exists why such a protective measure should be delayed**.[35] (Emphasis supplied; citations omitted)

13 February 2008 Resolution in G.R. No. 156052; Ordinance No. 8027 is constitutional

The oil companies and the Republic of the Philippines, represented by the DOE, filed their motions for leave to intervene and for reconsideration of the 7 March 2007 Decision. During the oral arguments, the parties submitted to the power of the Court to rule on the constitutionality and

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34 *Id.* at 490-491.
35 *Id.* at 493-494.

validity of the assailed Ordinance despite the pendency of the cases in the RTC.[36]

On 13 February 2008, the Court granted the motions for leave to intervene of the oil companies and the Republic of the Philippines but denied their respective motions for reconsideration. The dispositive portion of the Resolution reads:

> **WHEREFORE**, x x x
>
> We reiterate our order to respondent Mayor of the City of Manila to enforce Ordinance No. 8027. In coordination with the appropriate agencies and other parties involved, respondent Mayor is hereby ordered to oversee the relocation and transfer of the Pandacan Terminals out of its present site.[37]

13 February 2008 Resolution in G.R. No. 156052; Ordinance No. 8027 was not impliedly repealed by Ordinance No. 8119

The Court also ruled that Ordinance No. 8027 was not impliedly repealed by Ordinance No. 8119. On this score, the Court ratiocinated:

> For the first kind of implied repeal, there must be an irreconcilable conflict between the two ordinances. There is no conflict between the two ordinances. Ordinance No. 8027 reclassified the Pandacan area from Industrial II to Commercial I. Ordinance No. 8119, Section 23, designated it as a "Planned Unit Development/Overlay Zone (O-PUD)." In its Annex "C" which defined the zone boundaries, the Pandacan area was shown to be within the "High Density Residential/Mixed Use Zone (R-3/MXD)." x x x [B]oth ordinances actually have a common objective, *i.e.*, to shift the zoning classification from industrial to commercial (Ordinance No. 8027) or mixed residential commercial (Ordinance No. 8119)
>
> x x x x
>
> Ordinance No. 8027 is a special law since it deals specifically with a certain area described therein (the Pandacan oil depot area) whereas Ordinance No. 8119 can be considered a general law as it covers the entire city of Manila.
>
> x x x x
>
> x x x The repealing clause of Ordinance No. 8119 cannot be taken to indicate the legislative intent to repeal all prior inconsistent laws on the

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36 *Social Justice Society v. Hon. Atienza, Jr., supra* note 9 at 673.

37 *Id.* at 723.

> subject matter, including Ordinance No. 8027, a special enactment, since the aforequoted minutes (an official record of the discussions in the *Sanggunian)* actually indicated the clear intent to preserve the provisions of Ordinance No. 8027.[38]

Filing of a draft Resolution amending Ordinance No. 8027 effectively allowing the oil depots to stay in the Pandacan area; Manifestation and Motion to forestall the passing of the new Ordinance filed in G.R. No. 156052

On 5 March 2009, respondent then Councilor Arlene W. Koa, filed with the *Sangguniang Panlungsod* a draft resolution entitled "An Ordinance Amending Ordinance No. 8119 Otherwise Known as 'The Manila Comprehensive Land Use Plan and Zoning Ordinance of 2006' by Creating a Medium Industrial Zone (1-2) and Heavy Industrial Zone (1-3) and Providing for its Enforcement."[39] Initially numbered as Draft Ordinance No. 7177, this was later renumbered as Ordinance No. 8187, the assailed Ordinance in these instant petitions.

Considering that the provisions thereof run contrary to Ordinance No. 8027, the petitioners in G.R. No. 156052 filed a "Manifestation and Motion to: a) Stop the City Council of Manila from further hearing the amending ordinance to Ordinance No. 8027; [and] b) Transfer the monitoring of the enforcement of the Resolution of the Honorable Court on this case dated 13 February 2008 from Branch 39, Manila Regional Trial Court to the Supreme Court."[40]

28 April 2009 Resolution in G.R. No. 156052; Second Motion for Reconsideration denied with finality; succeeding motions likewise denied or otherwise noted without action

On 28 April 2009, pending the resolution of the Manifestation and Motion, the Court denied with finality the second motion for reconsideration

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38 *Id.* at 1792-1793.

39 *Rollo* in G.R. No. 156052, pp. 1793. Manifestation and Motion filed on 18 March 2009.

40 *Id.* at 1792 -1803.

dated 27 February 2008 of the oil companies.[41] It further ruled that no further pleadings shall be entertained in the case.[42]

Succeeding motions were thus denied and/or noted without action. And, after the "Very Urgent Motion to Stop the Mayor of the City of Manila from Signing Draft Ordinance No. 7177 and to Cite Him for Contempt if He Would Do So" filed on 19 May 2009 was denied on 2 June 2009 for being moot,[43] all pleadings pertaining to the earlier motion against the drafting of an ordinance to amend Ordinance No. 8027 were noted without action.[44]

The Enactment of Ordinance No. 8187 allowing the continued stay of the oil depots

On 14 May 2009, during the incumbency of former Mayor Alfredo S. Lim (Mayor Lim), who succeeded Mayor Atienza, the *Sangguniang Panlungsod* enacted Ordinance No. 8187.[45]

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41 *Id.* at 1813-1816. Resolution dated 28 April 2009.

42 *Id.* at 1816.

43 *Id.* (no proper pagination, should be pp. 1844-1845. Resolution dated 2 June 2009.

44 *Id.* (no proper pagination, should be p. 1846). Resolution dated 9 June 2009 with respect to the City Legal Office's Motion to Excuse from Filing Comment (on Petitioners' Manifestation and Motion and on Petitioners' Very Urgent Motion to Cite the Members of the City Council in Direct Contempt of Court), and the Comment. *Id.* (no proper pagination, should be pp. 1880-1881). Resolution dated 23 June 2009 with respect to the Reply to the Comment filed by the counsel for the petitioners.

45 *Rollo*, in G.R. No. 187916, Vol. I, pp. 70-74.

The Ordinance reads:

ORDINANCE NO. 8187

AN ORDINANCE AMENDING ORDINANCE NO. 8119, OTHERWISE KNOWN AS "THE MANILA COMPREHENSIVE LAND USE PLAN AND ZONING ORDINANCE OF 2006", BY CREATING A MEDIUM INDUSTRIAL ZONE (1-2) AND HEAVY INDUSTRIAL ZONE (1-3), AND PROVIDING FOR ITS ENFORCEMENT.

Be it ordained by the City Council of Manila, in session, assembled, *THAT:*

SECTION 1. Ordinance No. 8119, otherwise known as the "Manila Comprehensive Land Use Plan and Zoning Ordinance of 2006" is hereby amended by creating a Medium Industrial Zone (1-2) and Heavy Industrial Zone (1-3) to read as follows:

1. Use Regulations in Medium Industrial Zone (1-2)

The Medium Industrial Zone (I-2) shall be for Pollutive/Non-Hazardous and Pollutive/Hazardous manufacturing and processing establishments. Enumerated below are the allowable uses:

a. **Pollutive/Hazardous Industries**

1. Manufacture and canning of ham

2. Poultry processing and canning
3. Large-scale manufacture of ice cream
4. Corn Mill/Rice Mill
5. Chocolate and Cocoa Factory
6. Candy Factory
7. Chewing Gum Factory
8. Peanuts and other nuts factory
9. Other chocolate and confectionary products
10. Manufacture of flavoring extracts
11. Manufacture of food products n.e.c (vinegar, vetsin)
12. Manufacture of fish meal
13. Oyster shell grading
14. Manufacture of medicinal and pharmaceutical preparations
15. Manufacture of stationary, art goods, cut stone and marble products
16. Manufacture of abrasive products
17. Manufacture of miscellaneous non-metallic mineral products n.e.c.
18. Manufacture of cutlery, except table flatware
19. Manufacture of hand tools
20. Manufacture of general hardware
21. Manufacture of miscellaneous cutlery hand tools and general hardware n.e.c.
22. Manufacture of household metal furniture
23. Manufacture of office, store and restaurant metal furniture
24. Manufacture of metal blinds, screens and shades
25. Manufacture of miscellaneous furniture and fixture primarily of metal n.e.c.
26. Manufacture of fabricated structural iron and steel
27. Manufacture of architectural and ornamental metal works
28. Manufacture of boiler, tanks and other structural sheet metal works
29. Manufacture of other structural products n.e.c.
30. Manufacture of metal cans, boxes and containers
31. Manufacture of stamped coated and engraved metal products
32. Manufacture of fabricated wire and cable
33. Manufacture of heating, cooking and lighting equipment except electrical
34. Metal sheet works generally of manual operation
35. Manufacture of other fabricated metal products except machinery and equipment n.e.c.
36. Manufacture or assembly of agricultural machinery and equipment
37. Native plow and harrow factory
38. Repair of agricultural machinery
39. Manufacture or assembly of service industry machines
40. Manufacture or assembly of elevators or escalators
41. Manufacture or assembly of sewing machines
42. Manufacture or assembly of cooking ranges
43. Manufacture or assembly of water pumps
44. Refrigeration industry
45. Manufacture or assembly of other machinery and equipment except electrical n.e.c.
46. Manufacture and repair of electrical apparatus
47. Manufacture and repair of electrical cables and wires
48. Manufacture of cables and wires
49. Manufacture of other electrical industrial machinery and apparatus n.e.c.
50. Manufacture or assembly of electric equipment such as radio, television, tape, tape recorders and stereo
51. Manufacture or assembly of radio and television transmitting, signaling and detection equipment
52. Manufacture or assembly of telephone and telegraphic equipment
53. Manufacture of other electronic equipment and apparatus n.e.c.

54. Manufacture of industrial and commercial electrical appliances
55. Manufacture of household cooking, heating and laundry appliances
56. Manufacture of other electrical appliances n.e.c.
57. Manufacture of electrical lamp fixtures

b. **Pollutive/Hazardous (sic) Industries**

1. Flour Mill
2. Cassava Flour Mill
3. Manufacturing of coffee
4. Manufacturing of unprepared animal feeds, other grain milling n.e.c.
5. Production prepared feed for animals
6. Cigar and cigarette Factory
7. Curing and redrying tobacco leaves
8. Miscellaneous processing tobacco leaves n.e.c.
9. Weaving hemp textile
10. Jute spinning and weaving
11. Miscellaneous spinning and weaving mills n.e.c.
12. Hosiery mill
13. Underwear and outwear knitting mills
14. Fabric knitting mills
15. Miscellaneous knitting mills n.e.c.
16. Manufacture of mats and mattings
17. Manufacture of carpets and rugs
18. Manufacture of cordage, rope and twine
19. Manufacture of related products from abaca, sisal, henequen, hemp, cotton, paper, etc.
20. Manufacture of linoleum and other surface coverings
21. Manufacture of machines for leather and leather products
22. Manufacture of construction machinery
23. Manufacture of machines for clay, stove and glass industries
24. Manufacture, assembly, repair, rebuilding of miscellaneous special industrial machinery and equipment n.e.c.
25. Manufacture of dry cells, storage battery and other batteries
26. Boat building and repairing
27. Ship repairing industry, dock yards, dry dock, shipways
28. Miscellaneous shipbuilding and repairing n.e.c.
29. Manufacture of locomotive and parts
30. Manufacture of railroads and street cars
31. Manufacture of assembly of automobiles, cars, buses, trucks and trailers
32. Manufacture of wood furniture including upholstered
33. Manufacture of rattan furniture including upholstered
34. Manufacture of box beds and mattresses

2. Use Regulations in Heavy Industrial Zone (1-3)

The Heavy Industrial Zone (1-3) shall be for highly Pollutive/Non-Hazardous; Pollutive/Hazardous; Highly Pollutive/Extremely Hazardous; Non-Pollutive/Extremely Hazardous; and Pollutive/Extremely Hazardous manufacturing and processing establishments. Enumerated below are the allowable uses:

a. **Highly Pollutive/Non-Hazardous Industries**

1. Meat processing, curing, preserving except processing of ham, bacon, sausage and chicharon
2. Milk processing plants (manufacturing filled, reconstituted or recombined milk, condensed or evaporated)
3. Butter and cheese processing plants

4. Natural fluid milk processing (pasteurizing, homogenizing, vitaminizing bottling of natural animal milk and cream related products)
5. Other dairy products n.e.c.
6. Canning and preserving of fruits and fruit juices
7. Canning and preserving of vegetables and vegetable juices
8. Canning and preserving of vegetable sauces
9. Miscellaneous canning and preserving of fruits and vegetables, n.e.c.
10. Fish canning
11. Patis factory
12. Bagoong factory
13. Processing, preserving and canning of fish and other seafoods, n.e.c.
14. Manufacture of dessicated coconut
15. Manufacture of starch and its by-products
16. Manufacture of wines from juices of local fruits
17. Manufacture of malt and malt liquors
18. Manufacture of soft drinks carbonated water
19. Manufacture of instant beverages and syrups
20. Other non-alcoholic beverages, n.e.c.
21. Other slaughtering, preparing and preserving meat products, n.e.c.

b. **Highly Pollutive/Hazardous Industries**

1. Vegetable oil mills, including coconut oil
2. Manufacturing of refined cooking oil and margarine
3. Manufacture of fish, marine and other animal oils
4. Manufacture of vegetable and animal oils and fats, n.e.c.
5. Sugar cane milling (centrifugal refined)
6. Sugar refining
7. Muscovado Sugar Mill
8. Distilled, rectified and blended liquors, n.e.c.
9. Cotton textile mill
10. Ramie textile mill
11. Rayon and other man-made fiber textile mill
12. Bleaching and drying mills
13. Manufacture of narrow fabrics
14. Tanneries and leather finishing plants
15. Pulp mills
16. Paper and paperboard mills
17. Manufacture of fiberboard
18. Manufacture of inorganic salts and compounds
19. Manufacture of soap and cleaning preparations
20. Manufacture of hydraulic cement
21. Manufacture of lime and lime kilns
22. Manufacture of plaster
23. Products of blast furnace, steel works and rolling mills
24. Product of iron and steel foundries
25. Manufacture of smelted and refined non-ferrous metals
26. Manufacture of rolled, drawn or astruded non-ferrous metals
27. Manufacture of non-ferrous foundry products

c. **Highly Pollutive/Extremely Hazardous Industries**

1. Manufacture of industrial alcohols
2. Other basic industrial chemicals
3. Manufacture of fertilizers
4. Manufacture of pesticides

The new Ordinance repealed, amended, rescinded or otherwise modified Ordinance No. 8027, Section 23 of Ordinance No. 8119, and all other Ordinances or provisions inconsistent therewith[46] thereby allowing, once again, the operation of "Pollutive/Non-Hazardous and Pollutive/Hazardous manufacturing and processing establishments" and "Highly Pollutive/Non-Hazardous[,] Pollutive/Hazardous[,] Highly Pollutive/Extremely Hazardous[,] Non-Pollutive/Extremely Hazardous; and Pollutive/Extremely Hazardous; and Pollutive/Extremely Hazardous

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5. Manufacture of synthetic resins, plastic materials and man-made fibers except glass
6. Petroleum refineries and oil depots
7. Manufacture of reclaimed, blended and compound petroleum products
8. Manufacture of miscellaneous products of petroleum and coal

d. **Pollutive/Extremely Hazardous Industries**

1. Manufacture of paints
2. Manufacture of varnishes, shellac and stains
3. Manufacture of paint removers
4. Manufacture of other paint products
5. Manufacture of matches
6. Manufacture of tires and inner tubes
7. Manufacture of processed natural rubber not in rubber plantations
8. Manufacture of miscellaneous rubber products, n.e.c.

e. **Non-Pollutive/Extremely Hazardous Industries**

1. Manufacture of compressed and liquefied gases

SEC. 2. The land use where the existing industries are located, the operation of which are permitted under Section 1 hereof, are hereby classified as Industrial Zone.

The City Planning and Development Office (CPDO) shall prepare an amended Zoning Map and Zoning Boundaries which shall be submitted to the City Council for review.

SEC. 3. The Zoning Fees shall be P10/sq. m. of total floor area for MEDIUM INDUSTRIAL ZONE (1-2) and P10/sq. m. of total floor area for HEAVY INDUSTRIAL ZONE (1-3).

SEC. 4. Repealing Clause. – Ordinance No. 8027, Section 23 of Ordinance No. 8119 and all other Ordinances or provisions therein inconsistent with the provisions of this Ordinance are hereby repealed, amended, rescinded or modified accordingly.

SEC. 5. Effectivity Clause. – This Ordinance shall take effect fifteen (15) days after its publication in accordance with law.

x x x x.

[46] *Id.* at 74.

Sec. 4 of Ordinance No. 8187 reads:

SEC. 4. Repealing Clause. – Ordinance No. 8027, Section 23 of Ordinance No. 8119 and all other Ordinances or porvisions therein inconsistent with the provisions of this Ordinance are hereby repealed, amended, rescinded or otherwise modified accordingly.

manufacturing and processing establishments" within the newly created Medium Industrial Zone (1-2) and Heavy Industrial Zone (1-3) in the Pandacan area.

Thus, where the Industrial Zone under Ordinance No. 8119 was limited to *Light Industrial Zone (I-1)*, Ordinance No. 8187 appended to the list a *Medium Industrial Zone (I-2)* and a *Heavy Industrial Zone (I-3)*, where petroleum refineries and oil depots are now among those expressly allowed.

Hence these petitions.

The Petitions

G.R. No. 187836

To support their petition for prohibition against the enforcement of Ordinance No. 8187, the petitioner Social Justice Society (SJS) officers allege that:

1. The enactment of the assailed Ordinance is not a valid exercise of police power because the measures provided therein do not promote the general welfare of the people within the contemplation of the following provisions of law:

a) Article III, Section 18 (kk)[47] of Republic Act No. 409 otherwise known as the "Revised Charter of the City of Manila," which provides that the Municipal Board shall have the legislative power to enact all ordinances it may deem necessary and proper;

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[47] Section 18. *Legislative powers.* – The Municipal Board shall have the following legislative powers:

x x x x

(kk) To enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity, and the promotion of the morality, peace good order, comfort, convenience, and general welfare of the city and its inhabitants, and such others as may be necessary to carry into effect and discharge the powers and duties conferred by this chapter; and to fix penalties for the violation of ordinances which shall not exceed to two hundred pesos fine or six months' imprisonment, or both such fine and imprisonment, for a single offense.

b) Section 16[48] of Republic Act No. 7160 known as the Local Government Code, which defines the scope of the general welfare clause;

2. The conditions at the time the Court declared Ordinance No. 8027 constitutional in G.R. No. 156052 exist to this date;

3. Despite the finality of the Decision in G.R. No. 156052, and notwithstanding that the conditions and circumstances warranting the validity of the Ordinance remain the same, the Manila City Council passed a contrary Ordinance, thereby refusing to recognize that "judicial decisions applying or interpreting the laws or the Constitution form part of the legal system of the Philippines;"[49] and

4. Ordinance No. 8187 is violative of Sections 15 and 16, Article II of the Constitution of the Philippines on the duty of the State "to protect and promote the right to health of the people"[50] and "protect and advance the right of the people to a balanced and healthful ecology."[51]

Petitioners pray that Ordinance No. 8187 of the City of Manila be declared null and void, and that respondent, and all persons acting under him, be prohibited from enforcing the same.

G.R. No. 187916

The petition for Prohibition, *Mandamus* and *Certiorari* with Prayer for Temporary Restraining Order and/or Injunction against the enforcement of Ordinance No. 8187 of former Secretary of Department of Environment and Natural Resources and then Mayor Atienza, together with other residents and taxpayers of the City of Manila, also alleges violation of the

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48 SECTION 16. General Welfare. – Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

49 Article 8, Civil Code.

50 Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

51 Section 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

right to health of the people and the right to a healthful and balanced environment under Sections 15 and 16 of the Constitution.

Petitioners likewise claim that the Ordinance is in violation of the following health and environment-related municipal laws, and international conventions and treaties to which the Philippines is a state party:

1. Municipal Laws –

(a) Sections 4,[52] 12,[53] 19[54] and 30[55] of Republic Act No. 8749 otherwise known as the Philippine Clean Air Act;

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[52] SEC. 4. *Recognition of Rights.* - Pursuant to the above-declared principles, the following rights of citizens are hereby sought to be recognized and the State shall seek to guarantee their enjoyment:

[a] The right to breathe clean air;
[b] The right to utilize and enjoy all natural resources according to the principles of sustainable development;
[c] The right to participate in the formulation, planning, implementation and monitoring of environmental policies and programs and in the decision-making process;
[d] The right to participate in the decision-making process concerning development policies, plans and programs projects or activities that may have adverse impact on the environment and public health;
[e] The right to be informed of the nature and extent of the potential hazard of any activity, undertaking or project and to be served timely notice of any significant rise in the level of pollution and the accidental or deliberate release into the atmosphere of harmful or hazardous substances;
[f] The right of access to public records which a citizen may need to exercise his or her rights effectively under this Act;
[g] The right to bring action in court or quasi-judicial bodies to enjoin all activities in violation of environmental laws and regulations, to compel the rehabilitation and cleanup of affected area, and to seek the imposition of penal sanctions against violators of environmental laws; and
[h] The right to bring action in court for compensation of personal damages resulting from the adverse environmental and public health impact of a project or activity.

[53] SEC. 12. *Ambient Air Quality Guideline Values and Standards.*- The Department, in coordination with other concerned agencies, shall review and or revise and publish annually a list of hazardous air pollutants with corresponding ambient guideline values and/or standard necessary to protect health and safety, and general welfare. The initial list and values of the hazardous air pollutants shall be as follows:

a) For National Ambient Air Quality Guideline for Criteria Pollutants:

	Short Term [a]			Long Term [b]		
Pollutants	µg/Ncm	ppm	Averaging Time	µg/Ncm	ppm	Averaging Time
Suspended Particulate Matter[c]-TSP	230[d]		24 hours	90	----	1 year[e]
-PM-10	150[f]		24 hours	60	----	1 year[e]
Sulfur Dioxide[c]	180	0.07	24 hours	80	0.03	1 year
Nitrogen Dioxide	150	0.08	24 hours	----	----	----

Photochemical Oxidants	140	0.07	1 hour	----	----	----
As Ozone	60	0.03	8 hours	----	----	----
Carbon Monoxide	35mg/Ncm	30	1 hour	----	----	----
	10mg/Ncm	9	8 hours			
Lead[g]	1.5	----	3 months[g]	1.0	----	1 year

[a] Maximum limits represented by ninety-eight percentile (98%) values not to be exceed more than once a year.
[b] Arithmetic mean
[c] SO2 and Suspended Particulate matter are sampled once every six days when using the manual methods. A minimum of twelve sampling days per quarter of forty-eight sampling days each year is required for these methods. Daily sampling may be done in the future once continuous analyzers are procured and become available.
[d] Limits for Total Suspended Particulate Matter with mass median diameter less than 25-50 um.
[e] Annual Geometric Mean
[f] Provisional limits for Suspended Particulate Matter with mass median diameter less than 10 microns and below until sufficient monitoring data are gathered to base a proper guideline.
[g] Evaluation of this guideline is carried out for 24-hour averaging time and averaged over three moving calendar months. The monitored average value for any three months shall not exceed the guideline value.

b) For National Ambient Air Quality Standards for Source Specific Air Pollutants from Industrial Sources/Operations:

Pollutants1	Concentration[2]		Averaging time (min.)	Method of Analysis/ Measurement[3]
	µ/Ncm	ppm		
1. Ammonia	200	0.28	30	Nesselerization/ Indo Phenol
2. Carbon Disulfide	30	0.01	30	Tischer Method
3. Chlorine and Chlorine Compounds expressed as Cl[2]	100	0.03	5	Methyl Orange
4. Formaldehyde	50	0.04	30	Chromotropic acid Method or MBTH Colorimetric Method
5. Hydrogen Chloride	200100	0.13	30	Volhard Titration with Iodine Solution
6. Hydrogen Sulfide	100	0.07	30	Methylene Blue
7. Lead	20		30	AAS[c]
8. Nitrogen Dioxide	375,260	0.20,0.14	30,60	Greiss- Saltzman
9. Phenol	100	0.03	30	4-Aminoantiphyrine
10. Sulfur Dioxide	470, 340	0.18, 0.13	30,60	Colorimetric-Pararosaniline
11. Suspended Particulate Matter-TSP	300	----	60	Gravimetric

[1] *Pertinent ambient standards for Antimony, Arsenic, Cadmium, Asbestos, Nitric Acid and Sulfuric Acid Mists in the 1978 NPCC Rules and Regulations may be considered as guides in determining compliance.*

[2] *Ninety-eight percentile (98%) values of 30-minute sampling measured at 25^0C and one atmosphere pressure.*

[3] *Other equivalent methods approved by the Department may be used.*

The basis in setting up the ambient air quality guideline values and standards shall reflect, among others, the latest scientific knowledge including information on:

a) Variable, including atmospheric conditions, which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;
b) The other types of air pollutants which may interact with such pollutant to produce an adverse effect on public health or welfare; and
c) The kind and extent of all identifiable effects on public health or welfare which may be expected from presence of such pollutant in the ambient air, in varying quantities.

The Department shall base such ambient air quality standards on World Health Organization (WHO) standards, but shall not be limited to nor be less stringent than such standards.

54 SEC. 19. *Pollution From Stationary Sources.*- The Department shall, within two (2) years from the effectivity of this Act, and every two (2) years thereafter, review, or as the need therefore arises, revise and publish emission standards, to further improve the emission standards for stationary sources of air pollution. Such emission standards shall be based on mass rate of emission for all stationary source of air pollution based on internationally accepted standards, but not be limited to, nor be less stringent than such standards and with the standards set forth in this section. The standards, whichever is applicable, shall be the limit on the acceptable level of pollutants emitted from a stationary source for the protection of the public's health and welfare.

With respect to any trade, industry, process and fuel-burning equipment or industrial plant emitting air pollutants, the concentration at the point of emission shall not exceed the following limits:

Pollutants	Standard Applicable to Source	Maximum Permissible Limits (mg/Ncm)	Method of Analysis[a]
1. Antimony and Its compounds	any source	10 as Sb	AAS[b]
2. Arsenic and its compounds	Any source	10 as As	AAS[b]
3. Cadmium and its compounds	Any source	10 as Cd	AAS[b]
4. Carbon Monoxide	Any industrial Source	500 as CO	Orsat analysis
5. Copper and its Compounds	Any industrial source	100 ax Cu	AAS[b]
6. Hydrofluoric Acids and Fluoride compounds	Any source other than the manufacture of Aluminum from Alumina	50 as HF	Titration with Ammonium Thiocyanate
7. Hydrogen Sulfide	i) Geothermal Power Plants	[c.d]	Cadmium Sulfide Method
	ii) Geothermal Exploration and well-testing	[e]	

	iii) Any source other than (i) and (ii)	7 as H_2S	Cadmium Sulfide Method
8. Lead	Any trade, industry or process	10 as Pb	AAS[b]
9. Mercury	Any Source	5 as elemental Hg	AAS[b]/Cold-Vapor Technique or Hg Analyzer
10. Nickel and its compounds, except Nickel Carbonyl [f]	Any source	20 as Ni	AAS[b]
11. NO_x	i) Manufacture of Nitric Acid	2,000 as acid and NOx and calculated as NO2	Phenol-disulfonic acid Method
	ii) Fuel burning steam generators		Phenol-disulfonic acid Method
	Existing Source	1,500 as NO2	
	New Source		
	• Coal-Fired	1,000 as NO2	
	• Oil-Fired	500 as NO2	
	iii) Any source other than (i) adn (ii)		Phenol-disulfonic acid Method
	Existing Source	1000 as NO2	
	New Source	500 as NO2	
12. Phosphorus Pentoxide[g]	Any source	200 as P2O5	Spectrophotometry
13. Zinc and its Compounds	Any source	100 as Zn	AAS[b]

[a] Other equivalent methods approved by the Department may be used.
[b] Atomic Absorption Specttrophotometry
[c] All new geothermal power plants starting construction by 01 January 1995 shall control H_sS emissions to not more than 150 g/GMW-Hr
[d] All existing geothermal power plants shall control H_sS emissions to not more than 200 g/GMW-Hr within 5 years from the date of effectivity of these revised regulations.
[e] Best practicable control technology for air emissions and liquid discharges. Compliance with air and water quality standards is required.
[f] Emission limit of Nickel Carbonyl shall not exceed 0.5 mg/Ncm.
[g] Provisional Guideline

Provided, That the maximum limits in mg/ncm particulates in said sources shall be:

1. Fuel Burning Equipment	
a) Urban or Industrial Area	150 mg/Ncm
b) Other Area	200 mg/Ncm
2. Cement Plants (Kilns, etc.)	150 mg/Ncm
3. Smelting Furnaces	150 mg/Ncm
4. Other Stationary Sources[a]	200 mg/Ncm

[a] Other Stationary Sources means a trade, process, industrial plant, or fuel burning equipment other than thermal power plants, industrial boilers, cement plants, incinerators and smelting furnaces.

Provided, further, That the maximum limits for sulfur oxides in said sources shall be:

(1) Existing Sources	
(i) Manufacture of Sulfuric Acid and Sulf(on)ation Process	2.0gm.Ncm as SO_3
(ii) Fuel burning Equipment	1.5gm.Ncm as SO_2
(iii) Other Stationary Sources[a]	1.0gm.Ncm as SO_3
(2) New Sources	
(i) Manufacture of Sulfuric Acid and Sulf(on)ation Process	1.5 gm.Ncm as SO_3
(ii) Fuel Burning Equipment	0.7 gm.Ncm as SO_2
(iii) Other Stationary Sources[a]	0.2 gm.Ncm as SO_3

[a] Other Stationary Sources refer to existing and new stationary sources other than those caused by the manufacture of sulfuric acid and sulfonation process, fuel burning equipment and incineration.

For stationary sources of pollution not specifically included in the immediately preceding paragraph, the following emission standards shall not be exceeded in the exhaust gas:

I. Daily And Half Hourly Average Values

	Daily Average Values	Half Hourly Average Values
Total dust	10 mg/m^3	30 mg/m^3
Gaseous and vaporous organic substances, expressed as total organic carbon	10 mg/m^3	20 mg/m^3
Hydrogen chloride (HCl)	10 mg/m^3	60 mg/m^3
Hydrogen fluoride (HF)	1 mg/m^3	4 mg/m^3
Sulfur dioxide (SO_2)	50 mg/m^3	200 mg/m^3
Nitrogen monoxide (NO) and Nitrogen dioxide (NO_2), expressed as nitrogen dioxide for incineration plants with a capacity exceeding 3 tonnes per hour	200 mg/m^3	400 mg/m^3
Nitrogen monoxide (NO) and nitrogen dioxide (NO_2), expressed as nitrogen dioxide for incineration plants with a capacity of 3 tonnes per hour or less	300 mg/m^3	
Ammonia	10 mg/m^3	20 mg/m^3

II. All the Average Values Over the Sample Period of a Minimum of 4 and Maximum of 8 Hours.

Cadmium and its compounds, expressed as cadmium (Cd)	total 0.05
Thallium and its compounds, expressed as thallium (Tl)	mg/m^3
Mercury and its Compounds, expressed as mercury (Hg)	0.05 mg/m^3
Antimony and its compounds, expressed as antimony (Sb)	
Arsenic and its compounds, expressed as arsenic (As)	total 0.5 mg/m^3
Lead and its compounds, expressed as lead (Pb)	
Chromium and its compounds, expressed as chromium (Cr)	
Cobalt and its compounds, expressed as cobalt (Co)	
Copper and its compounds, expressed as copper (Cu)	
Manganese and its compounds, expressed as manganese (Mn)	
Nickel and its compounds, expressed as nickel (Ni)	

(b) Environment Code (Presidential Decree No. 1152);
(c) Toxic and Hazardous Wastes Law (Republic Act No. 6969); and
(d) Civil Code provisions on nuisance and human relations;

2. International Conventions and Treaties to which the Philippines is a state party –

a. Section 1 of the Universal Declaration of Human Rights, which states that "[e]veryone has the right to life, liberty and security of person;"

b. Articles 6,[56] 24[57] and 27[58] of the Convention on the Rights of the Child, summarized by the petitioners in the following manner:

Vanadium and its compounds, expressed as vanadium (V)

Tin and its compounds, expressed as tin (Sn)

These average values cover also gaseous and the vapor forms of the relevant heavy metal emission as well as their compounds: Provided, That the emission of dioxins and furans into the air shall be reduced by the most progressive techniques: Provided, further, That all average of dioxin and furans measured over the sample period of a minimum of 5 hours and maximum of 8 hours must not exceed the limit value of 0.1 nanogram/m3.

Pursuant to Sec. 8 of this Act, the Department shall prepare a detailed action plan setting the emission standards or standards of performance for any stationary source the procedure for testing emissions for each type of pollutant, and the procedure for enforcement of said standards.

Existing industries, which are proven to exceed emission rates established by the Department in consultation with stakeholders, after a thorough, credible and transparent measurement process shall be allowed a grace period of eighteen (18) months for the establishment of an environmental management system and the installation of an appropriate air pollution control device : Provided, That an extension of not more than twelve (12) months may be allowed by the Department on meritorious grounds.

[55] SEC. 30. *Ozone-Depleting Substances.*- Consistent with the terms and conditions of the Montreal Protocol on Substances that Deplete the Ozone Layer and other international agreements and protocols to which the Philippines is a signatory, the Department shall phase out ozone-depleting substances.

Within sixty (60) days after the enactment of this Act, the Department shall publish a list of substances which are known to cause harmful effects on the stratospheric ozone layer.

[56] Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

[57] Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

1. the human right to safe and healthy environment[;]
2. human right to the highest attainable standard of health[;]
3. the human right to ecologically sustainable development[;]
4. the human right to an adequate standard of living, including access to safe food and water[;]
5. the human right of the child to live in an environment appropriate for physical and mental development[; and]
6. the human right to full and equal participation for all persons in environmental decision-making and development planning, and in shaping decisions and policies affecting one's community, at the local, national and international levels.[59]

Petitioners likewise posit that the title of Ordinance No. 8187 purports to amend or repeal Ordinance No. 8119 when it actually intends to repeal

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(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

58 Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

59 *Rollo* in G.R. No. 187916, Vol. I, p. 44. Urgent Petition for Prohibition, *Mandamus* and *Certiorari*.

Ordinance No. 8027. According to them, Ordinance No. 8027 was never mentioned in the title and the body of the new ordinance in violation of Section 26, Article VI of the 1987 Constitution, which provides that every bill passed by Congress shall embrace only one subject which shall be expressed in the title thereof.

Also pointed out by the petitioners is a specific procedure outlined in Ordinance No. 8119 that should be observed when amending the zoning ordinance. This is provided for under Section 81 thereof, which reads:

> SEC. 81. Amendments to the Zoning Ordinance. The proposed amendments to the Zoning Ordinance as reviewed and evaluated by the City Planning and Development Office (CPDO) shall be submitted to the City Council for approval of the majority of the *Sangguniang Panlungsod* members. The amendments shall be acceptable and eventually approved: PROVIDED, That there is sufficient evidence and justification for such proposal; PROVIDED FURTHER, That such proposal is consistent with the development goals, planning objectives, and strategies of the Manila Comprehensive Land Use Plan. Said amendments shall take effect immediately upon approval or after thirty (30) days from application.

Petitioners thus pray that:

> 1. upon filing of [the] petition, [the] case be referred to the Court [E]n Banc, and setting (sic) the case for oral argument;
>
> 2. upon the filing of [the] petition, a temporary restraining order be issued enjoining the respondents from publishing and posting Manila City Ordinance No. 8187 and/or posting of Manila City Ordinance No. 8187; and/or taking any steps to implementing (sic) and/or enforce the same and after due hearing, the temporary restraining order be converted to a permanent injunction;
>
> 3. x x x Manila City Ordinance 8187 [be declared] as null and void for being repugnant to the Constitution and existing municipal laws and international covenants;
>
> 4. x x x the respondents [be ordered] to refrain from enforcing and/or implementing Manila City Ordinance No. 8187;
>
> 5. x x x respondent City Mayor Alfredo S. Lim [be enjoined] from issuing any permits (business or otherwise) to all industries whose allowable uses are anchored under the provisions of Manila Ordinance No. 8187; and

> 6. x x x respondent Mayor of Manila Alfredo S. Lim [be ordered] to comply with the Order of the Honorable Court in G.R. 156052 dated February 13, 2008.[60]

The Respondents' Position on the Consolidated Petitions

Respondent former Mayor Lim

In his Memorandum,[61] former Mayor Lim, through the City Legal Officer, attacks the petitioners' lack of legal standing to sue. He likewise points out that the petitioners failed to observe the principle of hierarchy of courts.

Maintaining that Ordinance No. 8187 is valid and constitutional, he expounds on the following arguments:

On the procedural issues, he contends that: (1) it is the function of the *Sangguniang Panlungsod* to enact zoning ordinances, for which reason, it may proceed to amend or repeal Ordinance No. 8119 without prior referral to the Manila Zoning Board of Adjustment and Appeals (MZBAA) as prescribed under Section 80 (Procedure for Re-Zoning) and the City Planning and Development Office (CPDO) pursuant to Section 81 (Amendments to the Zoning Ordinance) of Ordinance No. 8119, especially when the action actually originated from the *Sangguniang Panlungsod* itself; (2) the *Sangguniang Panlungsod* may, in the later ordinance, expressly repeal all or part of the zoning ordinance sought to be modified; and (3) the provision repealing Section 23 of Ordinance No. 8119 is not violative of Section 26, Article VI of the 1987 Constitution, which requires that every bill must embrace only one subject and that such shall be expressed in the title.

On the substantive issues, he posits that the petitions are based on unfounded fears; that the assailed ordinance is a valid exercise of police power; that it is consistent with the general welfare clause and public policy, and is not unreasonable; that it does not run contrary to the Constitution, municipal laws, and international conventions; and that the petitioners failed to overcome the presumption of validity of the assailed ordinance.

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60 *Id.* at 58-59.

61 *Rollo* in G.R. No. 187916, Vol. IV, pp. 1846-1926.

Respondents Vice-Mayor Domagoso and the City Councilors who voted in favor of the assailed ordinance

On 14 September 2012, after the Court gave the respondents several chances to submit their Memorandum,[62] they, through the Secretary of the *Sangguniang Panlungsod*, prayed that the Court dispense with the filing thereof.

In their Comment,[63] however, respondents offered a position essentially similar to those proffered by former Mayor Lim.

The Intervenors' Position on the Consolidated Petitions

On the other hand, the oil companies sought the outright dismissal of the petitions based on alleged procedural infirmities, among others, incomplete requisites of judicial review, violation of the principle of hierarchy of courts, improper remedy, submission of a defective verification and certification against forum shopping, and forum shopping.

As to the substantive issues, they maintain, among others, that the assailed ordinance is constitutional and valid; that the *Sangguniang Panlalawigan* is in the best position to determine the needs of its constituents; that it is a valid exercise of legislative power; that it does not violate health and environment-related provisions of the Constitution, laws, and international conventions and treaties to which the Philippines is a party; that the oil depots are not likely targets of terrorists; that the scaling down of the operations in Pandacan pursuant to the MOU has been followed; and that the people are safe in view of the safety measures installed in the Pandacan terminals.

Incidentally, in its Manifestation dated 30 November 2010,[64] Petron informed the Court that it will "cease [the] operation of its petroleum product storage facilities"[65] in the Pandacan oil terminal not later than

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62 Resolutions dated 20 October 2009, *rollo* in G.R. No. 187916, Vol. I (no proper pagination, should be 319-320; 15 June 2010, *rollo* in G.R. No. 187916, Vol. IV, pp. 1979-1980; 31 August 2010, *rollo* in G.R. No. No. 187916, Vol. IV, pp. 2002-2003; 31 May 2011, *rollo* in G.R. No. 187916, Vol. V, pp. 2347-2348; and 17 July 2012, *rollo* in G.R. No. 187836, Vol. VI, pp. 2746-2747.

63 *Rollo* in G.R. No. 187916, Vol. I, pp. 282-300.

64 *Id*., Vol. IV, pp. 2128-2132.

65 *Id.* at 2129.

January 2016 on account of the following:

> 2.01 Environmental issues, many of which are unfounded, continually crop up and tarnish the Company's image.
>
> 2.02. The location of its Pandacan terminal is continually threatened, and made uncertain preventing long-term planning, by the changing local government composition. Indeed, the relevant zoning ordinances have been amended three (3) times, and their validity subjected to litigation.[66]

Intervening Events

On 28 August 2012, while the Court was awaiting the submission of the Memorandum of respondents Vice-Mayor Domagoso and the councilors who voted in favor of the assailed Ordinance, the *Sangguniang Panlungsod*, which composition had already substantially changed, enacted Ordinance No. 8283[67] entitled "AN ORDINANCE AMENDING SECTION 2 OF

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66 *Id.*

67 *Id*., Vol. V, pp. 2661-2662.

The new Ordinance reads:

ORDINANCE NO. 8283

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 8187 BY RECLASSIFYING THE AREA WHERE PETROLEUM REFINERIES AND OIL DEPOTS ARE LOCATED FROM HEAVY INDUSTRIAL (1-3) TO HIGH INTENSITY COMMERCIAL/MIXED USE ZONE (C3/MXD)

Be it ordained by the City Council of Manila, in session, assembled, *THAT:*

SEC. 1. Section 2 of Ordinance No. 8187 shall be amended to read as follows:

"SEC. 2. The land use where the existing industries are located, the operation of which are permitted under Section 1 hereof, are hereby classified as Industrial Zone **except the area where petroleum refineries and oil depots are located, which shall be classified as High Intensity Commercial/Mixed Use Zone (C3/MXD)**."

SEC. 2. Owners or operators of petroleum refineries and oil depots, the operation of which are no longer permitted under Section 1 hereof, are hereby given a period until the end of January 2016 within which to relocate the operation of their businesses.

SEC. 3. The City Planning and Development Office shall prepare an amended zoning map and zoning boundaries which shall be submitted to the City Council for review.

SEC. 4. All ordinances or provisions which are inconsistent with the provisions of this Ordinance are hereby repealed, amended, rescinded or modified accordingly.

SEC. 5. This Ordinance shall take effect fifteen (15) days after its publication in accordance with law.

ORDINANCE NO. 8187 BY RECLASSIFYING THE AREA WHERE PETROLEUM REFINERIES AND OIL DEPOTS ARE LOCATED FROM HEAVY INDUSTRIAL (1-3) TO HIGH INTENSITY COMMERCIAL/MIXED USE ZONE (C3/MXD).

The new ordinance essentially amended the assailed ordinance to exclude the area where petroleum refineries and oil depots are located from the Industrial Zone.

Ordinance No. 8283 thus permits the operation of the industries operating within the Industrial Zone. However, the oil companies, whose oil depots are located in the High Intensity Commercial/Mixed Use Zone (C3/MXD), are given until the end of January 2016 within which to relocate their terminals.

Former Mayor Lim, who was then the incumbent mayor, did not support the amendment. Maintaining that the removal of the oil depots was prejudicial to public welfare, and, on account of the pending cases in the Supreme Court, he vetoed Ordinance No. 8283 on 11 September 2012.[68]

On 28 November 2012, former Mayor Lim filed a Manifestation informing this Court that the *Sangguniang Panlungsod* voted to override the veto, and that he, in turn, returned it again with his veto. He likewise directed the *Sangguniang Panlungsod* to append his written reasons for his veto of the Ordinance, so that the same will be forwarded to the President for his consideration in the event that his veto is overridden again.[69]

On 11 December 2012, Shell also filed a similar Manifestation.[70]

This Ordinance was finally enacted by the City Council of Manila on August 28, 2012.

PRESIDED BY:

FRANCISCO "Isko Moreno" DOMAGOSO
Vice-Mayor and Presiding Officer
City Council, Manila

[68] *Id.* at 2662.

The bottom portion of Ordinance No. 8283 reads:

BY HIS HONOR, THE MAYOR ON 11 Sept. 2012,
I veto this Ordinance for being prejudicial to public welfare and in view of the pending cases in the Supreme Court (G.R. No. 187836 and G.R. No. 187916)

[69] *Id.* at 2516-2518.

[70] *Id.* at 2526-2534.

Meanwhile, three days after former Mayor Lim vetoed the new ordinance, Atty. Luch R. Gempis, Jr. (Atty. Gempis), Secretary of the *Sangguniang Panlungsod*, writing on behalf of respondents Vice-Mayor Domagoso and the City Councilors of Manila who voted in favor of the assailed Ordinance, finally complied with this Court's Resolution dated 17 July 2012 reiterating its earlier directives[71] to submit the said respondents' Memorandum.

In his Compliance/Explanation with Urgent Manifestation[72] dated 13 September 2012, Atty. Gempis explained that it was not his intention to show disrespect to this Court or to delay or prejudice the disposition of the cases.

According to him, he signed the Comment prepared by respondents Vice-Mayor and the City Councilors only to attest that the pleading was personally signed by the respondents. He clarified that he was not designated as the legal counsel of the respondents as, in fact, he was of the impression that, pursuant to Section 481(b)(3) of the Local Government Code,[73] it is the City Legal Officer who is authorized to represent the local government unit or any official thereof in a litigation. It was for the same reason that he thought that the filing of a Memorandum may already be dispensed with when the City Legal Officer filed its own on 8 February 2010. He further explained that the Ordinance subject of these cases was passed during the 7th Council (2007-2010); that the composition of the 8th

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71 Resolutions dated 20 October 2009, *rollo* in G.R. No. 187916, Vol. I (no proper pagination, should be 319-320); 15 June 2010, *rollo* in G.R. No. 187916, Vol. IV, pp. 1979-1980; 31 August 2010, *rollo* in G.R. No. No. 187916, Vol. IV, pp. 2002-2003; 31 May 2011, *rollo* in G.R. No. 187916, Vol. V, pp. 2347-2348; and 17 July 2012, *rollo* in G.R. No. 187836, Vol. VI, pp. 2746-2747.

72 *Rollo* in G.R. No. 187916, Vol. IV, pp. 2495-2503.

73 SECTION 481. ***Qualifications, Term Powers and Duties.*** – x x x

x x x x

(b) The legal officer, the chief legal counsel of the local government unit, shall take charge of the office for legal services and shall:

x x x x

(3) In addition to the foregoing duties and functions, the legal officer shall:

(i) Represent the local government unit in all civil actions and special proceedings wherein the local government unit or any official thereof, in his official capacity, is a party: *Provided*, That, in actions or proceedings where a component city or municipality is a party adverse to the provincial government or to another component city or municipality, a special legal officer may be employed to represent the adverse party;

Council (2010-2013) had already changed after the 2010 elections; and that steps were already taken to amend the ordinance again. Hence, he was in a dilemma as to the position of the *Sangguniang Panlungsod* at the time he received the Court's Resolution of 31 May 2011.

Atty. Gempis, thus, prayed that the Court dispense with the filing of the required memorandum in view of the passing of Ordinance No. 8283.

Issue

The petitioners' arguments are primarily anchored on the ruling of the Court in G. R. No. 156052 declaring Ordinance No. 8027 constitutional and valid after finding that the presence of the oil terminals in Pandacan is a threat to the life and security of the people of Manila. From thence, the petitioners enumerated constitutional provisions, municipal laws and international treaties and conventions on health and environment protection allegedly violated by the enactment of the assailed Ordinance to support their position.

The resolution of the present controversy is, thus, confined to the determination of whether or not the enactment of the assailed Ordinance allowing the continued stay of the oil companies in the depots is, indeed, invalid and unconstitutional.

Our Ruling

We see no reason why Ordinance No. 8187 should not be stricken down insofar as the presence of the oil depots in Pandacan is concerned.

I

We first rule on the procedural issues raised by the respondents and the oil companies.

At the outset, let it be emphasized that the Court, in G.R. No. 156052, has already pronounced that the matter of whether or not the oil depots should remain in the Pandacan area is of transcendental importance to the residents of Manila.[74]

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[74] *Social Justice Society v. Hon. Atienza, Jr., supra* note 9 at 679.

We may, thus, brush aside procedural infirmities, if any, as we had in the past, and take cognizance of the cases[75] if only to determine if the acts complained of are no longer within the bounds of the Constitution and the laws in place.[76]

Put otherwise, there can be no valid objection to this Court's discretion to waive one or some procedural requirements if only to remove any impediment to address and resolve the serious constitutional question[77] raised in these petitions of transcendental importance, the same having far-reaching implications insofar as the safety and general welfare of the residents of Manila, and even its neighboring communities, are concerned.

Proper Remedy

Respondents and intervenors argue that the petitions should be outrightly dismissed for failure on the part of the petitioners to properly apply related provisions of the Constitution, the Rules of Court, and/or the Rules of Procedure for Environmental Cases relative to the appropriate remedy available to them.

To begin with, questioned is the applicability of Rule 65[78] of the Rules of Court to assail the validity and constitutionality of the Ordinance.

In that case, the Court held:

> x x x [The DOE] seeks to intervene in order to represent the interests of the members of the public who stand to suffer if the Pandacan Terminals' operations are discontinued. x x x Suffice it to say at this point that, for the purpose of hearing all sides and **considering the transcendental importance of this case**, we will also allow DOE's intervention. (Emphasis supplied)

75 *Santiago v. COMELEC*, 336 Phil. 848, 880 (1997) citing *Kilosbayan, Inc. v. Guingona*, G.R. No. 113375, 5 May 1994, 232 SCRA 110, 134 further citing the landmark *Emergency Powers Cases* (*Araneta v. Dinglasan*, 84 Phil. 368 (1949).

76 *Basco v. Phil. Amusements and Gaming Corporation*, 274 Phil. 323, 335 (1991) citing *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Hon. Tan*, 246 Phil. 380, 385 (1988).

77 *Association of Small Landowners in the Philippines, Inc. v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777, 798 (1989).

78 Sections 1 to 3, Rule 65 of the Rules of Court, provides:

> **Section 1.** *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> x x x x

… there is no appeal, or any plain,
speedy, and adequate remedy
in the ordinary course of law…

Rule 65 specifically requires that the remedy may be availed of only when "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law."[79]

Shell argues that the petitioners should have sought recourse before the first and second level courts under the Rules of Procedure for Environmental Cases,[80] which govern "the enforcement or violations of environmental and other related laws, rules and regulations."[81] Petron additionally submits that the most adequate remedy available to petitioners is to have the assailed ordinance repealed by the *Sangguniang Panlungsod*. In the alternative, a local referendum may be had. And, assuming that there were laws violated, the petitioners may file an action for each alleged violation of law against the particular individuals that transgressed the law.

It would appear, however, that the remedies identified by the intervenors prove to be inadequate to resolve the present controversies in their entirety owing to the intricacies of the circumstances herein prevailing.

The scope of the Rules of Procedure for Environmental Cases is embodied in Sec. 2, Part I, Rule I thereof. It states that the Rules shall

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> **Section 2.** *Petition for prohibition*. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.
>
> x x x x
>
> **Section 3.** *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

79 *Id.*

80 Resolution dated 13 April 2010 in A.M. No. 09-6-8-SC.

81 Sec. 2, Part I, Rule I, Rules of Procedure for Environmental Cases.

govern the procedure in civil, criminal and special civil actions before the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts, and the Regional Trial Courts involving enforcement or violations of environmental and other related laws, rules and regulations such as but not limited to the following:

> **(k) R.A. No. 6969, Toxic Substances and Hazardous Waste Act;**
>
> x x x x
>
> **(r) R.A. No. 8749, Clean Air Act**;
>
> x x x x
>
> (y) Provisions in C.A. No. 141, x x x; and **other existing laws that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources**.[82] (Emphasis supplied)

Notably, the aforesaid Rules are limited in scope. While, indeed, there are allegations of violations of environmental laws in the petitions, these only serve as collateral attacks that would support the other position of the petitioners – the protection of the right to life, security and safety.

Moreover, it bears emphasis that the promulgation of the said Rules was specifically intended to meet the following objectives:

> SEC. 3. *Objectives*.—The objectives of these Rules are:
>
> (a) To protect and advance the constitutional right of the people to a balanced and healthful ecology;
> (b) To provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties recognized under the Constitution, existing laws, rules and regulations, and international agreements;
> (c) To introduce and adopt innovations and best practices ensuring the effective enforcement of remedies and redress for violation of environmental laws; and
> (d) To enable the courts to monitor and exact compliance with orders and judgments in environmental cases.[83]

Surely, the instant petitions are not within the contemplation of these Rules.

Relative to the position of Petron, it failed to consider that these petitions are already a sequel to G.R. No. 156052, and that there are some

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82 *Id.*

83 Sec. 3, Part I, Rule I, Rules of Procedure for Environmental Cases.

issues herein raised that the remedies available at the level of the *Sangguniang Panlungsod* could not address. Neither could the filing of an individual action for each law violated be harmonized with the essence of a "plain, speedy, and adequate" remedy.

From another perspective, Shell finds fault with the petitioners' direct recourse to this Court when, pursuant to Section 5, Article VIII of the Constitution, the Supreme Court exercises only appellate jurisdiction over cases involving the constitutionality or validity of an ordinance.[84] Thus:

> **Section 5.** The Supreme Court shall have the following powers:
>
> x x x x
>
> 2. **Review, revise, reverse, modify, or affirm** on appeal or certiorari, as the law or the Rules of Court may provide, **final judgments and orders of lower courts** in:
>
> a. **All cases in which the constitutionality or validity of** any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, **ordinance**, or regulation is in question. (Emphasis supplied)

To further support its position, it cites the case of *Liga ng mga Barangay National v. City Mayor of Manila*,[85] where the petitioners sought the nullification of the mayor's executive order and the council's ordinance concerning certain functions of the petitioners that are vested in them by law. There, the Court held:

> *Second*, although the instant petition is styled as a petition for *certiorari*, in essence, it seeks the declaration by this Court of the unconstitutionality or illegality of the questioned ordinance and executive order. It, thus, partakes of the nature of a petition for declaratory relief over which this Court has only appellate, not original, jurisdiction.[86] Section 5, Article VIII of the Constitution provides: x x x
>
> As such, this petition must necessary fail, as this Court does not have original jurisdiction over a petition for declaratory relief even if only questions of law are involved.[87]

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84 *Rollo* in G.R. No. 187916, Vol. IV, pp. 2202-2203. Memorandum of Shell citing *Ortega v. Quezon City Government*, 506 Phil. 373 (2005).

85 465 Phil. 529 (2004).

86 *Id.* at 541 citing *Philnabank Employees Association v. Estanislao*, G.R. No. 104209, 16 November 1993, 227 SCRA 804, 811.

87 *Id.* at 542 citing *Tano v. Hon. Gov. Socrates*, 343 Phil. 670, 698 (1997); *Macasiano v. National Housing Authority*, G.R. No. 107921, 1 July 1993, 224 SCRA 236, 243.

Assuming that a petition for declaratory relief is the proper remedy, and that the petitions should have been filed with the Regional Trial Court, we have, time and again, resolved to treat such a petition as one for prohibition, provided that the case has far-reaching implications and transcendental issues that need to be resolved,[88] as in these present petitions.

On a related issue, we initially found convincing the argument that the petitions should have been filed with the Regional Trial Court, it having concurrent jurisdiction with this Court over a special civil action for prohibition, and original jurisdiction over petitions for declaratory relief.

However, as we have repeatedly said, the petitions at bar are of transcendental importance warranting a relaxation of the doctrine of hierarchy of courts.[89] In the case of *Jaworski v. PAGCOR*,[90] the Court ratiocinated:

> Granting *arguendo* that the present action cannot be properly treated as a petition for prohibition, **the transcendental importance of the issues involved in this case warrants that we set aside the technical defects and take primary jurisdiction over the petition at bar**. x x x **This is in accordance with the well-entrenched principle that rules of procedure are not inflexible tools designed to hinder or delay, but to facilitate and promote the administration of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate, rather than promote substantial justice, must always be eschewed**. (Emphasis supplied)

…persons aggrieved thereby…

As to who may file a petition for *certiorari*, prohibition or *mandamus*, Petron posits that petitioners are not among the "persons aggrieved" contemplated under Sections 1 to 3 of Rule 65 of the Rules of Court.

Chevron argues that petitioners, whether as "citizens," taxpayers," or legislators," lack the legal standing to assail the validity and constitutionality

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88 *Aquino v. COMELEC*, G.R. No. 189793, 7 April 2010, 617 SCRA 623, 638 citing *Del Mar v. Phil. Amusement and Gaming Corp.*, 400 Phil 307 (2000) and *Fortich v. Corona*, 352 Phil. 461 (1998).

89 *Del Mar v. Phil. Amusement and Gaming Corp.*, 400 Phil. 307 (2000); *Sen. Jaworski v. Phil. Amusement and Gaming Corp.*, 464 Phil. 375, 384 (2004).

90 *Sen. Jaworski v. Phil. Amusement and Gaming Corp.*, 464 Phil. 375, 385 (2004).

of Ordinance No. 8187. It further claims that petitioners failed to show that they have suffered any injury and/or threatened injury as a result of the act complained of.[91]

Shell also points out that the petitions cannot be considered taxpayers' suit, for then, there should be a claim that public funds were illegally disbursed and that petitioners have sufficient interest concerning the prevention of illegal expenditure of public money.[92] In G.R. No. 187916, Shell maintains that the petitioners failed to show their personal interest in the case and/or to establish that they may represent the general sentiments of the constituents of the City of Manila so as to be treated as a class suit. Even the minors, it argues, are not numerous and representative enough for the petition to be treated as a class suit. As to the city councilors who joined the petitioners in assailing the validity of Ordinance No. 8187, Shell posits that they cannot invoke the ruling in *Prof. David v. Pres. Macapagal-Arroyo*,[93] where the Court held that legislators may question the constitutionality of a statute, if and when it infringes upon their prerogatives as legislators, because of the absence of the allegation that the assailed ordinance indeed infringes upon their prerogatives.

Former Mayor Lim submitted a similar position supported by a number of cases on the concept of *locus standi*,[94] the direct injury test,[95] an outline of the stringent requirements of legal standing when suing as a citizen,[96] as a taxpayer,[97] as a legislator and in cases where class suits are filed in behalf of all citizens.[98]

Their arguments are misplaced.

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91 *Rollo* in G.R. No. 187916, Vol. IV, p. 2100. Memorandum of Chevron.

Chevron relied on the ruling in *Automotive Industry Workers Alliance v. Hon. Romulo*, 489 Phil. 710, 718 (2005) where the Court held:

> For a citizen to have standing, he must establish that he has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action.

92 *Id.*at 2222. Memorandum of Shell citing *Velarde v. Social Justice Society*, G.R. No. 159357, 28 April 2004, 428 SCRA 283 and *Kilosbayan, Inc. v. Morato*, 320 Phil. 171 (1995)

93 522 Phil. 705 (2006).

94 *Id.* at 1859 citing *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830 (2003).

95 *Id.* citing *Tolentino v. COMELEC*, 465 Phil. 385 (2004).

96 *Rollo* in G.R. No. 187916, Vol. IV, pp. 1858-1859 citing *Francisco v. House of Representatives*, 460 Phil. 830 (2003).

97 *Id.*; *Velarde v. Social Justice Society*, G.R. No. 159357, 28 April 2004, 428 SCRA 283.

98 *Id*.; *Id*. at 1863 citing *Oposa v. Factoran, Jr.*, G.R. No. 101083, 30 July 1993, 224 SCRA 792.

In G.R. No. 156052, we ruled that the petitioners in that case have a legal right to seek the enforcement of Ordinance No. 8027 because the subject of the petition concerns a public right, and they, as residents of Manila, have a direct interest in the implementation of the ordinances of the city. Thus:

> To support the assertion that petitioners have a clear legal right to the enforcement of the ordinance, petitioner SJS states that it is a political party registered with the Commission on Elections and has its offices in Manila. It claims to have many members who are residents of Manila. The other petitioners, Cabigao and Tumbokon, are allegedly residents of Manila.
>
> We need not belabor this point. We have ruled in previous cases that when a *mandamus* proceeding concerns a public right and its object is to compel a public duty, the people who are interested in the execution of the laws are regarded as the real parties in interest and they need not show any specific interest. Besides, as residents of Manila, petitioners have a direct interest in the enforcement of the city's ordinances.[99] x x x (Citations omitted)

No different are herein petitioners who seek to prohibit the enforcement of the assailed ordinance, and who deal with the same subject matter that concerns a public right. Necessarily, the people who are interested in the nullification of such an ordinance are themselves the real parties in interest, for which reason, they are no longer required to show any specific interest therein. Moreover, it is worth mentioning that SJS, now represented by SJS Officer Alcantara, has been recognized by the Court in G.R. No. 156052 to have legal standing to sue in connection with the same subject matter herein considered. The rest of the petitioners are residents of Manila. Hence, all of them have a direct interest in the prohibition proceedings against the enforcement of the assailed ordinance.

In the case of *Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. (IDEALS, INC.) v. Power Sector Assets and Liabilities Management Corporation (PSALM)*,[100] involving a petition for *certiorari* and prohibition to permanently enjoin PSALM from selling the Angat Hydro-Electric Power Plant (AHEPP) to Korea Water Resources Corporation (K-Water), the Court ruled:

> "Legal standing" or *locus standi* has been defined as a personal and substantial interest in the case such that the party has sustained or will

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99 *Social Justice Society v. Mayor Atienza, Jr., supra* note 8 at 492-493.

100 G.R. No. 192088, 9 October 2012, 682 SCRA 602.

> sustain direct injury as a result of the governmental act that is being challenged, alleging more than a generalized grievance. x x x This Court, however, has adopted a liberal attitude on the locus standi of a petitioner where the petitioner is able to craft an issue of transcendental significance to the people, as when the issues raised are of paramount importance to the public. **Thus, when the proceeding involves the assertion of a public right, the mere fact that the petitioner is a citizen satisfies the requirement of personal interest.**
>
> There can be no doubt that the matter of ensuring adequate water supply for domestic use is one of paramount importance to the public. That the continued availability of potable water in Metro Manila might be compromised if PSALM proceeds with the privatization of the hydroelectric power plant in the Angat Dam Complex confers upon petitioners such personal stake in the resolution of legal issues in a petition to stop its implementation.[101] (Emphasis supplied; citations omitted)

In like manner, the preservation of the life, security and safety of the people is indisputably a right of utmost importance to the public. Certainly, the petitioners, as residents of Manila, have the required personal interest to seek relief from this Court to protect such right.

… in excess of its or his jurisdiction,
or with grave abuse of discretion
amounting to lack or excess of jurisdiction…

Petron takes issue with the alleged failure of the petitioners to establish the facts with certainty that would show that the acts of the respondents fall within the parameters of the grave abuse of discretion clause settled by jurisprudence, to wit:

> x x x "[G]rave abuse of discretion" means such **capricious and whimsical exercise of judgment** as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.[102]

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101 *Id.* at 633-634.

102 *Rollo* in G.R. No. 187836, Vol. V, p. 2144-2145. Memorandum of Petron citing *Aduan v. Chong*, G.R. No. 172796, 13 July 2009, 592 SCRA 508; see also *Tañada v. Angara*, 338 Phil. 546 (1997); *Duero v. Court of Appeals*, 424 Phil. 12 (2002); *D.M. Consunji v. Esguerra*, 328 Phil. 1168 (1996); and *Planters Products, Inc. v. Court of Appeals*, 271 Phil. 592 (1991) citing *Carson v. Judge Pantanosas, Jr.*, 259 Phil. 628 (1989).

It is pointless to discuss the matter at length in these instant cases of transcendental importance in view of the Court's pronouncement, in *Magallona v. Ermita.*[103] There it held that the writs of *certiorari* and prohibition are proper remedies to test the constitutionality of statutes, notwithstanding the following defects:

> In praying for the dismissal of the petition on preliminary grounds, respondents seek a strict observance of the offices of the writs of certiorari and prohibition, **noting that the writs cannot issue absent any showing of grave abuse of discretion in the exercise of judicial, quasi-judicial or ministerial powers on the part of respondents** and resulting prejudice on the part of petitioners.
>
> Respondents' submission holds true in ordinary civil proceedings. When this Court exercises its constitutional power of judicial review, however, we have, by tradition, viewed the writs of *certiorari* and prohibition as proper remedial vehicles **to test the constitutionality of** statutes, and indeed, of **acts of other branches of government**. **Issues of constitutional import** x x x **carry such relevance in the life of this nation that the Court inevitably finds itself constrained to take cognizance of the case and pass upon the issues raised, non-compliance with the letter of procedural rules notwithstanding**. The statute sought to be reviewed here is one such law.[104] (Emphasis supplied; citations omitted)

Requisites of judicial review

For a valid exercise of the power of judicial review, the following requisites shall concur: (1) the existence of a legal controversy; (2) legal standing to sue of the party raising the constitutional question; (3) a plea that judicial review be exercised at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case.[105]

Only the first two requisites are put in issue in these cases.

On the matter of the existence of a legal controversy, we reject the contention that the petitions consist of bare allegations based on speculations, surmises, conjectures and hypothetical grounds.

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103 G.R. No. 187167, 16 August 2011, 655 SCRA 476.

104 *Id.* at 487-488.

105 *IBP v. Zamora*, 392 Phil. 618, 632 (2000) citing *Philippine Constitution Association v. Enriquez*, G.R. Nos. 113105, 113174, 113766 and 113888, 19 August 1994, 235 SCRA 506 citing *Luz Farms v. Secretary of the Department of Agrarian Reform*, G.R. No. 86889, 4 December 1990, 192 SCRA 51; *Dumlao v. Commission on Elections*, 184 Phil. 369 (1980); and *People v. Vera*, 65 Phil. 56 (1937).

The Court declared Ordinance No. 8027 valid and constitutional and ordered its implementation. With the passing of the new ordinance containing the contrary provisions, it cannot be any clearer that here lies an actual case or controversy for judicial review. The allegation on this, alone, is sufficient for the purpose.

The second requisite has already been exhaustively discussed.

Proof of identification required in the notarization of the verification and certification against forum shopping in G.R. No. 187916

At the bottom of the Verification and Certification against Forum Shopping of the petition in G.R. No. 187916 is the statement of the notary public to the effect that the affiant, in his presence and after presenting "an integrally competent proof of identification with signature and photograph,"[106] signed the document under oath.

Citing Sec. 163 of the Local Government Code,[107] which provides that an individual acknowledging any document before a notary public shall present his Community Tax Certificate (CTC), Chevron posits that the petitioner's failure to present his CTC rendered the petition fatally defective warranting the outright dismissal of the petition.

We disagree.

The verification and certification against forum shopping are governed specifically by Sections 4 and 5, Rule 7 of the Rules of Court.

Section 4 provides that a pleading, when required to be verified, shall be treated as an unsigned pleading if it lacks a proper verification while

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106 *Rollo* in G.R. No. 187916, Vol. I, p. 62. Urgent Petition for Prohibition, *Mandamus* and *Certiorari*.

107 *Rollo* in G.R. No. 187916, Vol. IV, p. 2097.

> Sec. 163. ***Presentation of Community Tax Certificate on Certain Occassions***. – (a) **When an individiual subject to the community tax acknowledges any document before a notary public**, takes the oath of office upon election or appointment to any position in the government service; receives any license, certificate, or permit from any public authority; pays any tax or fee; receives any money from any public fund; transacts other official business; or receives any salary or wage from any person or corporation, it shall be the duty of any person, officer or corporation with whom such transaction is made or business done or from whom any salary or wage is received to reequire such individual **to exhibit the community tax certificate**. x x x. (Emphasis and underscoring in the Memorandum of Chevron)

Section 5 requires that the certification to be executed by the plaintiff or principal party be under oath.

These sections, in turn, should be read together with Sections 6 and 12, Rule 2 of the 2004 Rules on Notarial Practice.

Section 6[108] of the latter Rules, specifically, likewise provides that any competent evidence of identity specified under Section 12 thereof may now be presented before the notary public, to wit:

> SEC. 12. Competent Evidence of Identity. - The phrase "competent evidence of identity" refers to the identification of an individual based on:
>
> (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disable Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification; or
> (b) x x x.[109]

Forum shopping

Shell contends that the petitioners in G.R. No. 187836 violated the rule against forum shopping allegedly because all the elements thereof are present in relation to G.R. No. 156052, to wit:

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108 Sec. 6. *Jurat*. - "Jurat" refers to an act in which an individual on a single occasion:
(a) appears in person before the notary public and presents an instrument or document;
(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;
(c) signs the instrument or document in the presence of the notary; and
(d) takes an oath or affirmation before the notary public as to such instrument or document.

109 As amended by Resolution dated 19 February 2008 in A.M. No. 02-8-13-SC.

1. "identity of parties, or at least such parties who represent the same interests in both actions" –

According to Shell, the interest of petitioner SJS in G.R. No. 156052 and the officers of SJS in G.R. No. 187836 are clearly the same. Moreover, both actions implead the incumbent mayor of the City of Manila as respondent. Both then respondent Mayor Atienza in G.R. No. 156052 and respondent former Mayor Lim in G.R. No. 187836 are sued in their capacity as Manila mayor.

2. "identity of rights asserted and relief prayed for, the relief being founded on the same fact(s)" –

Shell contends that, in both actions, petitioners assert the same rights to health and to a balanced and healthful ecology relative to the fate of the Pandacan terminal, and seek essentially the same reliefs, that is, the removal of the oil depots from the present site.

3. "the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other" –

Relative to the filing of the *Manifestation and Motion to: a) Stop the City Council of Manila from further hearing the amending ordinance to Ordinance No. 8027 x x x* (*Manifestation and Motion)* and *Very Urgent Motion to Stop the Mayor of the City of Manila from Signing Draft Ordinance No. 7177* [now Ordinance No. 8187] *and to Cite Him for Contempt if He Would Do So* (*Urgent Motion)* both in G.R. No. 156052, Shell points out the possibility that the Court would have rendered conflicting rulings "on cases involving the same facts, parties, issues and reliefs prayed for."[110]

We are not persuaded.

In *Spouses Cruz v. Spouses Caraos*,[111] the Court expounded on the nature of forum shopping. Thus:

> Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal

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110 *Rollo* in G.R. No. 187916, Vol. IV, p. 2216.

111 550 Phil. 98 (2007).

> or special civil action for *certiorari.* It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. The established rule is that for forum shopping to exist, both actions must involve the same transactions, same essential facts and circumstances and must raise identical causes of actions, subject matter, and issues. x x x[112] (Citations omitted)

It bears to stress that the present petitions were initially filed, not to secure a judgment adverse to the first decision, but, precisely, to enforce the earlier ruling to relocate the oil depots from the Pandacan area.

As to the matter of the denial of the petitioners' *Manifestation* and *Urgent Motion* in G.R. No. 156052, which were both incidental to the enforcement of the decision favorable to them brought about by the intervening events after the judgment had become final and executory, and which involve the same Ordinance assailed in these petitions, we so hold that the filing of the instant petitions is not barred by *res judicata.*

In the same case of *Spouses Cruz v. Spouses Caraos* involving the re-filing of a complaint, which had been earlier dismissed without qualification that the dismissal was with prejudice, and which had not been decided on the merits, the Court declared that such re-filing did not amount to forum shopping. It ratiocinated:

> It is not controverted that the allegations of the respective complaints in both Civil Case No. 95-1387 and Civil Case No. 96-0225 are *similarly worded*, and are identical in all relevant details, including typographical errors, except for the additional allegations in support of respondents' prayer for the issuance of preliminary injunction in Civil Case No. 95-1387. It is similarly not disputed that both actions involve the same transactions; same essential facts and circumstances; and raise identical causes of actions, subject matter, and issues.
>
> x x x x
>
> x x x The dismissal of Civil Case No. 95-1387 was without prejudice. Indeed, the Order dated 20 November 1995, dismissing Civil Case No. 95-1387 was an unqualified dismissal. More significantly, its dismissal was not based on grounds under paragraphs (f), (h), and (i) of Section 1 of Rule 16 of the Rules of Court, which dismissal shall bar the refiling of the same action or claim as crystallized in Section 5 of Rule 16 thereof, thus:

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112 *Id.* at 107.

> SEC. 5. *Effect of dismissal.* – Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h), and (i) of section 1 hereof shall bar the refiling of the same action or claim.

From the foregoing, it is clear that dismissals under paragraphs (f), (h), and (i) of Section 1 of Rule 16 of the Rules of Court constitute *res judicata*, to wit:

> (f) That the cause of action is barred by a prior judgment or by the statute of limitations;
>
> x x x x
>
> (h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
>
> (i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds.

Res judicata or bar by prior judgment is a doctrine which holds that a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause. *Res judicata* exists when the following elements are present: (a) the former judgment must be final; (b) the court which rendered judgment had jurisdiction over the parties and the subject matter; (3) **it must be a judgment on the merits**; and (d) and there must be, between the first and second actions, identity of parties, subject matter, and cause of action.[113] (Emphasis supplied; citations omitted)

Here, it should be noted that this Court denied the said *Manifestation* and *Urgent Motion*, and refused to act on the succeeding pleadings, for being moot.[114] Clearly, the merits of the motion were not considered by the Court. The following disquisition of the Court in *Spouses Cruz v. Spouses Caraos* is further enlightening:

> The judgment of dismissal in Civil Case No. 95-1387 does not constitute *res judicata* to sufficiently bar the refiling thereof in Civil Case No. 96-0225. As earlier underscored, the dismissal was one without prejudice. Verily, it was not a judgment on the merits. **It bears reiterating that a judgment on the merits is one rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point.** The dismissal of the case without prejudice indicates the

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113 *Id.* at 108-110.

114 *Rollo* in G.R. No. 156052 (no proper pagination, should be p. 1844). Resolution dated 2 June 2009.

> absence of a decision on the merits and leaves the parties free to litigate the matter in a subsequent action as though the dismissed action had not been commenced.[115] (Emphasis supplied; citations omitted)

Considering that there is definitely no forum shopping in the instant cases, we need not discuss in detail the elements of forum shopping.

II

The Local Government Code of 1991 expressly provides that the *Sangguniang Panlungsod* is vested with the power to "reclassify land within the jurisdiction of the city"[116] subject to the pertinent provisions of the Code. It is also settled that an ordinance may be modified or repealed by another ordinance.[117] These have been properly applied in G.R. No. 156052, where the Court upheld the position of the *Sangguniang Panlungsod* to reclassify the land subject of the Ordinance,[118] and declared that the mayor has the duty to enforce Ordinance No. 8027, provided that it has not been repealed by the *Sangguniang Panlungsod* or otherwise annulled by the courts.[119] In the same case, the Court also used the principle that the *Sanguniang Panlungsod* is in the best position to determine the needs of its constituents[120] – that the removal of the oil depots from the Pandacan area is necessary "to protect the residents of Manila from catastrophic devastation in case of a terrorist attack on the Pandacan Terminals."[121]

Do all these principles equally apply to the cases at bar involving the same subject matter to justify the contrary provisions of the assailed Ordinance?

We answer in the negative.

We summarize the position of the *Sangguniang Panlungsod* on the matter subject of these petitions. In 2001, the *Sanggunian* found the relocation of the Pandacan oil depots necessary. Hence, the enactment of Ordinance No. 8027.

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115 *Supra* note 110 at 110-111.
116 Section 458(a)(2)(viii), Local Government Code.
117 *Tuzon v. Court of Appeals*, G.R. No. 90107, 21 August 1992, 212 SCRA 739, 747.
118 *Social Justice Society v. Hon. Atienza, Jr.* applying Section 458(a)(2)(viii) of the Local Government Code.
119 *Social Justice Society v. Mayor Atienza, Jr., supra* note 8 at 493 citing *supra* note 116.
120 *Social Justice Society v. Hon. Atienza, Jr., supra* note 9 at 703.
121 *Id*. at 702.

In 2009, when the composition of the *Sanggunian* had already changed, Ordinance No. 8187 was passed in favor of the retention of the oil depots. In 2012, again when some of the previous members were no longer re-elected, but with the Vice-Mayor still holding the same seat, and pending the resolution of these petitions, Ordinance No. 8283 was enacted to give the oil depots until the end of January 2016 within which to transfer to another site. Former Mayor Lim stood his ground and vetoed the last ordinance.

In its Comment, the 7th Council (2007-2010) alleged that the assailed Ordinance was enacted to alleviate the economic condition of its constituents.[122]

Expressing the same position, former Mayor Lim even went to the extent of detailing the steps[123] he took prior to the signing of the Ordinance, if only to show his honest intention to make the right decision.

The fact remains, however, that notwithstanding that the conditions with respect to the operations of the oil depots existing prior to the enactment of Ordinance No. 8027 do not substantially differ to this day, as would later be discussed, the position of the *Sangguniang Panlungsod* on the matter has thrice changed, largely depending on the new composition of the council and/or political affiliations. The foregoing, thus, shows that its determination of the "general welfare" of the city does not after all gear towards the protection of the people in its true sense and meaning, but is, one way or another, dependent on the personal preference of the members who sit in the council as to which particular sector among its constituents it wishes to favor.

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122 *Rollo* in G.R. No. 187916, Vol. I, p. 296. Comment of respondents Vice-Mayor Domagoso and the City Councilors who voted in favor of the assailed Ordinance.

123 Id., Vol. IV, pp. 1852-1857. Memorandum of former Mayor Lim.

> Former Mayor Lim narrated that when he received the draft Ordinance for his approval, he did not readily act upon it but took the time to seriously study the pros and cons of enacting the Ordinance; that he issued Executive Order No. 18 creating an ad hoc panel to conduct a study thereon; that the Assistant City Treasurer of Manila submitted to him a list of properties that would be affected by the proposed ordinance and the real property taxes they paid from 2007 to 2009; that he conducted a stakeholders' consultative meeting composed of some Cabinet Secretaries and other officials, including the Joint Foreign Chamber of Commerce of the Philippines; that Engr. Rodolfo H. Catu (Engr. Catu), Officer in Charge of the City Planning and Development Office, together with the ad hoc panel earlier created, conducted an ocular inspection of the Pandacan Terminal, and submitted a favorable recommendation; that he also sought guidance from His Eminence, Gaudencio Cardinal Rosales; that he received a profile of the safety and security features installed at the Pandacan oil depots from Shell; that he likewise personally conducted an ocular inspection where he was assured by then President Arroyo and her cabinet secretaries, who happened to visit the site on the same day, that they interpose no objection to the proposed ordinance; and that the European Chamber of Commerce expressed support to the ordinance. It was only then that he made a decision to approve the Ordinance.

Now that the City of Manila, through the mayor and the city councilors, has changed its view on the matter, favoring the city's economic-related benefits, through the continued stay of the oil terminals, over the protection of the very lives and safety of its constituents, it is imperative for this Court to make a final determination on the basis of the facts on the table as to which specific right of the inhabitants of Manila should prevail. For, in this present controversy, history reveals that there is truly no such thing as "the will of Manila" insofar as the general welfare of the people is concerned.

If in sacrilege, in free translation of Angara[124] by Justice Laurel, we say when the judiciary mediates we do not in reality nullify or invalidate an act of the Manila *Sangguniang Panlungsod*, but only asserts the solemn and sacred obligation assigned to the Court 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.

III

The measures taken by the intervenors to lend support to their position that Manila is now safe despite the presence of the oil terminals remain ineffective. These have not completely removed the threat to the lives of the inhabitants of Manila.

In G.R. No. 156052, the validity and constitutionality of Ordinance No. 8027 was declared as a guarantee for the protection of the constitutional right to life of the residents of Manila. There, the Court said that the enactment of the said ordinance was a valid exercise of police power with the concurrence of the two requisites: a lawful subject – "to safeguard the rights to life, security and safety of all the inhabitants of Manila;"[125] and a lawful method – the enactment of Ordinance No. 8027 reclassifying the land use from industrial to commercial, which effectively ends the continued stay of the oil depots in Pandacan.[126]

In the present petitions, the respondents and the oil companies plead that the Pandacan Terminal has never been one of the targets of terrorist

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124 *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).
125 *Social Justice Society v. Hon. Atienza, Jr., supra* note 9.
126 *Id.* at 704-707.

attacks;[127] that the petitions were based on unfounded fears and mere conjectures;[128] and that the possibility that it would be picked by the terrorists is nil given the security measures installed thereat.[129]

The intervenors went on to identify the measures taken to ensure the safety of the people even with the presence of the Pandacan Terminals. Thus:

1. Chevron claims that it, together with Shell and Petron, continues to enhance the safety and security features of the terminals. They likewise adopt fire and product spill prevention measures in accordance with the local standards set by the Bureau of Fire Protection, among others, and with the international standards of the American Petroleum Industry ("API") and the National Fire Prevention and Safety Association ("NFPSA"); that since 1914, the oil depots had not experienced **"any incident beyond the ordinary risks and expectations"**[130] of the residents of Manila; and that it received a passing grade on the safety measures they installed in the facilities from the representatives of the City of Manila who conducted an ocular inspection on 22 May 2009; and

2. Referring to the old MOU entered into between the City of Manila and the DOE, on the one hand, and the oil companies, on the other, where the parties thereto conceded and acknowledged that the scale-down option for the Pandacan Terminal operations is the best alternative to the relocation of the terminals, Shell enumerates the steps taken to scale down its operations.

As to the number of main fuel tanks, the entire Pandacan Terminal has already decommissioned twenty-eight out of sixty-four tanks. Speaking for Shell alone, its LPG Spheres, which it claims is the only product that may cause explosion, was part of those decommissioned, thereby allegedly removing the danger of explosion. Safety buffer zones and linear/green parks were likewise created to separate the terminal from the nearest residential area. Shell's portion of the oil depot is likewise allegedly equipped with the latest technology to ensure air-quality control and water-quality control, and to prevent and cope with possible oil spills with a crisis management plan in place in the event that an oil spill occurs. Finally, Shell claims that the recommendations of EQE International in its Quantitative

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127 *Rollo* in G.R. No. 187916, Vol. IV, pp. 2103-2104. Memorandum of Chevron; *rollo* in G.R. No. 187836, Vol. V, pp. 2220-2225. Memorandum of Petron.

128 *Id.* at 1883. Memorandum of former Mayor Lim.

129 *Id.* at 2285-2310. Memorandum of Shell.

130 *Id.* at 2112. Memorandum of Chevron. Emphasis supplied.

Risk Assessment (QRA) study, which it says is one of the leading independent risk assessment providers in the world and largest risk management consultancy, were sufficiently complied with; and that, on its own initiative, it adopted additional measures for the purpose, for which reason, "the individual **risk level** resulting from any incident occurring from the Pandacan Terminal, per the QRA study, is **twenty (20) times lower** compared to the individual risk level of an average working or domestic environment."[131]

We are not persuaded.

The issue of whether or not the Pandacan Terminal is not a likely target of terrorist attacks has already been passed upon in G. R. No. 156052. Based on the assessment of the Committee on Housing, Resettlement and Urban Development of the City of Manila and the then position of the *Sangguniang Panlungsod*,[132] the Court was convinced that the threat of terrorism is imminent. It remains so convinced.

Even assuming that the respondents and intervenors were correct, the very nature of the depots where millions of liters of highly flammable and highly volatile products, regardless of whether or not the composition may cause explosions, has no place in a densely populated area. Surely, any untoward incident in the oil depots, be it related to terrorism of whatever origin or otherwise, would definitely cause not only destruction to properties within and among the neighboring communities but certainly mass deaths and injuries.

With regard to the scaling down of the operations in the Pandacan Terminals, which the oil companies continue to insist to have been validated and recognized by the MOU, the Court, in G.R. No. 156052, has already put this issue to rest. It specifically declared that even assuming that the terms of the MOU and Ordinance No. 8027 were inconsistent, the resolutions ratifying the MOU gave it full force and effect only until 30 April 2003.[133]

The steps taken by the oil companies, therefore, remain insufficient to convince the Court that the dangers posed by the presence of the terminals in a thickly populated area have already been **completely removed**.

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131 *Id.* at 2280. Memorandum of Shell.

132 *Social Justice Society v. Hon. Atienza, Jr., supra* note 9 at 702-703.

133 *Social Justice Society v. Mayor Atienza, Jr., supra* note 8 at 494.

For, given that the threat sought to be prevented may strike at one point or another, no matter how remote it is as perceived by one or some, we cannot allow the right to life to be dependent on the unlikelihood of an event. Statistics and theories of probability have no place in situations where the very life of not just an individual but of residents of big neighborhoods is at stake.

IV

It is the removal of the danger to life not the mere subdual of risk of catastrophe, that we saw in and made us favor Ordinance No. 8027. That reason, unaffected by Ordinance No. 8187, compels the affirmance of our Decision in G.R. No. 156052.

In striking down the contrary provisions of the assailed Ordinance relative to the continued stay of the oil depots, we follow the same line of reasoning used in G.R. No. 156052, to wit:

> Ordinance No. 8027 was enacted "for the purpose of promoting sound urban planning, ensuring health, public safety and general welfare" of the residents of Manila. The *Sanggunian* was impelled to take measures to protect the residents of Manila from catastrophic devastation in case of a terrorist attack on the Pandacan Terminals. Towards this objective, the *Sanggunian* reclassified the area defined in the ordinance from industrial to commercial.
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> The following facts were found by the Committee on Housing, Resettlement and Urban Development of the City of Manila which recommended the approval of the ordinance:
>
> (1) the depot facilities contained 313.5 million liters of highly flammable and highly volatile products which include petroleum gas, liquefied petroleum gas, aviation fuel, diesel, gasoline, kerosene and fuel oil among others;
> (2) the depot is open to attack through land, water or air;
> (3) it is situated in a densely populated place and near Malacañang Palace; and
> (4) in case of an explosion or conflagration in the depot, the fire could spread to the neighboring communities.
>
> The ordinance was intended to safeguard the rights to life, security and safety of all the inhabitants of Manila and not just of a particular class. The depot is perceived, rightly or wrongly, as a representation of western interests which means that it is a terrorist target. As long as it (sic) there is such a target in their midst, the residents of Manila are not safe. It

therefore became necessary to remove these terminals to dissipate the threat. According to respondent:

> Such a public need became apparent after the 9/11 incident which showed that what was perceived to be impossible to happen, to the most powerful country in the world at that, is actually possible. The destruction of property and the loss of thousands of lives on that fateful day became the impetus for a public need. In the aftermath of the 9/11 tragedy, the threats of terrorism continued [such] that it became imperative for governments to take measures to combat their effects.
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> x x x x
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> Both law and jurisprudence support the constitutionality and validity of Ordinance No. 8027. Without a doubt, there are no impediments to its enforcement and implementation. Any delay is unfair to the inhabitants of the City of Manila and its leaders who have categorically expressed their desire for the relocation of the terminals. Their power to chart and control their own destiny and preserve their lives and safety should not be curtailed by the intervenors' warnings of doomsday scenarios and threats of economic disorder if the ordinance is enforced.[134]

The same best interest of the public guides the present decision. The Pandacan oil depot remains a terrorist target even if the contents have been lessened. In the absence of any convincing reason to persuade this Court that the life, security and safety of the inhabitants of Manila are no longer put at risk by the presence of the oil depots, we hold that Ordinance No. 8187 in relation to the Pandacan Terminals is invalid and unconstitutional.

There is, therefore, no need to resolve the rest of the issues.

Neither is it necessary to discuss at length the test of police power against the assailed ordinance. Suffice it to state that the objective adopted by the *Sangguniang Panlungsod* to promote the constituents' general welfare in terms of economic benefits cannot override the very basic rights to life, security and safety of the people.

In. G.R. No. 156052, the Court explained:

> Essentially, the oil companies are fighting for their right to property. They allege that they stand to lose billions of pesos if forced to

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134 *Social Justice Society v. Hon. Atienza, Jr., supra* note 9 at 702-720.

> relocate. However, based on the hierarchy of constitutionally protected rights, the right to life enjoys precedence over the right to property. The reason is obvious: life is irreplaceable, property is not. When the state or LGU's exercise of police power clashes with a few individuals' right to property, the former should prevail.[135]

We thus conclude with the very final words in G.R. No. 156052:

> On Wednesday, January 23, 2008, a defective tanker containing 2,000 liters of gasoline and 14,000 liters of diesel exploded in the middle of the street a short distance from the exit gate of the Pandacan Terminals, causing death, extensive damage and a frightening conflagration in the vicinity of the incident. Need we say anthing about what will happen if it is the estimated 162 to 211 million liters [or whatever is left of the 26 tanks] of petroleum products in the terminal complex will blow up?[136]

V

As in the prequel case, we note that as early as October 2001, the oil companies signed a MOA with the DOE obliging themselves to:

> ... undertake a comprehensive and comparative study ... [which] shall include the preparation of a Master Plan, whose aim is to determine the scope and timing of the feasible location of the Pandacan oil terminals and all associated facilities and infrastructure including government support essential for the relocation such as the necessary transportation infrastructure, land and right of way acquisition, resettlement of displaced residents and environmental and social acceptability which shall be based on mutual benefit of the Parties and the public.

such that:

> Now that they are being compelled to discontinue their operations in the Pandacan Terminals, they cannot feign unreadiness considering that they had years to prepare for this eventuality.[137]

On the matter of the details of the relocation, the Court gave the oil companies the following time frames for compliance:

> To ensure the orderly transfer, movement and relocation of assets and personnel, the intervenors Chevron Philippines Inc., Petron

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135 *Id.* at 720.
136 *Id.* at 722-723.
137 *Id.* at 721.

> Corporation and Pilipinas Shell Petroleum Corporation shall, within a non-extendible period of ninety (90) days, submit to the Regional Trial Court of Manila, Branch 39, the comprehensive plan and relocation schedule which have allegedly been prepared. The presiding judge of Manila RTC, Branch 39 will monitor the strict enforcement of this resolution.[138]

The periods were given in the Decision in G.R. No. 156052 which became final on 23 April 2009. Five years have passed, since then. The years of non-compliance may be excused by the swing of local legislative leads. We now stay the sway and begin a final count.

A comprehensive and well-coordinated plan within a specific time-frame shall, therefore, be observed in the relocation of the Pandacan Terminals. The oil companies shall be given a fresh non-extendible period of forty-five (45) days from notice within which to submit to the Regional Trial Court, Branch 39, Manila an updated comprehensive plan and relocation schedule. The relocation, in turn, shall be completed not later than six months from the date of their submission.

Finally, let it be underscored that after the last Manifestation filed by Shell informing this Court that respondent former Mayor Lim vetoed Ordinance No. 8283 for the second time, and was anticipating its referral to the President for the latter's consideration, nothing was heard from any of the parties until the present petitions as to the status of the approval or disapproval of the said ordinance. As it is, the fate of the Pandacan Terminals remains dependent on this final disposition of these cases.

VI

On the matter of the failure of Atty. Gempis to immediately comply with the directives of this Court to file the Memorandum for the Vice-Mayor and the city councilors who voted in favor of the assailed Ordinance, the records do not bear proof that he received a copy of any of the resolutions pertaining to the filing of the Memorandum.

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138 *Id.* at 723.

A narration of the events from his end would show, however, that he was aware of the directive issued in 2009 when he stated that "when the City Legal Officer filed its Memorandum dated 8 February 2010, [he] thought the filing of a Memorandum for the other respondent city officials could be dispensed with."[139] There was also a categorical admission that he received the later Resolution of 31 May 2011 but that he could not prepare a Memorandum defending the position of respondents vice-mayor and the city councilors who voted in favor of Ordinance No. 8187 in view of the on-going drafting of Ordinance No. 8283, which would change the position of the *Sanggunian*, if subsequently approved.

The reasons he submitted are not impressed with merit.

That he was not officially designated as the counsel for the vice-mayor and the city councilors is beside the point. As an officer of the court, he cannot feign ignorance of the fact that "a resolution of this Court is not a mere request but an order which should be complied with promptly and completely."[140] As early as 2009, he should have immediately responded and filed a Manifestation and therein set forth his reasons why he cannot represent the vice-mayor and the city councilors. And, even assuming that the 31 May 2011 Resolution was the first directive he personally received, he had no valid excuse for disregarding the same. Worse, the Court had to issue a show cause order before he finally heeded.

Atty. Gempis should "strive harder to live up to his duties of observing and maintaining the respect due to the courts, respect for law and for legal processes and of upholding the integrity and dignity of the legal profession in order to perform his responsibilities as a lawyer effectively."[141]

In *Sibulo v. Ilagan*,[142] which involves a lawyer's repeated failure to comply with the directives of the Court, the penalty recommended by the Integrated Bar of the Philippines was reduced from suspension to reprimand and a warning. The Court ratiocinated:

> Considering, however, that respondent was absolved of the administrative charge against him and is being taken to task for his intransigence and lack of respect, the Court finds that the penalty of suspension would not be warranted under the circumstances.

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139 *Rollo* in G.R. No. 187916, Vol. V, p. 2496. Compliance/Explanation with Urgent Manifestation of Atty. Gempis, Jr.

140 *Gone v. Atty. Macario Ga*, A.C. No. 7771, 6 April 2011, 647 SCRA 243, 250.

141 *Sibulo v. Ilagan*, 486 Phil. 197, 204 (2004) citing Canons 1, 7, and 11, Code of Professional Responsibility.

142 *Id.*

> x x x x
>
> To the Court's mind, a reprimand and a warning are sufficient sanctions for respondent's disrespectful actuations directed against the Court and the IBP. The imposition of these sanctions in the present case would be more consistent with the avowed purpose of disciplinary case, which is "not so much to punish the individual attorney as to protect the dispensation of justice by sheltering the judiciary and the public from the misconduct or inefficiency of officers of the court."[143]

We consider the participation of Atty. Gempis in this case and opt to be lenient even as we reiterate the objective of protecting the dispensation of justice. We deem it sufficient to remind Atty. Gempis to be more mindful of his duty as a lawyer towards the Court.

WHEREFORE, in light of all the foregoing, Ordinance No. 8187 is hereby declared **UNCONSTITUTIONAL** and **INVALID** with respect to the continued stay of the Pandacan Oil Terminals.

The incumbent mayor of the City of Manila is hereby ordered to **CEASE** and **DESIST** from enforcing Ordinance No. 8187. In coordination with the appropriate government agencies and the parties herein involved, he is further ordered to oversee the relocation and transfer of the oil terminals out of the Pandacan area.

As likewise required in G.R. No. 156052, the intervenors Chevron Philippines, Inc., Pilipinas Shell Petroleum Corporation, and Petron Corporation shall, within a non-extendible period of forty-five (45) days, submit to the Regional Trial Court, Branch 39, Manila an updated comprehensive plan and relocation schedule, which relocation shall be completed not later than six (6) months from the date the required documents are submitted. The presiding judge of Branch 39 shall monitor

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143 *Id.* at 204-205 citing *Dr. Gamilla v. Atty. Mariño, Jr.*, 447 Phil. 419 (2003).

the strict enforcement of this Decision.

For failure to observe the respect due to the Court, Atty. Luch R. Gempis, Jr., Secretary of the *Sangguniang Panlungsod*, is **REMINDED** of his duties towards the Court and **WARNED** that a repetition of an act similar to that here committed shall be dealt with more severely.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

I join J. Leonen in his separate concurring opinion.

MARIA LOURDES P. A. SERENO
Chief Justice

No Part one of the counsel is my former law firm.

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On leave)
ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

See separate concurring and dissenting opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V. F. LEONEN
Associate Justice

NO Part
Intervenor Part
former employer Group

FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice