

KNIGHTS OF RIZAL, PETITIONER, VS. DMCI HOMES, INC., DMCI PROJECT DEVELOPERS, INC., CITY OF MANILA, NATIONAL COMMISSION FOR CULTURE AND THE ARTS, NATIONAL MUSEUM, AND NATIONAL HI...

G.R. No. 213948. April 25, 2017

Ponente: CARPIO, J.

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CARPIO, J.:

Bury me in the ground, place a stone and a cross over it.
My name, the date of my birth, and of my death. Nothing more.
If you later wish to surround my grave with a fence, you may do so.
No anniversaries. I prefer Paang Bundok.

- Jose Rizal

The Case

Before this Court is a Petition for Injunction, with Applications for Temporary Restraining Order, Writ of Preliminary Injunction, and Others[1] filed by the Knights of Rizal (KOR) seeking, among others, for an order to stop the construction of respondent DMCI Homes, Inc.'s condominium development project known as the Torre de Manila. In its Resolution dated 25 November 2014, the Court resolved to treat the petition as one for mandamus.[2]

The Facts

On 1 September 2011, DMCI Project Developers, Inc. (DMCI-PDI)[3] acquired a 7,716.60-square meter lot in the City of Manila, located near Taft Avenue, Ermita, beside the former Manila Jai-Alai Building and Adamson University.[4] The lot was earmarked for the construction of DMCI-PDI's Torre de Manila condominium project.

On 2 April 2012, DMCI-PDI secured its Barangay Clearance to start the construction of its project. It then obtained a Zoning Permit from the City of Manila's City Planning and Development Office (CPDO) on 19 June 2012.[5]

Then, on 5 July 2012, the City of Manila's Office of the Building Official granted DMCI-PDI a Building Permit,

allowing it to build a "Forty--Nine (49) Storey w/ Basement & 2 penthouse Level Res'l./Condominium" on the property.[6]

On 24 July 2012, the City Council of Manila issued Resolution No. 121 enjoining the Office of the Building Official to temporarily suspend the Building Permit of DMCI-PDI, citing among others, that "the Torre de Manila Condominium, based on their development plans, upon completion, will rise up high above the back of the national monument, to clearly dwarf the statue of our hero, and with such towering heights, would certainly ruin the line of sight of the Rizal Shrine from the frontal Roxas Boulevard vantage point[.]"[7]

Building Official Melvin Q. Balagot then sought the opinion of the City of Manila's City Legal Officer on whether he is bound to comply with Resolution No. 121.[8] In his letter dated 12 September 2012, City Legal Officer Renato G. Dela Cruz stated that there is "no legal justification for the temporary suspension of the Building Permit issued in favor of [DMCI-PDI]" since the construction "lies outside the Luneta Park" and is "simply too far to be a repulsive distraction or have an objectionable effect on the artistic and historical significance" of the Rizal Monument.[9] He also pointed out that "there is no showing that the [area of] subject property has been officially declared as an anthropological or archeological area. Neither has it been categorically designated by the National Historical Institute as a heritage zone, a cultural property, a historical landmark or even a national treasure."

Subsequently, both the City of Manila and DMCI-PDI sought the opinion of the National Historical Commission of the Philippines (NHCP) on the matter. In the letter[10] dated 6 November 2012 from NHCP Chairperson Dr. Maria Serena I. Diokno addressed to DMCI-PDI and the letter[11] dated 7 November 2012 from NHCP Executive Director III Ludovico D. Badoy addressed to then Manila Mayor Alfredo S. Lim, the NHCP maintained that the Torre de Manila project site is outside the boundaries of the Rizal Park and well to the rear of the Rizal Monument, and thus, cannot possibly obstruct the frontal view of the National Monument.

On 26 November 2013, following an online petition against the Torre de Manila project that garnered about 7,800 signatures, the City Council of Manila issued Resolution No. 146, reiterating its directive in Resolution No. 121 enjoining the City of Manila's building officials to temporarily suspend DMCI-PDI's Building Permit.[12]

In a letter to Mayor Joseph Ejercito Estrada dated 18 December 2013, DMCI-PDI President Alfredo R. Austria sought clarification on the controversy surrounding its Zoning Permit. He stated that since the CPDO granted its Zoning Permit, DMCI-PDI continued with the application for the Building Permit, which was granted, and did not deem it necessary to go through the process of appealing to the local zoning board. He then expressed DMCI-PDI's willingness to comply with the process if the City of Manila deemed it necessary.[13]

On 23 December 2013, the Manila Zoning Board of Adjustments and Appeals (MZBAA) issued Zoning Board Resolution No. 06, Series of 2013,[14] recommending the approval of DMCI-PDI's application for variance. The MZBAA noted that the Torre de Manila project "exceeds the prescribed maximum Percentage of Land Occupancy (PLO) and exceeds the prescribed Floor Area Ratio (FAR) as stipulated in Article V, Section 17 of City Ordinance No. 8119[.]" However, the MZBAA still recommended the approval of the variance subject to the five conditions set under the same resolution.

After some clarification sought by DMCI-PDI, the MZBAA issued Zoning Board Resolution No. 06-A, Series of 2013,[15] on 8 January 2014, amending condition (c) in the earlier resolution.[16]

On 16 January 2014, the City Council of Manila issued Resolution No. 5, Series of 2014,[17] adopting Zoning Board Resolution Nos. 06 and 06-A. The City Council resolution states that "the City Council of Manila find[s] no cogent reason to deny and/or reverse the aforesaid recommendation of the [MZBAA] and hereby ratif1ies] and

confirm[s] all previously issued permits, licenses and approvals issued by the City [Council] of Manila for Torre de Manila[.]"

Arguments of the KOR

On 12 September 2014, the KOR, a "civic, patriotic, cultural, non-partisan, non-sectarian and non-profit organization"[18] created under Republic Act No. 646,[19] filed a Petition for Injunction seeking a temporary restraining order, and later a permanent injunction, against the construction of DMCI-PDI's Torre de Manila condominium project. The KOR argues that the subject matter of the present suit is one of "transcendental importance, paramount public interest, of overarching significance to society, or with far-reaching implication" involving the desecration of the Rizal Monument.

The KOR asserts that the completed Torre de Manila structure will "[stick] out like a sore thumb, [dwarf] all surrounding buildings within a radius of two kilometer/s" and "forever ruin the sightline of the Rizal Monument in Luneta Park: Torre de Manila building would loom at the back and overshadow the entire monument, whether up close or viewed from a distance."[20]

Further, the KOR argues that the Rizal Monument, as a National Treasure, is entitled to "full protection of the law"[21] and the national government must abate the act or activity that endangers the nation's cultural heritage "even against the wishes of the local government hosting it."[22]

Next, the KOR contends that the project is a nuisance per se[23] because "[t]he despoliation of the sight view of the Rizal Monument is a situation that 'annoys or offends the senses' of every Filipino who honors the memory of the National Hero Jose Rizal. It is a present, continuing, worsening and aggravating status or condition. Hence, the PROJECT is a nuisance per se. It deserves to be abated summarily, even without need of judicial proceeding."[24]

The KOR also claims that the Torre de Manila project violates the NHCP's Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages, which state that historic monuments should assert a visual "dominance" over its surroundings,[25] as well as the country's commitment under the International Charter for the Conservation and Restoration of Monuments and Sites, otherwise known as the Venice Charter.[26]

Lastly, the KOR claims that the DMCI-PDI's construction was commenced and continues in bad faith, and is in violation of the City of Manila's zoning ordinance.[27]

Arguments of DMCI-PDI

In its Comment, MCI-PDI argues that the KOR's petition should be dismissed, on the following grounds:

I.

THIS HONORABLE COURT HAS NO JURISDICTION OVER THIS ACTION.

II.

KOR HAS NO LEGAL RIGHT OR INTEREST TO FILE OR PROSECUTE THIS ACTION.

III

TORRE DE MANILA IS NOT A NUISANCE PER SE.

IV.

DMCI-PDI ACTED IN GOOD FAITH IN CONSTRUCTING TORRE DE MANILA; AND

V.

KOR IS NOT ENTITLED TO A TEMPORARY RESTRAINING ORDER AND/OR A WRIT OF PRELIMINARY INJUNCTION.[28]

First, DMCI-PDI asserts that the Court has no original jurisdiction over actions for injunction.[29] Even assuming that the Court has concurrent jurisdiction, DMCI-PDI maintains that the petition should still have been filed with the Regional Trial Court under the doctrine of hierarchy of courts and because the petition involves questions of fact.[30]

DMCI-PDI also contends that the KOR's petition is in actuality an opposition or appeal from the exemption granted by the City of Manila's MZBAA, a matter which is also not within the jurisdiction of the Court.[31] DMCI-PDI claims that the proper forum should be the MZBAA, and should the KOR fail there, it should appeal the same to the Housing and Land Use Regulatory Board (HLURB).[32]

DMCI-PDI further argues that since the Rizal Monument has been declared a National Treasure, the power to issue a cease and desist order is lodged with the "appropriate cultural agency" under Section 25 of Republic Act No. 10066 or the National Cultural Heritage Act of 2009.[33] Moreover, DMCI-PDI asserts that the KOR availed of the wrong remedy since an action for injunction is not the proper remedy for abatement of a nuisance.[34]

Second, DMCI-PDI maintains that the KOR has no standing to institute this proceeding because it is not a real party in interest in this case. The purposes of the KOR as a public corporation do not include the preservation of the Rizal Monument as a cultural or historical heritage site.[35] The KOR has also not shown that it suffered an actual or threatened injury as a result of the alleged illegal conduct of the City of Manila. If there is any injury to the KOR at all, the same was caused by the private conduct of a private entity and not the City of Manila.[36]

Third, DMCI-PDI argues that the Torre de Manila is not a nuisance per se. DMCI-PDI reiterates that it obtained all the necessary permits, licenses, clearances, and certificates for its construction.[37] It also refutes the KOR's claim that the Torre de Manila would dwarf all other structures around it, considering that there are other tall buildings even closer to the Rizal Monument itself, namely, the Eton Baypark Tower at the corner of Roxas Boulevard and T.M. Kalaw Street (29 storeys; 235 meters from the Rizal Monument) and Sunview Palace at the corner of M.H. Del Pilar and T.M. Kalaw Streets (42 storeys; 250 meters from the Rizal Monument).[38]

Fourth, DMCI-PDI next argues that it did not act in bad faith when it started construction of its Torre de Manila project. Bad faith cannot be attributed to it since it was within the "lawful exercise of [its] rights." [39] The KOR failed to present any proof that DMCI-PDI did not follow the proper procedure and zoning restrictions of the City of Manila. Aside from obtaining all the necessary permits from the appropriate government agencies,[40] DMCI-PDI also sought clarification on its right to build on its site from the Office of the City Legal Officer of Manila, the Manila CPDO, and the NHCP.[41] Moreover, even if the KOR proffered such proof, the Court would be in no position to declare DMCI-PDI's acts as illegal since the Court is not a trier of facts.[42]

Finally, DMCI-PDI opposes the KOR's application for a Temporary Restraining Order (TRO) and writ of preliminary injunction. DMCI-PDI asserts that the KOR has failed to establish "a clear and unmistakable right to enjoin the construction of Torre de Manila, much less request its demolition." [43] DMCI-PDI further argues that it "has complied with all the legal requirements for the construction of Torre de Manila x x x [and] has violated no right of KOR that must be protected. Further, KOR stands to suffer no damage because of its lack of direct pecuniary interest in this petition. To grant the KOR's application for injunctive relief would constitute an unjust taking of property without due process of law." [44]

Arguments of the City of Manila

In its Comment, the City of Manila argues that the writ of mandamus cannot issue "considering that no property or substantive rights whatsoever in favor of [the KOR] is being affected or x x x entitled to judicial protection[.]"[45]

The City of Manila also asserts that the "issuance and revocation of a Building Permit undoubtedly fall under the category of a discretionary act or duty performed by the proper officer in light of his meticulous appraisal and evaluation of the pertinent supporting documents of the application in accordance with the rules laid out under the National Building Code [and] Presidential Decree No. 1096,"[46] while the remedy of mandamus is available only to compel the performance of a ministerial duty.[47]

Further, the City of Manila maintains that the construction of the Torre de Manila did not violate any existing law, since the "edifice [is] well behind (some 789 meters away) the line of sight of the Rizal Monument." [48] It adds that the City of Manila's "prevailing Land Use and Zoning Ordinance [Ordinance No. 8119] x x x allows an adjustment in Floor Area Ratios thru the [MZBAA] subject to further final approval of the City Council." [49] The City Council adopted the MZBAA's favorable recommendation in its Resolution No. 5, ratifying all the licenses and permits issued to DMCI-PDI for its Torre de Manila project.

In its Position Paper dated 15 July 2015, the City of Manila admitted that the Zoning Permit issued to DMCI-PDI was "in breach of certain provisions of City Ordinance No. 8119." [50] It maintained, however, that the deficiency is "procedural in nature and pertains mostly to the failure of [DMCI-PDI] to comply with the stipulations that allow an excess in the [FAR] provisions." [51] Further, the City of Manila argued that the MZBAA, when it recommended the allowance of the project's variance, imposed certain conditions upon the Torre de Manila project in order to mitigate the possible adverse effects of an excess FAR. [52]

The Issue

The issues raised by the parties can be summed up into one main point: Can the Court issue a writ of mandamus against the officials of the City of Manila to stop the construction of DMCI-PDI's Torre de Manila project?

The Court's Ruling

The petition for mandamus lacks merit and must be dismissed.

There is no law prohibiting the construction of the Torre de Manila.

In *Manila Electric Company v. Public Service Commission*, [53] the Court held that "what is not expressly or impliedly prohibited by law may be done, except when the act is contrary to morals, customs and public order." This principle is fundamental in a democratic society, to protect the weak against the strong, the minority against the majority, and the individual citizen against the government. In essence, this principle, which is the foundation of a civilized society under the rule of law, prescribes that the freedom to act can be curtailed only through law. Without this principle, the rights, freedoms, and civil liberties of citizens can be arbitrarily and whimsically trampled upon by the shifting passions of those who can shout the loudest, or those who can gather the biggest crowd or the most number of Internet trolls. In other instances, [54] the Court has allowed or upheld actions that were not expressly prohibited by statutes when it determined that these acts were not contrary to morals, customs, and public order, or that upholding the same would lead to a more equitable solution to the controversy. However, it is the law itself - Articles 1306 [55] and 1409(1) [56] of the Civil Code - which prescribes that acts not contrary to morals, good customs, public order, or public policy are allowed if also not contrary to law.

In this case, there is no allegation or proof that the Torre de Manila project is "contrary to morals, customs, and

public order" or that it brings harm, danger, or hazard to the community. On the contrary, the City of Manila has determined that DMCI-PDI complied with the standards set under the pertinent laws and local ordinances to construct its Torre de Manila project.

There is one fact that is crystal clear in this case. There is no law prohibiting the construction of the Torre de Manila due to its effect on the background "view, vista, sightline, or setting" of the Rizal Monument.

Zoning, as well as land use, in the City of Manila is governed by Ordinance No. 8119. The ordinance provides for standards and guidelines to regulate development projects of historic sites and facilities within the City of Manila.

Specifically, Section 47 reads:

SEC. 47. Historical Preservation and Conservation Standards. - Historic sites and facilities shall be conserved and preserved. These shall, to the extent possible, be made accessible for the educational and cultural enrichment of the general public.

The following shall guide the development of historic sites and facilities:

1. Sites with historic buildings or places shall be developed to conserve and enhance their heritage values.
2. Historic sites and facilities shall be adaptively re-used.
3. Any person who proposes to add, to alter, or partially demolish a designated heritage property will require the approval of the City Planning and Development Office (CPDO) and shall be required to prepare a heritage impact statement that will demonstrate to the satisfaction of CPDO that the proposal will not adversely impact the heritage significance of the property and shall submit plans for review by the CPDO in coordination with the National Historical Institute (NHI).
4. Any proposed alteration and/or re-use of designated heritage properties shall be evaluated based on criteria established by the heritage significance of the particular property or site.
5. Where an owner of a heritage property applies for approval to demolish a designated heritage property or properties, the owner shall be required to provide evidence to satisfaction that demonstrates that rehabilitation and re-use of the property is not viable.
6. Any designated heritage property which is to be demolished or significantly altered shall be thoroughly documented for archival purposes with a history, photographic records, and measured drawings, in accordance with accepted heritage recording guidelines, prior to demolition or alteration.
7. Residential and commercial infill in heritage areas will be sensitive to the existing scale and pattern of those areas, which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources.
8. Development plans shall ensure that parking facilities (surface lots, residential garages, stand-alone parking garages and parking components as parts of larger developments) are compatibly integrated into heritage areas, and/or are compatible with adjacent heritage resources.
9. Local utility companies (hydro, gas, telephone, cable) shall be required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations which do not detract from the visual character of heritage resources, and which do not have a negative impact on its architectural integrity.
10. Design review approval shall be secured from the CPDO for any alteration of the heritage property to ensure that design guidelines and standards are met and shall promote preservation and conservation of the heritage property. (Emphasis supplied)

It is clear that the standards laid down in Section 47 of Ordinance No. 8119 only serve as guides, as it expressly states that "the following shall guide the development of historic sites and facilities." A guide simply sets a direction or gives an instruction to be followed by property owners and developers in order to conserve and enhance a property's heritage values.

On the other hand, Section 48 states:

SEC. 48. Site Performance Standards. - The City considers it in the public interest that all projects are designed and developed in a safe, efficient and aesthetically pleasing manner. Site development shall consider the environmental character and limitations of the site and its adjacent properties. All project elements shall be in complete harmony according to good design principles and the subsequent development must be visually pleasing as well as efficiently functioning especially in relation to the adjacent properties and bordering streets.

1 The design, construction, operation and maintenance of every facility shall be in harmony with the existing and intended character of its neighborhood. It shall not change the essential character of the said area but will be a substantial improvement to the value of the properties in the neighborhood in particular and the community in general.

Furthermore, designs should consider the following:

1. Sites, buildings and facilities shall be designed and developed with regard to safety, efficiency and high standards of design. The natural environmental character of the site and its adjacent properties shall be considered in the site development of each building and facility.

2. The height and bulk of buildings and structures shall be so designed that it does not impair the entry of light and ventilation, cause the loss of privacy and/or create nuisances, hazards or inconveniences to adjacent developments.

3. Abutments to adjacent properties shall not be allowed without the neighbor's prior written consent which shall be required by the City Planning and Development Office (CPDO) prior to the granting of a Zoning Permit (Locational Clearance).

4. The capacity of parking areas/lots shall be per the minimum requirements of the National Building Code. These shall be located, developed and landscaped in order to enhance the aesthetic quality of the facility. In no case, shall parking areas/lots encroach into street rights-of-way and shall follow the Traffic Code as set by the City.

5. Developments that attract a significant volume of public modes of transportation, such as tricycles, jeepneys, buses, etc., shall provide on-site parking for the same. These shall also provide vehicular loading and unloading bays so as street traffic flow will not be impeded.

6. Buffers, silencers, mufflers, enclosures and other noise-absorbing materials shall be provided to all noise and vibration-producing machinery. Noise levels shall be maintained according to levels specified in DENR DAO No. 30 - Abatement of Noise and Other Forms of Nuisance as Defined by Law.

7. Glare and heat from any operation or activity shall not be radiated, seen or felt from any point beyond the limits of the property.

8. No large commercial signage and/or pylon, which will be detrimental to the skyline, shall be allowed.

9. Design guidelines, deeds of restriction, property management plans and other regulatory tools that will ensure high quality developments shall be required from developers of commercial subdivisions and condominiums. These shall be submitted to the City Planning and Development Office (CPDO) for review and approval. (Emphasis supplied)

Section 47 of Ordinance No. 8119 specifically regulates the "development of historic sites and facilities." Section 48 regulates "large commercial signage and/or pylon." There is nothing in Sections 47 and 48 of Ordinance No. 8119 that disallows the construction of a building outside the boundaries of a historic site or facility, where such building may affect the background of a historic site. In this case, the Torre de Manila stands 870 meters outside and to the rear of the Rizal Monument and "cannot possibly obstruct the front view of the [Rizal] Monument." [57] Likewise, the Torre de Manila is not in an area that has been declared as an "anthropological or archeological area" or in an area designated as a heritage zone, cultural property, historical landmark, or a national treasure by the NHCP. [58]

Section 15, Article XIV of the Constitution, which deals with the subject of arts and culture, provides that "[t]he State shall conserve, promote and popularize the nation's historical and cultural heritage and resources x x x." Since this provision is not self-executory, Congress passed laws dealing with the preservation and conservation of our cultural heritage.

One such law is Republic Act No. 10066, [59] or the National Cultural Heritage Act of 2009, which empowers the National Commission for Culture and the Arts and other cultural agencies to issue a cease and desist order "when the physical integrity of the national cultural treasures or important cultural properties [is] found to be in danger of destruction or significant alteration from its original state." [60] This law declares that the State should protect the "physical integrity" of the heritage property or building if there is "danger of destruction or significant alteration from its original state." Physical integrity refers to the structure itself - how strong and sound the structure is. The same law does not mention that another project, building, or property, not itself a heritage property or building, may be the subject of a cease and desist order when it adversely affects the background view, vista, or sightline of a heritage property or building. Thus, Republic Act No. 10066 cannot apply to the Torre de Manila condominium project.

Mandamus does not lie against the City of Manila.

The Constitution states that "[n]o person shall be deprived of life, liberty or property without due process of law x x x." [61] It is a fundamental principle that no property shall be taken away from an individual without due process, whether substantive or procedural. The dispossession of property, or in this case the stoppage of the construction of a building in one's own property, would violate substantive due process.

The Rules on Civil Procedure are clear that mandamus only issues when there is a clear legal duty imposed upon the office or the officer sought to be compelled to perform an act, and when the party seeking mandamus has a clear legal right to the performance of such act.

In the present case, nowhere is it found in Ordinance No. 8119 or in any law, ordinance, or rule for that matter, that the construction of a building outside the Rizal Park is prohibited if the building is within the background sightline or view of the Rizal Monument. Thus, there is no legal duty on the part of the City of Manila "to consider," in the words of the Dissenting Opinion, "the standards set under Ordinance No. 8119" in relation to the applications of DMCI-PDI for the Torre de Manila since under the ordinance these standards can never be applied outside the boundaries of Rizal Park. While the Rizal Park has been declared a National Historical Site, the area where Torre de Manila is being built is a privately-owned property that is "not part of the Rizal Park that has been declared as a National Heritage Site in 1995," and the Torre de Manila area is in fact "well-beyond" the Rizal Park, according to NHCP Chairperson Dr. Maria Serena I. Diokno. [62] Neither has the area of the Torre de Manila been designated as a "heritage zone, a cultural property, a historical landmark or even a national treasure." [63]

Also, to declare that the City of Manila failed to consider the standards under Ordinance No. 8119 would involve

making a finding of fact. A finding of fact requires notice, hearing, and the submission of evidence to ascertain compliance with the law or regulation. In such a case, it is the Regional Trial Court which has the jurisdiction to hear the case, receive evidence, make a proper finding of fact, and determine whether the Torre de Manila project properly complied with the standards set by the ordinance. In *Meralco Public Service Commission*,^[64] we held that it is the cardinal right of a party in trials and administrative proceedings to be heard, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof and to have such evidence presented considered by the proper court or tribunal.

To compel the City of Manila to consider the standards under Ordinance No. 8119 to the Torre de Manila project will be an empty exercise since these standards cannot apply outside of the Rizal Park - and the Torre de Manila is outside the Rizal Park. Mandamus will lie only if the officials of the City of Manila have a ministerial duty to consider these standards to buildings outside of the Rizal Park. There can be no such ministerial duty because these standards are not applicable to buildings outside of the Rizal Park.

The KOR also invokes this Court's exercise of its extraordinary certiorari power of review under Section 1, Article VIII^[65] of the Constitution. However, this Court can only exercise its extraordinary certiorari power if the City of Manila, in issuing the required permits and licenses, gravely abused its discretion amounting to lack or excess of jurisdiction. Tellingly, neither the majority nor minority opinion in this case has found that the City of Manila committed grave abuse of discretion in issuing the permits and licenses to DMCI-PDI. Thus, there is no justification at all for this Court to exercise its extraordinary certiorari power.

Moreover, the exercise of this Court's extraordinary certiorari power is limited to actual cases and controversies that necessarily involve a violation of the Constitution or the determination of the constitutionality or validity of a governmental act or issuance. Specific violation of a statute that does not raise the issue of constitutionality or validity of the statute cannot, as a rule, be the subject of the Court's direct exercise of its expanded certiorari power. Thus, the KOR's recourse lies with other judicial remedies or proceedings allowed under the Rules of Court.

In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*,^[66] we held that in cases where the question of constitutionality of a governmental action is raised, the judicial power that the courts exercise is likewise identified as the power of judicial review - the power to review the constitutionality of the actions of other branches of government. As a rule, as required by the hierarchy of courts principle, these cases are filed with the lowest court with jurisdiction over the subject matter. The judicial review that the courts undertake requires:

- 1)
there be an actual case or controversy calling for the exercise of judicial power;
- 2)
the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;
- 3)
the question of constitutionality must be raised at the earliest possible opportunity; and
- 4)
the issue of constitutionality must be the very *lis mota* of the case.

The lower court's decision under the constitutional scheme reaches the Supreme Court through the appeal process, through a petition for review on certiorari under Rule 45 of the Rules of Court.

In the present case, the KOR elevated this case immediately to this Court in an original petition for injunction which we later on treated as one for mandamus under Rule 65. There is, however, no clear legal duty on the City of Manila to consider the provisions of Ordinance No. 8119 for applications for permits to build outside the protected areas of the Rizal Park. Even if there were such legal duty, the determination of whether the City of Manila failed to abide by this legal duty would involve factual matters which have not been admitted or established in this case. Establishing factual matters is not within the realm of this Court. Findings of fact are the province of the trial courts.

There is no standard in Ordinance No. 8119 for defining or determining the background sightline that is supposed to be protected or that is part of the "physical integrity" of the Rizal Monument. How far should a building like the Torre de Manila be from the Rizal Monument - one, two, three, four, or five kilometers? Even the Solicitor General, during the Oral Arguments, conceded that the ordinance does not prescribe how sightline is determined, neither is there any way to measure by metes and bounds whether construction that is not part of the historic monument itself or is outside the protected area can be said to violate the Rizal Monument's physical integrity, except only to say "when you stand in front of the Rizal Monument, there can be no doubt that your view is marred and impaired." This kind of a standard has no parameters and can include a sightline or a construction as far as the human eyes can see when standing in front of the Rizal Monument. Obviously, this Court cannot apply such a subjective and non-uniform standard that adversely affects property rights several kilometers away from a historical sight or facility.

The Dissenting Opinion claims that "the City, by reason of a mistaken or erroneous construction of its own Ordinance, had failed to consider its duties under [Ordinance No. 8119] when it issued permits in DMCI-PDI's favor." However, MZBAA Zoning Board Resolution Nos. 06 and 06-A[67] easily dispel this claim. According to the resolutions, the City of Manila, through the MZBAA, acted on DMCI-PDI's application for variance under the powers and standards set forth in Ordinance No. 8119.

Without further proof that the MZBAA acted whimsically, capriciously, or arbitrarily in issuing said resolution, the Court should respect MZBAA's exercise of discretion. The Court cannot "substitute its judgment for that of said officials who are in a better position to consider and weigh the same in the light of the authority specifically vested in them by law." [68] Since the Court has "no supervisory power over the proceedings and actions of the administrative departments of the government," it "should not generally interfere with purely administrative and discretionary functions." [69] The power of the Court in mandamus petitions does not extend "to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either." [70]

Still, the Dissenting Opinion insists on directing the re-evaluation by the City of Manila, through the CPDO, of the permits previously issued in favor of the Torre de Manila project to determine compliance with the standards under Ordinance No. 8119. It also declares that the circumstances in this case warrant the pro hac vice conversion of the proceedings in the issuance of the permits into a "contested case" necessitating notice and hearing with all the parties involved.

Pro hac vice means a specific decision does not constitute a precedent because the decision is for the specific case only, not to be followed in other cases. A pro hac vice decision violates statutory law - Article 8 of the Civil Code - which states that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines." The decision of the Court in this case cannot be pro hac vice because by mandate

of the law every decision of the Court forms part of the legal system of the Philippines. If another case comes up with the same facts as the present case, that case must be decided in the same way as this case to comply with the constitutional mandate of equal protection of the law. Thus, a pro hac vice decision also violates the equal protection clause of the Constitution.

It is the policy of the courts not to interfere with the discretionary executive acts of the executive branch unless there is a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction. Mandamus does not lie against the legislative and executive branches or their members acting in the exercise of their official discretionary functions. This emanates from the respect accorded by the judiciary to said branches as co-equal entities under the principle of separation of powers.

In *De Castro v. Salas*,^[71] we held that no rule of law is better established than the one that provides that mandamus will not issue to control the discretion of an officer or a court when honestly exercised and when such power and authority is not abused.

In exceptional cases, the Court has granted a prayer for mandamus to compel action in matters involving judgment and discretion, only "to act, but not to act one way or the other,"^[72] and only in cases where there has been a clear showing of grave abuse of discretion, manifest injustice, or palpable excess of authority.^[73]

In this case, there can be no determination by this Court that the City of Manila had been negligent or remiss in its duty under Ordinance No. 8119 considering that this determination will involve questions of fact. DMCI-PDI had been issued the proper permits and had secured all approvals and licenses months before the actual construction began. Even the KOR could not point to any law that respondent City of Manila had violated and could only point to declarations of policies by the NHCP and the Venice Charter which do not constitute clear legal bases for the issuance of a writ of mandamus.

The Venice Charter is merely a codification of guiding principles for the preservation and restoration of ancient monuments, sites, and buildings. It brings together principles in the field of historical conservation and restoration that have been developed, agreed upon, and laid down by experts over the years. Each country, however, remains "responsible for applying the plan within the framework of its own culture and traditions."^[74]

The Venice Charter is not a treaty and therefore does not become enforceable as law. The Philippines is not legally bound to follow its directive, as in fact, these are not directives but mere guidelines a set of the best practices and techniques that have been proven over the years to be the most effective in preserving and restoring historical monuments, sites and buildings.

The City of Manila concedes that DMCI-PDI's Zoning Permit was granted without going through the process under Ordinance No. 8119. However, the same was properly rectified when, faced with mounting opposition, DMCI-PDI itself sought clarification from the City of Manila and immediately began complying with the procedure for applying for a variance. The MZBAA did subsequently recommend the approval of the variance and the City Council of Manila approved the same, ratifying the licenses and permits already given to DMCI-PDI. Such ratification was well within the right of the City Council of Manila. The City Council of Manila could have denied the application had it seen any reason to do so. Again, the ratification is a function of the City Council of Manila, an exercise of its discretion and well within the authority granted it by law and the City's own Ordinance No. 8119.

The main purpose of zoning is the protection of public safety, health, convenience, and welfare. There is no indication that the Torre de Manila project brings any harm, danger, or hazard to the people in the surrounding areas except that the building allegedly poses an unsightly view on the taking of photos or the visual appreciation

of the Rizal Monument by locals and tourists. In fact, the Court must take the approval of the MZBAA, and its subsequent ratification by the City Council of Manila, as the duly authorized exercise of discretion by the city officials. Great care must be taken that the Court does not unduly tread upon the local government's performance of its duties. It is not for this Court to dictate upon the other branches of the government how their discretion must be exercised so long as these branches do not commit grave abuse of discretion amounting to lack or excess of jurisdiction.

Likewise, any violation of Ordinance No. 8119 must be determined in the proper case and before the proper forum. It is not within the power of this Court in this case to make such determination. Without such determination, this Court cannot simply declare that the City of Manila had failed to consider its duties under Ordinance No. 8119 when it issued the permits in DMCI-PDI's favor without making a finding of fact how the City of Manila failed "to consider" its duties with respect to areas outside the boundaries of the Rizal Park. In the first place, this Court has no jurisdiction to make findings of fact in an original action like this before this Court. Moreover, the City of Manila could not legally apply standards to sites outside the area covered by the ordinance that prescribed the standards. With this, taken in light of the lack of finding that there was grave abuse of discretion on the part of the City of Manila, there is no basis to issue the writ of mandamus against the City of Manila.

During the Oral Arguments, it was established that the granting of a variance is neither uncommon nor irregular. On the contrary, current practice has made granting of a variance the rule rather than the exception:

JUSTICE CARPIO: Let's go to Ordinance 8119. For residential condominium that stand alone, in other words not part of a commercial complex or an industrial complex...

ATTY. FLAMINIANO: Yes, Your Honor.

JUSTICE CARPIO: The [Floor Area Ratio (FAR)] is uniform for the entire City of Manila, the FAR 4, correct?

ATTY. FLAMINIANO: I believe so, Your Honor, it's FAR 4.

JUSTICE CARPIO: So it's FAR 4 for all residential condominium complex or industrial projects.

ATTY. FLAMINIANO: There might be, the FAR might be different when it comes to condominiums in commercial areas, Your Honor.

JUSTICE CARPIO: Yes, I'm talking of stand-alone...

ATTY. FLAMINIANO: Yes, Your Honor.

JUSTICE CARPIO: ...residential condominiums...

ATTY. FLAMINIANO: Uniform at FAR 4, Your Honor.

JUSTICE CARPIO: And the percentage of land occupancy is always 60 percent.

ATTY. FLAMINIANO: 60 percent, correct, Your Honor.

JUSTICE CARPIO: Okay...how many square meters is this Torre de Manila?

x x x x

ATTY. FLAMINIANO: The land area, Your Honor, it's almost 5,000...5,556.

JUSTICE CARPIO: So, it's almost half a hectare.

ATTY. FLAMINIANO: Yes, Your Honor.

JUSTICE CARPIO: And at FAR 4, it can only build up to 18 storeys, I mean at FAR 4, is that correct?

ATTY. FLAMINIANO: If the 60 percent of the lot...

JUSTICE CARPIO: Yes, but that is a rule.

ATTY. FLAMINIANO: That is a rule, that's the rule, Your Honor.

JUSTICE CARPIO: 60 percent of...

ATTY. FLAMINIANO: Of the land area.

JUSTICE CARPIO: ...buildable, the rest not buildable.

ATTY. FLAMINIANO: Yes, Your Honor.

JUSTICE CARPIO: Okay, so if you look around here in the City of Manila anywhere you go, you look at stand alone residential condominium buildings...

ATTY. FLAMINIANO: There's a lot of them, Your Honor.

JUSTICE CARPIO: It's always not FAR 4, it's more than FAR 4.

ATTY. FLAMINIANO: Yes, Your Honor.

JUSTICE CARPIO: And the buildable area is to the edge of the property...it's not 60 percent, correct?

ATTY. FLAMINIANO: Yes, Your Honor.

JUSTICE CARPIO: So, if you look at all the...residential buildings in the last ten years, they [have] all variances. They did not follow the original FAR 4 or the 60 percent (of land occupancy). Every residential building that stand alone was a variance.

ATTY. FLAMINIANO: That's correct, Your Honor.

JUSTICE CARPIO: So the rule really in the City of Manila is variance, and the exception which is never followed is FAR 4.

ATTY. FLAMINIANO: FAR 4, it appears to be that way, Your Honor.

x x x x

JUSTICE CARPIO: Every developer will have to get a variance because it doesn't make sense to follow FAR 4 because the land is so expensive and if you can build only two storeys on a 1,000-square meter lot, you will surely lose money, correct?

ATTY. FLAMINIANO: Exactly, Your Honor.[75] (Emphasis supplied)

Thus, the MZBAA's grant of the variance cannot be used as a basis to grant the mandamus petition absent any clear finding that said act amounted to "grave abuse of discretion, manifest injustice, or palpable excess of authority."

The KOR is Estopped from Questioning the Torre de Manila Construction.

The KOR is now estopped from questioning the construction of the Torre de Manila project. The KOR itself came up with the idea to build a structure right behind the Rizal Monument that would dwarf the Rizal Monument.

In the mid-1950s, the Jose Rizal National Centennial Commission (JRNCC) formulated a plan to build an Educational Center within the Rizal Park. In July 1955, the KOR proposed the inclusion of a national theater on the site of the Educational Center. The JRNCC adopted the proposal. The following year, a law - Republic Act No. 1427[76] - authorized the establishment of the Jose Rizal National Cultural Shrine consisting of a national theater, a national museum, and a national library on a single site.[77]

To be built on the open space right behind the 12.7 meter high Rizal Monument were: the KOR's proposed national theater, standing 29.25 meters high and 286 meters in distance from the Rizal Monument; the national library, standing 25.6 meters high and 180 meters in distance from the Rizal Monument, with its rear along San Luis Street (now T.M. Kalaw Street); and facing it, the national museum, at 19.5 meters high and 190 meters in distance from the Rizal Monument, with its back along P. Burgos Street.[78]

However, several sectors voiced their objections to the construction for various reasons. Among them, the need to preserve the open space of the park, the high cost of construction, the desecration of the park's hallowed grounds, and the fact that the proposed cultural center including the 29.25 meter high national theater proposed by the KOR would dwarf the 12.7 meter high Rizal Monument.[79] The JRNCC revised the plan and only the National Library - which still stands today - was built.[80]

According to the NHCP, the KOR even proposed to build a Rizal Center on the park as recently as 2013.[81] The proposal was disapproved by the NHCP and the Department of Tourism.

Surely, as noble as the KOR's intentions were, its proposed center would have dwarfed the Rizal Monument with its size and proximity.

In contrast, the Torre de Manila is located well outside the Rizal Park, and to the rear of the Rizal Monument - approximately 870 meters from the Rizal Monument and 30 meters from the edge of Rizal Park.[82]

It is a basic principle that "one who seeks equity and justice must come to court with clean hands." [83] In *Jenosa v. Delariarte*, [84] the Court reiterated that he who seeks equity must do equity, and he who comes into equity must come with clean hands. This "signifies that a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent, or deceitful as to the controversy in issue." [85] Thus, the KOR, having earlier proposed a national theater a mere 286 meters in distance from the back of the Rizal Monument that would have dwarfed the Rizal Monument, comes to this Court with unclean hands. It is now precluded from "seeking any equitable refuge" [86] from the Court. The KOR's petition should be dismissed on this ground alone.

Torre de Manila is Not a Nuisance Per Se.

In its petition, the KOR claims that the Torre de Manila is a nuisance per se that deserves to be summarily abated even without judicial proceedings. [87] However, during the Oral Arguments, counsel for the KOR argued that the KOR now believes that the Torre de Manila is a nuisance per accidens and not a nuisance per se. [88]

Article 694 of the Civil Code defines a nuisance as any act, omission, establishment, business, condition of property, or anything else which: (1) injures or endangers the health or safety of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) hinders or impairs the use of property.

The Court recognizes two kinds of nuisances. The first, nuisance per se, is one "recognized as a nuisance under any and all circumstances, because it constitutes a direct menace to public health or safety, and, for that reason, may be abated summarily under the undefined law of necessity." [89] The second, nuisance per accidens, is that which "depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing in law constitutes a nuisance." [90]

It can easily be gleaned that the Torre de Manila is not a nuisance per se. The Torre de Manila project cannot be considered as a "direct menace to public health or safety." Not only is a condominium project commonplace in the City of Manila, DMCI-PDI has, according to the proper government agencies, complied with health and safety standards set by law. DMCI-PDI has been granted the following permits and clearances prior to starting the project: (1) Height Clearance Permit from the Civil Aviation Authority of the Philippines; [91] (2) Development Permit from the HLURB; [92] (3) Zoning Certification from the HLURB; [93] (4) Certificate of Environmental Compliance Commitment from the Environment Management Bureau of the Department of Environment and Natural Resources; [94] (5) Barangay Clearance; [95] (6) Zoning Permit; [96] (7) Building Permit; [97] (8) and

Electrical and Mechanical Permit.[98]

Later, DMCI-PDI also obtained the right to build under a variance recommended by the MZBAA and granted by the City Council of Manila. Thus, there can be no doubt that the Torre de Manila project is not a nuisance per se.

On the other hand, the KOR now claims that the Torre de Manila is a nuisance per accidens.

By definition, a nuisance per accidens is determined based on its surrounding conditions and circumstances. These conditions and circumstances must be well established, not merely alleged. The Court cannot simply accept these conditions and circumstances as established facts as the KOR would have us do in this case.[99] The KOR itself concedes that the question of whether the Torre de Manila is a nuisance per accidens is a question of fact.[100]

The authority to decide when a nuisance exists is an authority to find facts, to estimate their force, and to apply rules of law to the case thus made.[101] This Court is no such authority. It is not a trier of facts. It cannot simply take the allegations in the petition and accept these as facts, more so in this case where these allegations are contested by the respondents.

The task to receive and evaluate evidence is lodged with the trial courts. The question, then, of whether the Torre de Manila project is a nuisance per accidens must be settled after due proceedings brought before the proper Regional Trial Court. The KOR cannot circumvent the process in the guise of protecting national culture and heritage.

The TRO must be lifted.

Injunctive reliefs are meant to preserve substantive rights and prevent further injury[102] until final adjudication on the merits of the case. In the present case, since the legal rights of the KOR are not well-defined, clear, and certain, the petition for mandamus must be dismissed and the TRO lifted.

The general rule is that courts will not disturb the findings of administrative agencies when they are supported by substantial evidence. In this case, DMCI-PDI already acquired vested rights in the various permits, licenses, or even variances it had applied for in order to build a 49-storey building which is, and had been, allowed by the City of Manila's zoning ordinance.

As we have time and again held, courts generally hesitate to review discretionary decisions or actions of administrative agencies in the absence of proof that such decisions or actions were arrived at with grave abuse of discretion amounting to lack or excess of jurisdiction.

In *JRS Business Corp. v. Montesa*,[103] we held that mandamus is the proper remedy if it could be shown that there was neglect on the part of a tribunal in the performance of an act which the law specifically enjoins as a duty, or there was an unlawful exclusion of a party from the use and enjoyment of a right to which he is clearly entitled. Only specific legal rights may be enforced by mandamus if they are clear and certain. If the legal rights of the petitioner are not well-defined, definite, clear, and certain,[104] the petition must be dismissed. Stated otherwise, the writ never issues in doubtful cases. It neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.[105]

In sum, bearing in mind the Court does not intervene in discretionary acts of the executive department in the absence of grave abuse of discretion,[106] and considering that mandamus may only be issued to enforce a clear and certain legal right,[107] the present special civil action for mandamus must be dismissed and the TRO issued earlier must be lifted.

A FINAL WORD

It had been Rizal's wish to die facing the rising sun. In his *Mi Ultimo Adios*, the poem he left for his family the night before he was executed, Rizal wrote:

Yo muero cuando veo que el cielo se colora Y al fin anuncia el dia tras lobrego capuz[108]

[Ako'y mamamatay, ngayong namamalas na sa Silanganan ay namamanaag yaong maligayang araw na sisikat sa likod ng luksang nagtabing na ulap.][109]

[I die just when I see the dawn break, Through the gloom of night, to herald the day][110]

Yet at the point of his execution, he was made to stand facing West towards Manila Bay, with his back to the firing squad, like the traitor the colonial government wished to portray him. He asked to face his executioners, facing the East where the sun would be rising since it was early morning, but the Spanish captain did not allow it. As he was shot and a single bullet struck his frail body, Rizal forced himself, with his last remaining strength, to turn around to face the East and thus he fell on his back with his face to the sky and the rising sun. Then, the Spanish captain approached Rizal and finished him off with one pistol shot to his head.

Before his death, Rizal wrote a letter to his family. He asked for a simple tomb, marked with a cross and a stone with only his name and the date of his birth and death; no anniversary celebrations; and interment at Paang Bundok (now, the Manila North Cemetery). Rizal never wanted his grave to be a burden to future generations.

The letter never made it to his family and his wishes were not carried out. The letter was discovered many years later, in 1953. By then, his remains had been entombed at the Rizal Monument, countless anniversaries had been celebrated, with memorials and monuments built throughout the world.

Rizal's wish was unmistakable: to be buried without pomp or pageantry, to the point of reaching oblivion or obscurity in the future.[111] For Rizal's life was never about fame or vainglory, but for the country he loved dearly and for which he gave up his life.

The Rizal Monument is expressly against Rizal's own wishes. That Rizal's statue now stands facing West towards Manila Bay, with Rizal's back to the East, adds salt to the wound. If we continue the present orientation of Rizal's statue, with Rizal facing West, we would be like the Spanish captain who refused Rizal's request to die facing the rising sun in the East. On the other hand, if Rizal's statue is made to face East, as Rizal had desired when he was about to be shot, the background - the blue sky above Manila Bay would forever be clear of obstruction, and we would be faithful to Rizal's dying wish.

WHEREFORE, the petition for mandamus is DISMISSED for lack of merit. The Temporary Restraining Order issued by the Court on 16 June 2015 is LIFTED effective immediately.

SO ORDERED.

Sereno, C. J., Bersamin, Del Castillo, and Reyes, JJ., concur.

Velasco, Jr., J., Please see Concurring Opinion.

Leonardo-De Castro, J., I join the Dissent of Justice Jardeleza.

Peralta, J., I join the Dissent of J. Jardeleza.

Mendoza, J., I join Separate Opinion of J. Jardeleza.

Perlas-Bernabe, J., Please see Separate Concurring Opinion.

Leonen, J., I concur. See Separate Opinion.

Jardeleza, J., Please see Dissenting Opinion.

Caguioa, J., I join the Dissent of J. Jardeleza.
Martires, J., I join the Dissent of J. Jardeleza.
Tijam, J., Please see Separate Concurring Opinion.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on April 25, 2017 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on May 26, 2017 at 2:00 p.m.

Very truly yours,

(SGD)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[1] Rollo, Vol. I, pp. 3-28.

[2] Id. at 418-C-418-D.

[3] In a Manifestation dated 14 October 2014, DMCI-PDI informed the Court that it is the owner and developer of the Torre de Manila project and requested to substitute for DMCI Homes, Inc. as respondent in this case. Id. at 240-242.

The Court, in its 11 November 2014 Resolution, resolved to implead DMCI-PDI as respondent in this case. Id. at 281-282.

[4] Id. at 300.

[5] Id. at 301.

[6] Id. at 376.

[7] Rollo, Vol. III, pp. 1371-1373.

[8] Id. at 1374.

[9] Id. at 1375-1376.

[10] Rollo, Vol. I, pp. 404-405.

[11] Rollo, Vol. III, p. 1377.

[12] Id. at 1381-1383.

[13] Id. at 1384-1385.

[14] Id. at 1386-1387.

[15] Id. at 1388-1389.

[16] Condition (c) in the 23 December 2013 resolution reads:

(c) The Project shall continuously be socially acceptable to the Barangay Council and nearby residents by assuring that its operations shall not adversely affect the community heritage, traffic condition, public health, safety and welfare x x x. Id. at 1387.

It was amended in the 8 January 2014 resolution to read:

(c) The proponent shall ensure that its operations shall not adversely affect community heritage, traffic condition, public health, safety and welfare x x x. Id. at 1389.

[17] Rollo, Vol. III, pp. 1390-1392.

[18] Rollo, Vol. I, p. 5.

[19] Id. at 4.

[20] Id. at 13.

[21] Id. at 16.

[22] Id. at 17.

[23] During the Oral Arguments on 21 July 2015, the counsel for the KOR asserted that the KOR has changed its position on the matter and now considers the Torre de Manila project a nuisance per accidens. TSN, 21 July 2015, p. 106.

[24] Rollo, Vol. I, p. 18.

[25] Id. at 19.

[26] Id. at 20.

[27] Id. at 21.

[28] Id. at 307.

[29] Id. at 308.

[30] Id. at 311-312.

[31] Id. at 314.

[32] Id. at 315.

[33] Id. at 317.

[34] Id. at 318.

[35] Id. at 320.

[36] Id. at 321.

[37] Id. at 329.

[38] Id.

[39] Id. at 338.

[40] Id. at 336.

[41] Id. at 337.

[42] Id. at 339.

[43] Id. at 346.

[44] Id. at 346-347.

[45] Id. at 434.

[46] Id.

[47] Id. at 433.

[48] Id. at 434.

[49] Id. at 436.

[50] Rollo, Vol. III, p. 1363.

[51] Id.

[52] Id. at 1365.

[53] 60 Phil. 658, 661 (1934).

[54] See *In the Matter of the Adoption of Stephanie Nathy Astroga Garcia*, 494 Phil. 515 (2005); *Summerville General Merchandising Co. v. Court of Appeals*, 552 Phil. 668 (2007).

[55] Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

[56] Art. 1409. The following contracts are inexistent and void from the beginning:

(1)

Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

[57] Rollo, Vol. III, p. 1377.

[58] Id. at 1376.

[59] An Act Providing for the Protection and Conservation of the National Cultural Heritage, Strengthening the National Commission for Culture and the Arts (NCCA) and its Affiliated Cultural Agencies, and for Other Purposes. Approved on 26 March 2010.

[60] Section 25, Republic Act No. 10066.

[61] Section 1, Article III, Constitution.

[62] TSN, 1 September 2015, p. 34.

[63] Rollo, Vol. III, p. 1376.

[64] 120 Phil. 321, 337 (1964).

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

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

[66] G.R. No. 207132, 6 December 2016.

[67] Rollo, Vol. III, pp. 1386-1389.

Zoning Board Resolution No. 06, Series of 2013, 23 December 2013.

WHEREAS, Section 78 of the Ordinance No. 8119, otherwise known as the Manila Comprehensive Land Use Plan and Zoning Ordinance of 2006, mandates the Manila Zoning Board of Adjustments and Appeals (MZBAA) to act on the applications for zoning appeals on the following nature: variances, exceptions, non-conforming uses, complaints and oppositions;

WHEREAS, the City Planning and Development Office (CPDO) elevated the application for Zoning Appeal regarding the Special Use Permit of the above-captioned Project to the MZBAA in its Fourth Meeting held on December 23, 2013;

WHEREAS, the CPDO Evaluation Worksheet for Zoning Permit Processing reveals that the Project exceeds the prescribed maximum Percentage of Land Occupancy (PLO) and exceeds the prescribed Floor Area Ratio (FAR) as stipulated in Article V, Section 17 of City Ordinance No. 8119;

WHEREAS, the Owner requested for favorable endorsement to the City Council; x x x

WHEREAS, the Owner, Designer and Developer through their respective profiles present track record in the design, construction and operations/management of similar projects[;] x x x

WHEREAS, through Barangay Resolutions and an Affidavit, the Barangay Council together with the owners and residents of the adjacent surrounding properties interpose no objection; x x x

WHEREAS, through Certifications from respective utility companies, the supplies of water, power and communications are assured to be continuous and sufficient to the community vis-a-vis supplying the utility demands of the proposed Project; x x x

NOW, THEREFORE, the MZBAA, by virtue of the powers vested in us by law hereby RECOMMENDS APPROVAL FOR VARIANCE to the City Council of Manila, the herein Proposed Project, TORRE DE MANILA: 49-Storey High-Rise Residential Condominium located at TAFT AVENUE, ERMITA x x x.

x x x x

[68] Lianga Bay Logging Co., Inc. v. Enage, 236 Phil. 84, 95 (1987).

[69] Board of Medical Education v. Alfonso, 257 Phil. 311, 321 (1989). Citations omitted.

[70] Angchangco, Jr. v. Ombudsman, 335 Phil. 766, 771-772 (1997). Emphasis supplied.

[71] 34 Phil. 818, 823 (1916).

[72] M.A. Jimenez Enterprises, Inc. v. Ombudsman, 665 Phil. 523, 540-541 (2011), citing Albay Accredited

Constructors Association, Inc. v. Desierto, 516 Phil. 308, 326 (2006).

[73] See *Angchangco, Jr. v. Ombudsman*, supra note 70; *Kant Kwong v. PCGG*, 240 Phil. 219, 230 (1987).

[74] The preamble of the International Charter for the Conservation and Restoration of Monuments and Sites (1964), otherwise known as the Venice Charter, reads:

Imbued with a message from the past, the historic monuments of generations of people remain to the present day as living witnesses of their age-old traditions. People are becoming more and more conscious of the unity of human values and regard ancient monuments as a common heritage. The common responsibility to safeguard them for future generations is recognized. It is our duty to hand them on in the full richness of their authenticity. It is essential that the principles guiding the preservation and restoration of ancient buildings should be agreed and be laid down on an international basis, with each country being responsible for applying the plan within the framework of its own culture and traditions.

By defining these basic principles for the first time, the Athens Charter of 1931 contributed towards the development of an extensive international movement which has assumed concrete form in national documents, in the work of ICOM and UNESCO and in the establishment by the latter of the International Centre for the Study of the Preservation and the Restoration of Cultural Property. Increasing awareness and critical study have been brought to bear on problems which have continually become more complex and varied; now the time has come to examine the Charter afresh in order to make a thorough study of the principles involved and to enlarge its scope in a new document.

x x x x

[75] TSN, 25 August 2015, pp. 18-22, 24.

[76] An Act Appropriating Funds to Carry Out the Purposes of Jose Rizal National Centennial Commission Created by Executive Order No. Fifty-two, dated August Ten, Nineteen Hundred and Fifty-four. Approved on 14 June 1956.

[77] Rollo, Vol. V, p. 2497.

[78] Id. at 2500.

[79] Id. at 2493.

[80] Id. at 2500.

[81] Id. at 2502.

[82] Rollo, Vol. III, p. 1283.

[83] *Bank of the Philippine Islands v. Fernandez*, G.R. No. 173134, 2 September 2015, 768 SCRA 563, 582, citing *Roque v. Lapuz*, 185 Phil. 525 (1980).

[84] 644 Phil. 565 (2010).

[85] Id. at 573, citing *University of the Philippines v. Hon. Catungal, Jr.*, 338 Phil. 728, 744 (1997); *In re: Petition for Separation of Property Elena Buenaventura Muller v. Helmut Muller*, 531 Phil. 460, 468 (2006).

[86] *Beumer v. Amores*, 700 Phil. 90, 98 (2012).

[87] Rollo, Vol. I, p. 18.

[88] TSN, 121 July 2015, p. 105.

[89] Aquino v. Municipality of Malay, Aklan, G.R. No. 211356, 29 September 2014, 737 SCRA 145, 163; Salao v. Santos, 67 Phil. 547, 550 (1939). Citations omitted.

[90] Id.

[91] Rollo, Vol. I, p. 371.

[92] Id. at 382.

[93] Id. at 372.

[94] Id. at 385-392.

[95] Id. at 373.

[96] Rollo, Vol. III, p. 1369.

[97] Id. at 1370.

[98] Id. at 1366.

[99] TSN, 21 July 2015, p. 107.

[100] Id. at 106.

[101] Iloilo Ice and Cold Storage Co. v. Municipal Council of Iloilo, 24 Phil. 471, 475 (1913). Citations omitted.

[102] See Garcia, Jr. v. Court of Appeals, 604 Phil. 677 (2009).

[103] 131 Phil. 719, 725 (1968).

[104] Zamora v. Wright, 53 Phil. 613, 629 (1929).

[105] Sanson v. Barrios, 63 Phil. 198, 201 (1936).

[106] Case v. Board of Health, 24 Phil. 250, 277 (1913).

[107] Pascua v. Tuason, 108 Phil. 69, 73 (1960), citing Zamora v. Wright, *supra* note 104; Sanson v. Barrios, *supra* note 105; Pabico v. Jaranilla, 60 Phil. 247 (1934).

[108] From the untitled poem written by Jose Rizal given to his family the night before his execution in 1896, <https://en.wikipedia.org/wiki/Mi_%C3%BAltimo_adi%C3%B3s> (accessed on 16 February 2017). The poem was later given the title Mi Ultimo Adios by Mariano Ponce. <<http://www.joserizal.ph/pm03.html>> (accessed on 16 February 2017).

[109] From Pahimakas ni Dr. Jose Rizal, Tagalog translation of Rizal's Mi Ultimo Adios by Andres Bonifacio <https://en.wikipedia.org/wiki/Mi_%C3%BAltimo_adi%C3%B3s> (accessed on 16 February 2017).

[110] English translation by Charles Derbyshire <http://en.wikipilipinas.org/index.php/Mi_Ultimo_Adios> (accessed on 24 April 2017).

[111] Were Rizal's Burial Wishes Honored?, Dr. Pablo S. Trillana, <<http://newsinfo.inquirer.net/554367/were-rizals-burial-wishes-honored>> (accessed on 16 February 2017).

CONCURRING OPINION

VELASCO, JR., J.:

I concur with the majority decision. I submit this opinion only to articulate the nuances of my position and to address several points raised by the minority through the dissent of Justice Francis H. Jardeleza (Justice Jardeleza).

I

This case started out as a petition for injunction filed directly before us by the petitioner Knights of Rizal against the respondent DMCI Project Developers, Inc. (DMCI-PDI).[1] In it, petitioner primarily prayed for the following reliefs:[2]

- The issuance of an order enjoining the DMCI-PDI from continuing with the construction of the Torre de Manila building; and
- The issuance of an order directing the demolition of so much of the said building already erected by the DMCI-PDI.

Subsequently, however, we issued a resolution:[3] (a) treating the instant case as a mandamus petition and (b) impleading-as public respondents herein-the City of Manila, the National Commission for Culture and the Arts (NCCA), the National Museum (NM) and the National Historical Commission of the Philippines (NHCP).

The conversion of the instant case to a mandamus petition and the addition of public respondents, to my mind, made clear what ought to be the central issue of the case, whether any or all of the respondents may be compelled to perform one or both acts sought to be enjoined in the original petition for injunction. The main inquiry, in other words, is whether any or all of the respondents may be compelled (1) to stop or prohibit the continued construction of the Torre de Manila building and/or (2) to demolish so much of the said building that already stands.

In order to answer the foregoing query, it is necessary to make a parallel determination on whether any of the respondents has the legal duty to perform one or both of the mentioned acts. It is rudimentary, after all, that a writ of mandamus will only lie to compel the performance of an act if such act is one "which the law specifically enjoins as a duty resulting from an office, trust or station"[4] on the part of the respondent/s.

During the course of this case, various arguments were proffered in favor of the view that the respondents have the legal duties to stop or prohibit the continued construction of the Torre de Manila building and/or to demolish it in its present state. I find that these arguments may generally be subdivided into three (3) kinds.

The first argument is premised on the claim that the Torre de Manila building-visible as it is in the backdrop of the Rizal Monument to anyone facing such monument at or from a certain distance-had impaired the view of dominance of the Rizal Monument in relation to its background (view of dominance), which view is supposedly protected by the following laws and guidelines:

- Sections 15 and 16, Article XIV of the Constitution,
- Republic Act (RA) Nos. 4846, 7356 and 10066,
- the Venice Charter, and
- the 2012 NHCP Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other

Personages (NHCP Guidelines).

The theory of the first argument is that the illegal impairment of the view of dominance of the Rizal Monument gives rise to the duty of the respondents-particularly the DMCI-PDI (as the builder of the offending structure), as well as the NCCA, NM and NHCP (as the cultural agencies tasked by RA No. 10066 to protect the nation's cultural properties)[5]-to perform the subject acts.

The second argument, on the other hand, rests on the notion that the construction of the Torre de Manila was carried out by DMCI-PDI in bad faith with the use of void permits, viz:

- The zoning permit issued to DMCI-PDI for the construction of the Torre de Manila is void for exceeding the maximum number of floors allowed for buildings within the Institutional University Cluster per Section 17 of Ordinance No. 8119 of the City of Manila.
- The building permit for the Torre de Manila is also void as a necessary consequence of the nullity of the zoning permit, pursuant to Section 69 of Ordinance No. 8119.
- The variance granted to DMCI-PDI by the Sangguniang Panglungsod of the City of Manila, which exempted the Torre de Manila from the floor and height limits of Ordinance No. 8119, is also void due to it not being obtained in accordance with the procedure prescribed under Section 61 of the same ordinance.
- All of the foregoing irregularities in its permits were known to DMCI-PDI yet it still pushed through with the construction of the Torre de Manila.

The theory of the second argument is that the nullity of the permits coupled by the bad faith of DMCI-PDI gives rise to the duty of the DMCI-PDI and of the City of Manila to perform the subject acts.

Lastly, the third argument is premised on the assumption that the Torre de Manila building constitutes as a nuisance for it apparently annoys or offends the senses of anyone viewing the Rizal Monument.

The theory of the third argument is that the character of the Torre de Manila building as a nuisance gives rise to the duty of DMCI-PDI and the City of Manila to cause the summary abatement of the said building.

II

The minority, through the dissent of Justice Jardeleza, confined themselves in addressing only the first argument.[6]

As to the first argument, the minority essentially held that the view of dominance of the Rizal Monument is not afforded any legal protection under: (a) Sections 15 and 16 of Article XIV of the Constitution, (b) RA Nos. 4846, 7356 and 10066, (c) the Venice Charter or (d) the NHCP Guidelines. The minority elucidated thusly:[7]

- Sections 15 and 16 of Article XIV of the Constitution are not self-executing provisions; both are mere expressions of general state policies and so, by themselves and without the aid of any enabling law, they cannot be the source of any enforceable right or claim of protection.
- Though RA Nos. 4846, 7356 and 10066 all implement to some extent the broad policies of Sections 15 and 16 of Article XIV of the Constitution, none of the said statutes provides any clear and definite protection to a view of dominance for any of the country's historical and cultural sites, let alone one for the Rizal Monument.
- The Venice Charter does not rise to the level of enforceable law. There is no showing that the Philippines has legally committed to observe such charter. Neither was it established that the principles contained therein are norms of general or customary international law. At any rate, the Venice Charter, by its own words, only seems to

be hortatory.

- The NHCP Guidelines is neither law nor an enforceable regulation. It appears that it has never been published nor filed with the Law Center of the University of the Philippines. Moreover, like the Venice Charter, the NHCP Guidelines appears to be merely hortatory.

The inquiry of the majority, however, did not stop there.

According to the minority, even though no national law categorically guarantees a view of dominance to any of the nation's cultural properties, there exists a local Manila legislation that actually extends such a guarantee to at least the city's historical sites and facilities.[8] To this end, they cited Sections 47 and 48 of Ordinance No. 8119 of the City of Manila. As the minority explained:[9]

- Section 47 of Ordinance No. 8119 provides standards that aim to protect Manila's historical sites and facilities from impairment that may be caused by development projects. The protection afforded by Section 47 extends even to the view of the city's historical sites and facilities, as two of the standards therein make explicit reference to: (a) the maintenance of the "landscape and streetscape" qualities of such sites and facilities as well as (b) the preservation of the "visual character" of the same.

- Section 48 of Ordinance No. 8119, on the other hand, prescribes standards that aim to protect properties and neighborhoods that are adjacent to a proposed development project. Two standards therein make explicit reference to: (a) an obligation of property developers to consider, in the design of their projects, the "natural environmental character" of adjacent properties as well as (b) a prohibition against certain projects that could be detrimental to the "skyline."

Be that as it may, the minority withheld themselves from determining: (a) whether the Rizal Monument and Park is a historical site or facility in contemplation of Ordinance No. 8119, (b) whether the abovementioned standards in Sections 47 and 48 apply to the DMCI-PDI and the Torre de Manila building and, if so, (c) whether DMCI-PDI, in erecting the said building, had breached or impaired any of such standards. They implicitly considered the City of Manila as the entity in the best position to make such determinations; pointing out that it was supposedly the latter's duty to do so, as, in fact, it should have already done so, prior to issuing permits to DMCI-PDI.

In this case, however, the majority found that the City of Manila had failed to consider the abovementioned standards in Sections 47 and 48 of Ordinance No. 8119 when it issued the permits for the construction of the Torre de Manila to DMCI-PDI.[10]

And so, the minority posited that a writ of mandamus compelling the City of Manila to re-evaluate the permits it issued to DMCI-PDI ought to be issued in the present case.

III

I share the minority's disregard of the second and third arguments. The second and third arguments actually pose factual questions that are more properly settled in the first instance, not by the Court, but by an appropriate office, administrative agency or trial court.

I even agree with their position that the Rizal Monument's view of dominance is neither protected nor guaranteed by: (a) Sections 15 and 16 of Article XIV of the Constitution, (b) RA Nos. 4846, 7356 and 10066, (c) the Venice Charter or (d) the NHCP Guidelines.

I disagree, however, with the majority's interpretation that the view -that is, the view of dominance-of Manila's

historical sites and facilities are protected by Sections 47 and 48 of Ordinance No. 8119. A careful reading of both sections, in their proper contexts, easily disproves such interpretation.

Hence, I cannot but disagree with the minority's proposition compelling the City of Manila, through a writ of mandamus, to re-evaluate the permits of DMCI-PDI. Such a re-evaluation will serve no useful purpose given that none of the standards enumerated under Sections 47 and 48 of Ordinance No. 8119 can have any application to the present dispute.

I remain convinced that there is no law, whether national or local, that protects the view of dominance of the Rizal Monument. Verily, I am constrained to follow the only logical conclusion of that finding, i.e., there is no compellable duty on the part of any of the respondents to stop or prohibit the construction of the Torre de Manila building or to otherwise destroy so much of the said building already constructed.

I, therefore, join the majority and vote to dismiss the mandamus petition.

A. Sections 47 and 48 of Ordinance No. 8119 Do Not Protect View of Dominance of Rizal Monument

Contrary to the minority's finding, Sections 47 and 48 do not protect the view-particularly, the view of dominance-of Manila's historical sites and facilities.

View of Dominance

The view of dominance of a property, at least for purposes of the dispute at hand, refers to a characteristic of a property that permits it to be viewed as the sole or most prominent element vis-a-vis its background. This is the attribute of the Rizal Monument that was supposedly impaired by the construction of the Torre de Manila, per the proponents of the first argument.

An inviolable view of dominance is not an inherent attribute of any kind of property-not even of our monuments and national shrines.[11] To merit inviolability, there must be a law that guarantees and protects it.

A law that purports to protect the view of dominance of a particular property, such as a historical site or facility, must necessarily be a law that either prohibits the construction of buildings and other structures within a certain area outside of the premises of the site or facility or prescribes specific limitations on any such construction. Without such express prohibition or limitation, there can be no effective assurance that the view of dominance of a historical site or facility would not be impaired.

The nature of a law protecting a view of dominance, therefore, is similar to one that establishes an easement; it imposes a burden (in this case, a building prohibition or restriction) upon certain properties so as to ensure that the prominent view of another property in relation to its background remains unimpaired.

Section 47 Does Not Prohibit or Regulate the Construction of Buildings and Other Structures Outside of the Premises of Manila's Historical Sites and Facilities; Its Standards Do Not Apply to DMCI-PDI and the Torre de Manila

Section 47 of Ordinance No. 8119, true enough, enumerates standards that aim to protect Manila's historical sites and facilities from impairment. Those standards, however, do not extend protection to the view of dominance of such sites and facilities.

A reading of Section 47 reveals that the standards enumerated thereunder only apply to construction projects involving the "development of historic sites and facilities" themselves, to wit:

SEC. 47. Historical Preservation and Conservation Standards. - Historic sites and facilities shall be conserved and preserved. These shall, to the extent possible, be made accessible for the educational and cultural

enrichment of the general public.

The following shall guide the development of historic sites and facilities:

x x x x (emphasis supplied)

The clear import of the foregoing is that Section 47 only applies to development projects that are implemented within the historical sites or facilities. The section, in other words, has absolutely no application to projects that are constructed outside of such site or facility.

Since Section 47 does not regulate, much less prohibit, construction projects that surrounds the city's historical sites and facilities, it cannot be said that the said section provides any protection or guarantee to the view of dominance of such sites and facilities. The standards under Section 47 could not be invoked so as to prohibit a building-standing on private land and without the premises of a historical site or facility-from rising and becoming visible in the background of such site or facility.

Hence, even assuming that the Rizal Monument is a historical site or facility in contemplation of Ordinance No. 8119, it is manifest that none of the standards under Section 47-much less those pointed out by the minority-can conceivably apply to the case of the DMCI-PDI and the Torre de Manila. Indeed, a thorough look at some of those standards will quickly expose their inaptness:

First. Section 47(3) of the ordinance, which requires the submission of a heritage impact statement and of construction plans to the City Planning and Development Office and the NHCP for review, only applies to property developers who propose to "to add, to alter or partially demolish" a heritage property. This cannot apply to the DMCI-PDI because the Torre de Manila building is built on private property well outside the premises of the Rizal Monument and even of the Rizal Park, and does not add to, alter or partially demolish the said monument and park.

Second. Section 47(7) of the ordinance, which requires residential and commercial infill in heritage areas to maintain the existing "landscape and streetscape" qualities of such area, cannot apply to DMCI-PDI simply because the Torre de Manila does not stand on any such "heritage area."

Apropos to this point is the uncontroverted fact that the Torre de Manila building stands on an area that has not been declared as an "anthropological or archeological area," nor designated as a "heritage zone, cultural property, historical landmark or a national treasure" by the NHCP.[12]

Third. Section 47(9) of the ordinance, which requires power and communication equipment[13] to be placed in locations that do not detract from the "visual character" of the heritage resources and which do not have negative impact on its architectural integrity, can never apply to DMCI-PDI because it is not a "local utility company" and its Torre de Manila project is not involved with the installation of any power and communication equipment in or within the Rizal Monument and Park.

Verily, none of the standards under Section 47 of Ordinance No. 8119 may be considered as protective of the view of dominance of any of Manila's historical sites and facilities. Such standards are clearly meant to apply only to development projects within the historical sites or facilities themselves. None of them, consequently, can have any possible application to DMCI-PDI and the Torre de Manila.

Standards Under Section 48 Cited By the Majority Are Mere General Norms on Construction Projects That Do Not Guarantee the View of Dominance of Adjacent Properties

Section 48 of Ordinance No. 8119, on the other hand, enumerates standards that aim to protect the character, environmental limitation, convenience and safety of properties and neighborhoods that are adjacent to a

construction project. The section, by its terms, is meant to have universal application, i.e., its standards apply to all construction projects within the city (such as the Torre de Manila) and are intended to protect any kind of properties or neighborhoods adjacent thereto (such as the Rizal Monument).

Be that as it may, Section 48 does not prescribe any concrete building prohibition or restriction on construction projects that are specially geared towards the preservation of the view of dominance of properties or neighborhoods adjacent thereto. The standards under Section 48 that were invoked by the majority are mere general norms that, per se, are insufficient to guarantee such view. The said standards do not establish operable norms by themselves and so, to gain substance, should be read with other provisions of the ordinance or of other laws:

First. The second paragraph of Section 48, which requires every construction project to be "in harmony with the existing and intended character of its neighborhoods," obviously has reference to the provisions of Ordinance No. 8119 that demarcates the different zoning areas of the City of Manila.[14] This does not guarantee the view of dominance of neighborhoods adjacent to a construction project, but only requires the latter to adhere to the "character" of such neighborhoods as "intended" by the zoning regulations.

Second. Section 48(1), which requires construction projects to consider the "natural environmental character" of adjacent properties, has perceptible reference to the provisions of the National Building Code on sanitation[15] as well as to our different environmental laws and regulations. This provision actually has no connection whatsoever with protecting the view of dominance of a property adjacent to a construction project.

Third. Section 48(7), which prohibits large commercial signages that are detrimental to the "skyline," is an adjunct of Section 36 of Ordinance No. 8119 that, in turn, states that all "advertising, business signs and billboards" must comply with "existing laws, rules and regulations." [16] This is not a direct guarantee of the view of dominance of any property, but a general prohibition against certain kinds of signages. Moreover, for obvious reasons, this provision cannot apply to the Torre de Manila.

Verily, none of the standards under Section 48 of Ordinance No. 8119 may be considered as protective of the view of dominance of any of property within the city, much less of the Rizal Monument.

B. Mandamus to Compel Re-evaluation Does Not Lie

The minority's proposition compelling the City of Manila to re-evaluate the permits it issued to DMCI-PDI is premised on the claim that the former, in so issuing the said permits, overlooked certain standards under Sections 47 and 48 of Ordinance No. 8119 that supposedly protects the view of dominance of Manila's historical sites and facilities. The underlying purpose of the re-evaluation was to allow the City of Manila to determine, in essence, the following: (a) whether the Rizal Monument and Park is a historical site or facility in contemplation of Ordinance No. 8119, (b) whether the abovementioned standards in Sections 47 and 48 apply to the DMCI-PDI and the Torre de Manila building and, if so, (c) whether DMCI--PDI, in erecting the said building, had breached or impaired any of such standards.

My discussion in the immediately preceding segment, however, established that none of the standards under Sections 47 and 48 of Ordinance No. 8119 actually extends protection to the view of dominance of any property within Manila. It cannot be said, therefore, that the City of Manila had overlooked, misinterpreted or misapplied any pertinent standards when it issued the permits to DMCI-PDI. The need for a re-evaluation is thereby also negated as the possibility that the same would yield an outcome different from the original evaluation is but reduced to nil.

Hence, the directive compelling the City of Manila to re-evaluate the permits of DMCI-PDI must fail. A

re-evaluation will only waste resources, further delay the final resolution of the case and defeat the very purpose why we took cognizance of the petition in the first place. The compulsion of such an act is certainly not the office of the writ of mandamus.

IV

This case has been pending with us for more than two (2) years. In that time I certainly had ample opportunity to scour our statute books for any pertinent law or regulation that could be considered as protective of the Rizal Monument's view of dominance. And scour I did. Yet, I found none.

The absence of law protecting the view of dominance of the Rizal Monument strips the first argument of any semblance it might have first had as a bona fide legal dispute. Without the backing of law, the only query the argument actually brings to the fore is whether the Rizal Monument is still pleasing to look at or to take picture of in light of the Torre de Manila looming in its background. To my mind, that is not a question that the Court may dabble into, much less settle in the exercise of its judicial power.

For whatever it is worth, however, may I just add that not all viewing and photographic opportunities^[17] of the Rizal Monument have been lost as a consequence of the construction of the Torre de Manila. From my own personal observation, the visibility Torre de Manila building in the backdrop of the Rizal Monument is highly dependent on the distance and angle from which the monument is viewed.

Thus, while one vantage point does expose the Torre de Manila in the background of the Rizal Monument:

(see image)

Other vantage points permit a view of the Rizal Monument with only a minimum of, if not totally without, the Torre de Manila building in sight:

(see image)

Hence, even from a lay perspective, it cannot be gainsaid that the construction of the Torre de Manila building had deprived anyone of the chance to view or photograph the Rizal Monument without the said building looming in the background.

V

Now, I vote.

It has been said that a writ of mandamus only lies in the enforcement of a clear legal right on the part of the petitioner and in the compulsion of a clear legal duty on the part of the respondent.^[18] Here, it has been established that there is no law, whether national or local, that protects the view of dominance of the Rizal Monument or prohibits DMCI-PDI from constructing in its land a building such as the Torre de Manila. The conclusion, to my mind, is inevitable-petitioner is not entitled to the writ inasmuch as there is no compellable duty on the part of any of the respondents to stop or prohibit the construction of the Torre de Manila building or to otherwise destroy so much of the said building already constructed.

IN VIEW WHEREOF, I vote to DISMISS the instant petition for mandamus.

[1] The petition was actually originally filed against respondent DMCI Homes, Inc. (DMCI-HI). However, DMCI-HI was substituted in the present suit by DMCI-PDI.

[2] See page 25 of the Petition for Injunction.

[3] Dated November 25, 2014.

[4] Section 3 of Rule 65 of the Rules of Court.

[5] See Section VII of RA No. 10066.

[6] See page 7 of the Dissenting Opinion of Justice Jardeleza.

[7] See pages 7-16 of the Dissenting Opinion of Justice Jardeleza.

[8] Page 16 of the Dissenting Opinion of Justice Jardeleza.

[9] See pages 18-22 of the Dissenting Opinion of Justice Jardeleza.

[10] See pages 32-34 of the Dissenting Opinion of Justice Jardeleza.

[11] Indeed, at least two (2) of the country's most revered monuments-the Bonifacio Monument in Caloocan City and the Ninoy Aquino Monument in Makati City-already stand in highly urbanized settings and completely surrounded by high buildings and/or billboards. See "Examples of Monuments of Other Filipino National Heroes," Memorandum of the NHCP.

[12] Opinion of City Legal Officer of the City of Manila dated September 12, 2012, Annex E, Position Paper of the City of Manila

[13] That is, metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless communication towers and other utility equipment.

[14] See Sections 7 and 8 of Ordinance No. 8119. See also Zoning Map, Annex B, Ordinance No. 8119.

[15] Chapter IX of Presidential Decree (PD) No. 1096.

[16] See Chapter XX of PD No. 1096.

[17] See page 11 of the Petition.

[18] Philippine Coconut Authority v. Primex Coco Products, G.R. No. 163088, July 20, 2006, 495 SCRA 763.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

Before this Court is a petition for injunction[1] - subsequently and uncontestedly converted by this Court into one for mandamus - filed by herein petitioner Knights of Rizal (petitioner), seeking to compel respondents[2] to stop the construction of the Torre de Manila, a high-rise condominium project situated about 870 meters outside and to the rear of the Rizal Park, as it allegedly obstructs the sightline, setting, or backdrop of the Rizal Monument, which is claimed to be a historical or cultural heritage or resource protected by the Constitution and various laws. Owing to the nature of the action, the resolution of this case therefore depends on whether or not petitioner has satisfied the requirements necessary for a writ of mandamus to issue.

"Mandamus is defined as a writ commanding a tribunal, corporation, board or person to do the act required to be done when it or he 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 or which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law." [3]

Section 3, Rule 65 of the Rules of Court lays down under what circumstances a petition for mandamus may be filed:

SEC. 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.

x x x x

Based on jurisprudence, the peremptory writ of mandamus is characterized as "an extraordinary remedy that is issued only in extreme necessity, and [because] the ordinary course of procedure is powerless to afford an adequate and speedy relief to one who has a clear legal right to the performance of the act to be compelled." [4] Thus, it is a basic principle that "[a] writ of mandamus can be issued only when petitioner's legal right to the performance of a particular act which is sought to be compelled is clear and complete. A clear legal right is a right which is indubitably granted by law or is inferable as a matter of law." [5] Stated otherwise, "mandamus will issue only when the petitioner has a clear legal right to the performance of the act sought to be compelled and the respondent has an imperative duty to perform the same." [6]

As a corollary, it is fundamental that "[t]he remedy of mandamus lies [only] to compel the performance of a ministerial duty. A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial." [7]

In this case, the clarity and completeness of petitioner's legal right to the compulsion prayed for - i.e., to stop the construction of the Torre de Manila - remains suspect in view of the present lack of established and binding legal standards on the protection of sightlines and vistas of historical monuments, as well as heritage sites and/or areas.

Primarily, petitioner cites Sections 15 [8] and 16, [9] Article XIV of the 1987 Constitution as basis for the relief prayed for. [10] However, it is quite apparent that these are not self-executing provisions; thus, Congress must first enact a law that would provide guidelines for the regulation of heritage conservation, as well as the penalties for violations thereof. Otherwise stated, there is a need for supplementary statutory implementation to give effect to these provisions.

In this light, I join the ponencia in finding that there is currently no such law which specifically prohibits the construction of any structure that may obstruct the sightline, setting, or backdrop of a historical or cultural heritage or resource. [11] This prohibition is neither explicit nor deducible from any of the statutory laws discussed in the present petition. [12] There are several laws which consistently reiterate the State's policy to protect and conserve the nation's historical and cultural heritage and resources. However, none of them adequately map out the boundaries of protection and/or conservation, at least to the extent of providing this Court with a reasonable impression that sightlines, vistas, and the like of historical monuments are indeed covered by

compulsive limitations.

The closest to a statutory regulation of this kind would appear to be Section 25 of Republic Act No. (RA) 10066, which provides that:

SEC. 25. Power to Issue a Cease and Desist Order. - When the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state, the appropriate cultural agency shall immediately issue a Cease and Desist Order ex parte suspending all activities that will affect the cultural property. The local government unit which has the jurisdiction over the site where the immovable cultural property is located shall report the same to the appropriate cultural agency immediately upon discovery and shall promptly adopt measures to secure the integrity of such immovable cultural property. Thereafter, the appropriate cultural agency shall give notice to the owner or occupant of the cultural property and conduct a hearing on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after due notice and hearing involving the interested parties and stakeholders. (Emphasis and underscoring supplied)

However, it is unclear whether "physical integrity," as used in this provision, covers sightlines, vistas, settings, and backdrops. The concept of "physical integrity" is glaringly undefined in the law, and in fact, as the ponencia aptly points out, the reasonable inference is that "physical integrity [equates] to the structure itself - how strong and sound it is." [13]

For another, petitioner claims that the Torre de Manila project violates the National Historical Commission of the Philippines (NHCP) Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages, as well as the International Charter for the Conservation and Restoration of Monuments and Sites, otherwise known as the Venice Charter. [14] However, the NHCP Guidelines is neither a law nor an enforceable rule or regulation, considering the lack of showing that the requirements of publication and filing with the Law Center of the University of the Philippines were complied with. Meanwhile, as the ponencia aptly points out, the Venice Charter is not a treaty but "merely a codification of guiding principles for preservation and restoration of ancient monuments, sites[,] and buildings[.]" which, however, defers to each country the "responsib[ility] for applying the plan within the framework of its own culture and traditions." [15] Hence, the guidelines stated therein have no binding effect in this jurisdiction.

Neither can Manila Ordinance No. 8119 be considered as an existing local legislation that provides a clear and specific duty on the part of respondent City of Manila (the City of Manila) to regulate development projects insofar as these may adversely affect the view, vista, sightline or setting of a cultural property within the city. While I find this ordinance to be a binding regulation which not merely sets forth a tentative direction or instruction for property development within the city, [16] it is my view that none of its provisions justify the issuance of a writ of mandamus in favor of petitioner.

The minority proposes that a writ of mandamus be issued to re-evaluate with dispatch the permits and variance issued in favor of DMCI Project Developers, Inc. (DMCI-PDI)'s Torre de Manila project, and thereby determine the applicability and/or compliance with the standards under Sections 45, 53, 47, 48, and 60 (in relation to the grant of a variance) of Ordinance No. 8119, and eventually, grant the appropriate reliefs and sanctions under the law. [17]

However, Sections 45 and 53 of Ordinance No. 8119 respectively pertain to environmental conservation and protection standards, and the requirement of Environmental Compliance Certificates, and thus, are only relevant when there is an alleged violation of an environmental law affecting the natural resources within the City's premises:

SEC. 45. Environmental Conservation and Protection Standards. - It is the intent of the City to protect its natural resources. In order to achieve this objective, all development shall comply with the following regulations:

- Views shall be preserved for public enjoyment especially in sites with high scenic quality by closely considering building orientation, height, bulk, fencing and landscaping.

x x x x

SEC. 53. Environmental Compliance Certificate (ECC). - Notwithstanding the issuance of zoning permit (locational clearance) Section 63 of this Ordinance, no environmentally critical projects nor projects located in environmentally critical areas shall be commenced, developed or operated unless the requirements of ECC have been complied with.

In this case, the Rizal Monument is not claimed to be a natural resource whose view should be preserved in accordance with Section 45 (1) above. Neither was it claimed that the Torre de Manila project is covered by and/or has breached the ECC requirement under Section 53. Therefore, none of these provisions should apply to this case.

In the same vein, Section 48 of Ordinance No. 8119 provides for site performance standards, which, among others, only require that developments within the City be designed in a safe, efficient, and aesthetically pleasing manner:

SEC. 48. Site Performance Standards. - The City considers it in the public interest that all projects are designed and developed in a safe, efficient and aesthetically pleasing manner. Site development shall consider the environmental character and limitations of the site and its adjacent properties. All project elements shall be in complete harmony according to good design principles and the subsequent development must be visually pleasing as well as efficiently functioning especially in relation to the adjacent properties and bordering streets.

The design, construction, operation and maintenance of every facility shall be in harmony with the existing and intended character of its neighborhood. It shall not change the essential character of the said area but will be a substantial improvement to the value of the properties in the neighborhood in particular and the community in general.

Furthermore, designs should consider the following:

- Sites, buildings and facilities shall be designed and developed with regard to safety, efficiency and high standards of design. The natural environmental character of the site and its adjacent properties shall be considered in the site development of each building and facility.
- The height and bulk of buildings and structures shall be so designed that it does not impair the entry of light and ventilation, cause the loss of privacy and/or create nuisances, hazards or inconveniences to adjacent developments.

x x x x

- No large commercial signage and/or pylon, which will be detrimental to the skyline, shall be allowed.

- Design guidelines, deeds of restriction, property management plans and other regulatory tools that will ensure high quality developments shall be required from developers of commercial subdivisions and condominiums. These shall be submitted to the City Planning and Development Office (CPDO) for review and approval. (Emphases and underscoring supplied)

It is not inferable whether the "aesthetics" requirement under this provision precludes any form of obstruction on the sightline and vista of any historical monument within the City. It also does not account for a situation where

the assailed development and historical monument are located in different cluster zones.

It has not also been claimed that the natural environmental character of the adjacent properties within the Torre de Manila's cluster zone, per Section 48, paragraph 3 (1) above, has been negatively impacted by the latter's construction. As worded, this provision regulates only environmental and not historical considerations; thus, it is premised with the requirement that "[s]ites, buildings and facilities [be] designed and developed with regard to safety, efficiency and high standards of design."

Likewise, Section 48, paragraph 3 (8) is inapplicable, considering that the Torre de Manila project is not a large commercial signage and/or pylon (or claimed to be an equivalent thereof) that would prove to be detrimental to the City's skyline.

Meanwhile, Section 60 of Ordinance No. 8119 governs the grant of variances from the prescribed Land Use Intensity Control (LUIC) standards (among others, the Floor Area Ratio [FAR]) on buildings within a specific zone:

SEC. 60. Deviations. - Variances and exceptions from the provisions of this Ordinance may be allowed by the Sangguniang Panlungsod as per recommendation from the Manila Zoning Board of Adjustment and Appeals (MZBAA) through the Committee on Housing, Urban Development and Resettlements only when all the following terms and conditions are obtained/ existing:

- Variance - all proposed projects which do not conformed [sic] with the prescribed allowable Land Use Intensity Control (LUIC) in the zone.
- The property is unique and different from other properties in the adjacent locality and, because of its uniqueness, the owner/s cannot obtain a reasonable return on the property.

This condition shall include at least three (3) of the following provisions:

- Conforming to the provisions of the Ordinance will cause undue hardship on the part of the owner or occupant of the property due to physical conditions of the property (topography, shape, etc.), which is not self-created.
- The proposed variance is the minimum deviation necessary to permit reasonable use of the property.
- The variance will not alter the physical character of the district/zone where the property for which the variance sought is located, and will not substantially or permanently injure the use of the other properties in the same district or zone.
- That the variance will not weaken the general purpose of the Ordinance and will not adversely affect the public health, safety, and welfare.
- The variance will be in harmony with the spirit of this Ordinance.

x x x x

In this case, the City of Manila had already exercised its discretion to grant a variance in favor of DMCI-PDI's Torre de Manila project. The factors taken into account by the City of Manila in the exercise of such discretion are beyond the ambit of a mandamus petition. As above-mentioned, "[t]he remedy of mandamus lies [only] to compel the performance of a ministerial duty" which is "one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done." [18] It is settled that "[m]andamus is employed to compel the performance, when refused, of a ministerial duty, this being its chief use and not a discretionary duty. It is nonetheless likewise available to compel action, when refused, in matters involving

judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either." [19] Further, while it has not been shown whether the conditions stated in Section 60 were complied with, it remains unclear whether or not these provisions can be - as it has been previously been - suspended due to justifiable reasons. [20]

What remains undisputed is the fact that DMCI-PDI applied for a variance, which application, upon due deliberation of the City's MZBAA, has been granted. Again, whether proper or not, the fact remains that discretion has already been exercised by the City of Manila. Thus, mandamus is not the appropriate remedy to enjoin compliance with the provisions on variance. Needless to state, erring public officials who are found to have irregularly exercised their functions may, however, be subjected to administrative/criminal sanctions in the proper proceeding therefor.

Finally, Section 47 of Ordinance No. 8119, which enumerates several historical preservation and conservation standards, was supposedly not considered by the City of Manila when it allowed the construction of the Torre de Manila:

SEC. 47. Historical Preservation and Conservation Standards. - Historic sites and facilities shall be conserved and preserved. These shall, to the extent possible, be made accessible for the educational and cultural enrichment of the general public.

The following shall guide the development of historic sites and facilities:

- Sites with historic buildings or places shall be developed to conserve and enhance their heritage values.
- Historic sites and facilities shall be adaptively re-used.
- Any person who proposes to add, to alter, or partially demolish a designated heritage property will require the approval of the City Planning and Development Office (CPDO) and shall be required to prepare a heritage impact statement that will demonstrate to the satisfaction of CPDO that the proposal will not adversely impact the heritage significance of the property and shall submit plans for review by the CPDO in coordination with the National Historical Institute (NHI).
- Any proposed alteration and/or re-use of designated heritage properties shall be evaluated based on criteria established by the heritage significance of the particular property or site.
- Where an owner of a heritage property applies for approval to demolish a designated heritage property or properties, the owner shall be required to provide evidence to satisfaction [sic] that demonstrates that rehabilitation and re-use of the property is not viable.
- Any designated heritage property which is to be demolished or significantly altered, shall be thoroughly documented for archival purposes with a history, photographic records, and measured drawings, in accordance with accepted heritage recording guidelines, prior to demolition or alteration.
- Residential and commercial infill in heritage areas will be sensitive to the existing scale and pattern of those areas, which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources.
- Development plans shall ensure that parking facilities (surface lots, residential garages, stand-alone parking garages and parking components as parts of larger developments) are compatibly integrated into heritage areas, and/or are compatible with adjacent heritage resources.
- Local utility companies (hydro, gas, telephone, cable) shall be required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations which do not detract from the visual character of heritage

resources, and which do not have a negative impact on its architectural integrity.

- Design review approval shall be secured from the CPDO for any alteration of the heritage property to ensure that design guidelines and standards are met and shall promote preservation and conservation of the heritage property. (Emphases and underscoring supplied)

However, the fact that Section 47 speaks of the preservation of existing landscape and streetscape qualities (Section 47, paragraph 2 [7]), or conveys a mandate to local utility companies not to detract from the visual character of heritage resources (Section 47, paragraph 2 [9]) should not be enough for this Court to conclude that Ordinance No. 8119 imposes a prohibition against the obstruction of sightlines and vistas of a claimed heritage property via the construction of buildings at a particular distance therefrom. The operable norms and standards of protecting vistas and sightlines are not only undefined; it is also doubtful whether or not the phrases "landscape or streetscape qualities" and "visual character of heritage resources" as used in the provision even include the aspects of vistas and sightlines, which connote regulation beyond the boundaries of a heritage site, building or place, as in this case.

In the same light, it is also unclear whether or not a purported obstruction of a heritage property's vista and sightline would mean an "addition", "alteration", and/or "demolition" of the said property so as to trigger the application of Section 47, paragraph 2 (3) (which requires the prior submission of a heritage impact statement and the approval of the CPDO) and Section 47, paragraph 2 (4) (requiring evaluation based on the criteria of heritage significance) of Ordinance No. 8119. In fact, it would be sensible to conclude that these concepts of "addition", "alteration", and/or "demolition" relate to the concept of "physical integrity" in Section 25 of RA 10066, which as above-discussed pertains only to the architectural stability of the structure.

Plainly speaking, there is no discernible reference from our existing body of laws from which we can gather any legal regulation on a heritage property's vista and sightline. After a careful study of this case, it is my conclusion that the realm of setting preservation is a new frontier of law that is yet to be charted by our lawmakers. It is therefore a political question left for Congress and not for this Court to presently decide. Verily, our function as judges is to interpret the law; it is not for us to conjure legal niceties from general policies yet undefined by legislature. Until such time that our legal system evolves on this subject, I believe that this Court is unprepared to grant a mandamus petition to compel the stoppage of the Torre De Manila project simply on the premise that the Torre de Manila "visually obstructs the vista and adds an unattractive sight to what was once a lovely public image." [21] In fact, this bare claim even appears to be in serious dispute, considering that the NHCP itself confirmed that the Torre de Manila was "outside the boundaries of the Rizal Park and well to the rear x x x of the Rizal National Monument; hence, it cannot possibly obstruct the front view of the said National Monument." [22] Likewise, the City Legal Officer of Manila City confirmed that the area on which the Torre de Manila is situated "lies outside the Luneta Park" and that it was "simply too far from the Rizal Monument to be a repulsive distraction or have an objectionable effect on the artistic and historical significance of the hallowed resting place of the national hero." [23] And finally, DMCI-PDI had demonstrated that the Rizal Monument can be viewed/photographed at certain angles to avoid or at least minimize the Torre de Manila's presence; [24] thus, the obstructive effects of the building on the monument's sightline are not only questionable but at most, insubstantial.

To reiterate, case law exhorts that for mandamus to issue, it must be shown that the petitioner has a clear legal right to the performance of the act sought to be compelled and the respondent has an imperative duty to perform the same. [25] The jurisprudential attribution is, in fact, exacting: "[a] clear legal right is a right which is indubitably granted by law or is inferable as a matter of law." [26] No such right of petitioner exists in this case. Neither do any of the respondents have the imperative duty to stop the Torre de Manila's construction.

Accordingly, for the reasons discussed herein, I vote to DISMISS the mandamus petition.

[1] See rollo, Vol. I, pp. 3-28.

[2] Original respondent, DMCI Homes, Inc., was subsequently substituted by respondent DMCI Project Developers, Inc., as the owner and developer of the Torre de Manila project (see Manifestation and Motion of DMCI-PDI dated October 14, 2014; rollo, Vol. I, pp. 240-242). Later on respondents the City of Manila, the National Historical Commission of the Philippines, the National Museum and the National Commission on Culture and the Arts were impleaded as respondents to this case (see Court's Resolution dated November 25, 2014; *id.* at 418-C-418-D).

[3] *Systems Plus Computer College v. Local Government of Caloocan City*, 455 Phil. 956, 962 (2003), citing Section 3, Rule 65 of the Rules of Court.

[4] *Special People, Inc. Foundation v. Canda*, 701 Phil. 365, 369 (2013); underscoring supplied.

[5] *Carolina v. Senga*, G.R. No. 189649, April 20, 2015, 756 SCRA 55, 70; *Calim v. Guerrero*, 546 Phil. 240, 252 (2007); and *Manila International Airport Authority v. Rivera Village Lessee Homeowners Association, Inc.*, 508 Phil. 354, 371 (2005); emphasis and underscoring supplied.

[6] *Special People, Inc. Foundation v. Canda*, *supra* note 4, at 386; emphasis, italics, and underscoring supplied.

[7] *Carolina v. Senga*, *supra* note 5, at 70-71; emphases and underscoring supplied.

[8] Sec. 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations.

[9] Sec. 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

[10] See rollo, Vol. I, pp. 15-16.

[11] See ponencia, pp. 8 and 9.

[12] Particularly: (1) Republic Act No. (RA) 4846 entitled "AN ACT TO REPEAL ACT NUMBERED THIRTY EIGHT HUNDRED SEVENTY FOUR, AND TO PROVIDE FOR THE PROTECTION AND PRESERVATION OF PHILIPPINE CULTURAL PROPERTIES," otherwise known as "CULTURAL PROPERTIES PRESERVATION AND PROTECTION ACT" (June 18, 1966); (2) RA 7356 entitled "AN ACT CREATING THE NATIONAL COMMISSION FOR CULTURE AND THE ARTS, ESTABLISHING A NATIONAL ENDOWMENT FUND FOR CULTURE AND THE ARTS, AND FOR OTHER PURPOSES," otherwise known as "LAW CREATING THE NATIONAL COMMISSION OF CULTURE AND THE ARTS" (April 3, 1992); and (3) RA 10066 entitled "AN ACT PROVIDING FOR THE PROTECTION AND CONSERVATION OF THE NATIONAL CULTURAL HERITAGE, STRENGTHENING THE NATIONAL COMMISSION FOR CULTURE AND THE ARTS (NCCA) AND ITS AFFILIATED CULTURAL AGENCIES, AND FOR OTHER PURPOSES," otherwise known as the "NATIONAL CULTURAL HERITAGE ACT OF 2009," approved on March 26, 2010. (See rollo, Vol. I, pp. 16-17.)

[13] Ponencia, p. 12.

[14] See rollo, Vol. I, pp. 19-20.

[15] Ponencia, pp. 17-18.

[16] See ponencia, pp. 9-10.

[17] See Dissenting Opinion of Justice Francis H. Jardeleza.

[18] See *Carolino v. Senga*, supra note 5, at 70; emphases and underscoring supplied.

[19] *Anchangco, Jr. v. Ombudsman*, 335 Phil. 766, 771-772 (1997); emphases and underscoring supplied.

[20] During the oral arguments, it was established that the granting of a variance is neither uncommon or irregular. On the contrary, current practice has made granting the variance the rule rather than the exception. (See ponencia, pp. 19-20, citing TSN, August 25, 2015, pp. 18-22.)

[21] *Rollo*, Vol. I, p. 172.

[22] See DMCI-PDI's Comment Ad Cautelam dated November 11, 2014; *id.* at 301-302; emphasis and underscoring supplied.

[23] *Id.* at 302; emphasis and underscoring supplied.

[24] See *id.* at 329-332.

[25] See *Special People, Inc. Foundation v. Canda*, supra note 4, at 386.

[26] *Carolina v. Senga*, supra note 5, at 70.

CONCURRING OPINION

"To my family,

I ask you for forgiveness for the pain I caused you, but some day I shall have to die and it is better that I die now in the plenitude of my conscience.

Dear parents and brothers: Give thanks to God that I may preserve my tranquility before my death. I die resigned, hoping that with my death you will be left in peace. Ah! It is better to die than to live suffering. Console yourself.

I enjoin you to forgive one another the little meanness of life and try to live united in peace and good harmony. Treat your old parents as you would like to be treated by your children later. Love them very much in my memory.

Bury me in the ground. Place a stone and a cross over it. My name, the date of my birth and of my death. Nothing

more. If later you wish to surround my grave with a fence, you can do it. No anniversaries. I prefer Paang Bundok.

Have pity on poor Josephine."

- Jose Rizal[1]

LEONEN, J.:

The soul of this nation and the story of the gallantry of our many peoples are more resilient than a bad photograph.

The Rizal Monument will not be physically altered. Adjoining properties owned by others have not been declared as national shrines.

Together with the Solicitor General, the petitioners argue that a specific view of the Rizal Monument is a legally protected right. They insist that even if the Rizal Monument is clearly in the foreground, the existence of the building of private respondents in the background violates that legally protected right. They insist that that background amounts to an alteration of the monument. They, however, fail to point to any clear text found in the Constitution, a statute, or an ordinance which contains this prestation. They have not succeeded in convincing this Court that there is precedent supporting their aesthetic propositions.

The dissent also acknowledges this. They agree that the temporary restraining order should be lifted. The dissent, however, insists that the matter be remanded to the Sangguniang Panlungsod of Manila to allow them, again, to deliberate as to whether to allow the construction or to cause its demolition.

I concur with the ponencia of Senior Associate Justice Antonio T. Carpio. There is no such law which mandates that the Rizal Monument, at a specific angle, should have only a specific background.

The Solicitor General and the petitioners are motivated by their passion, which can be summed up in a statement and which they want this Court to believe as a truism: a view of the monument with a tall building as background destroys the "soul of our nation." They claim that this gaze with a "photobomber" so undermines every conceivable narrative we can have of Rizal that there will be no way that our collective history as a people can be redeemed if we do not order the building to be torn down. They wish this Court of 15 unelected public servants to read this specific version of history into the Constitution of this Republic. They want us to declare that the monument of Rizal is so sacred that it should dwarf any other human structure without any other judicially discernible standard.

I do not agree.

There is no law which inscribes such narrative. There is no law that empowers any majority of the 15 members of this Supreme Court to impose our own narrative of our country's own history.

History, like every other cultural understanding of who we are, is the dynamic product of constant democratic deliberation. To impose only a single version is akin to installing a dictatorship or disempowering present and

future generations. Our history as a people is always in flux: always being written and always being reread in the light of contemporary challenges.

The Petition for Injunction, amended by this Court into a Petition for Mandamus, should fail.

I

This Petition should have been dismissed outright. The petitioners did not have standing and this Court had no jurisdiction over the subject matter of this case that the Petition, originally for injunction, had to be converted to mandamus.

Section 1, Article VIII of the Constitution provides:

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

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

For this Court to exercise its power of judicial review, four (4) requisites must be satisfied. First, there must exist "an actual and appropriate case." [2] Second, the party bringing suit must have a "personal and substantial interest ... in raising the constitutional question." [3] Third, "the exercise of judicial review is pleaded at the earliest opportunity." [4] Lastly, "the constitutional question is the lis mota of the case." [5]

The second requisite is absent in this case.

Legal standing requires that the party bringing suit has "sustained or will sustain direct injury as a result of the governmental act that is being challenged." [6] There must be "a personal stake in the outcome of the controversy" [7] on the part of the petitioner so as not to unnecessarily impede the judicial process. "For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice." [8]

There are exceptions to the rule on standing. Non-traditional suitors - taxpayers, [9] voters, [10] concerned citizens, [11] and legislators [12] - have been granted standing to question the constitutionality of governmental acts. The "transcendental importance" [13] of the issues raised is often cited as basis for granting standing.

Petitioner Knights of Rizal anchors its legal standing on its charter, Republic Act No. 646, Section 2 of which provides:

SECTION 2. The purposes of this corporation shall be to study the teachings of Dr. Jose Rizal, to inculcate and propagate them in and among all classes of the Filipino people, and by words and deeds to exhort our citizenry to emulate and practice the examples and teachings of our national hero; to promote among the associated knights the spirit of patriotism and Rizalian chivalry; to develop a perfect union among the Filipinos in revering the memory of Dr. Jose Rizal; and to organize and hold programs commemorative of Rizal's nativity and martyrdom.

Petitioner further cites as basis Section 7 of Republic No. 7356 or the Law Creating the National Commission for Culture and the Arts:

SECTION 7. Preservation of the Filipino Heritage. - It is the duty of every citizen to preserve and conserve the Filipino historical and cultural heritage and resources. The retrieval and conservation of artifacts of Filipino

culture and history shall be vigorously pursued.

However, like any other corporation, petitioner Knights of Rizal may only exercise its corporate powers, specifically, its power to sue,[14] through its Board of Directors.[15] There must be a duly issued Secretary's Certificate attached to the petition stating that the corporation's board allowed the filing of the suit in behalf of the corporation.[16]

Here, the Secretary's Certificate was not duly accomplished. There was no indication of petitioner's Corporate Secretary Maximo Salazar's community tax certificate number and competent evidence of identity. These were left blank in the Acknowledgment page.[17] The date of the alleged special meeting when Diosdado Santos, Deputy Supreme Commander of petitioner, was authorized by the Board to file the case, was also left blank.[18]

Moreover, there was no showing of a direct injury to petitioner or a specific member of Knights of Rizal caused by the construction of Torre de Manila. "[Losing] its moral authority and capacity 'to inculcate and propagate... [the teaching of] Dr. Jose Rizal'"[19] is too general and vague an interest to grant Knights of Rizal legal standing to sue. Further, Knights of Rizal is not a citizen with the duty to preserve and conserve historical and cultural heritage.

In *Integrated Bar of the Philippines v. Zamora*,[20] this Court denied legal standing to the Integrated Bar of the Philippines (IBP) for the organization's lack of direct and personal injury in the deployment of the Marines in select areas in Metro Manila. "[The IBP's] alleged responsibility to uphold the rule of law and the Constitution,"[21] this Court said, was not sufficient an interest considering the lack of allegation that the civil liberties of any of its individual members were violated. Explained the Court:

In the case at bar, the IBP primarily anchors its standing on its alleged responsibility to uphold the rule of law and the Constitution. Apart from this declaration, however, the IBP asserts no other basis in support of its locus standi. The mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by other groups and the whole citizenry. Based on the standards above-stated, the IBP has failed to present a specific and substantial interest in the resolution of the case. Its fundamental purpose which, under Section 2, Rule 139-A of the Rules of Court, is to elevate the standards of the law profession and to improve the administration of justice is alien to, and cannot be affected by the deployment of the Marines. It should also be noted that the interest of the National President of the IBP who signed the petition, is his alone, absent a formal board resolution authorizing him to file the present action. To be sure, members of the BAR, those in the judiciary included, have varying opinions on the issue. Moreover, the IBP, assuming that it has duly authorized the National President to file the petition, has not shown any specific injury which it has suffered or may suffer by virtue of the questioned governmental act. Indeed, none of its members, whom the IBP purportedly represents, has sustained any form of injury as a result of the operation of the joint visibility patrols. Neither is it alleged that any of its members has been arrested or that their civil liberties have been violated by the deployment of the Marines. What the IBP projects as injurious is the supposed "militarization" of law enforcement which might threaten Philippine democratic institutions and may cause more harm than good in the long run. Not only is the presumed "injury" not personal in character, it is likewise too vague, highly speculative and uncertain to satisfy the requirement of standing. Since petitioner has not successfully established a direct and personal injury as a consequence of the questioned act, it does not possess the personality to assail the validity of the deployment of the Marines. This Court, however, does not categorically rule that the IBP has absolutely no standing to raise constitutional issues now or in the future. The IBP must, by way of allegations and proof, satisfy this Court that it has sufficient stake to obtain judicial resolution of the controversy.[22]

With petitioner Knights of Rizal having no direct and personal interest in this case, it has no legal standing. On this ground alone, this Petition should have been dismissed outright.

The liberality in granting legal standing to those who have none should be tempered especially when the party suing is a corporation, the composition and nature of which inherently make the determination of direct and personal interest difficult. This is especially true in cases involving alleged violations of provisions under the Bill of Rights, which primarily involves "fundamental individual rights." [23]

The constitutional issue raised here is indeed novel. This Court has yet to decide on the extent of protection the State has to afford to our nation's historical and cultural heritage and resources, specifically, whether a declared national cultural treasure's sightlines and settings are part of its physical integrity.

Nevertheless, novelty, in it itself, does not equate to the transcendental importance of the issues involved. Constitutional issues, however novel, may likewise be resolved by regional trial courts at the first instance. Regional trial courts and this Court share concurrent original jurisdiction over issues involving constitutional questions. [24]

As pointed out in the majority opinion, factual issues [25] were raised in this Petition. [26] This Court, not being a trier of facts, [27] the Petition should have been filed before the regional trial court. This is also consistent with the doctrine of hierarchy of courts. Recourse must first be obtained from lower courts sharing concurrent jurisdiction with a higher court. [28]

Clarifying this concept in *Diocese of Bacolod v. Commission on Elections*, [29] we said:

The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.

The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating - in the light of new circumstances or in the light of some confusions of bench or bar existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role. [30] (Citation omitted)

II

This Court also has no subject matter jurisdiction over this case.

Jurisdiction over the subject matter is the "power to hear and determine cases of the general class to which the proceedings in question belong." [31] For this Court, its subject matter jurisdiction is provided in the first

paragraph of Section 5 of Article VIII of the Constitution:

SECTION 5. The Supreme Court shall have the following powers: (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.

As for cases for injunction such as that originally filed by petitioner Knights of Rizal, this Court has no jurisdiction. Actions for injunction have subject matters incapable of pecuniary estimation.[32] Therefore, such actions are under the exclusive original jurisdiction of regional trial courts.[33] Actions for injunction cannot be commenced before any other court.

The present Petition was converted into mandamus as a matter of "[relaxing] procedural rules." [34] The dissent of Justice Francis H. Jardeleza cites as legal bases *Gamboa v. Teves*, [35] *Salvacion v. Central Bank of the Philippines*, [36] and *Alliance of Government Workers v. Minister of Labor and Employment* [37] where the petitions, as originally filed, were for declaratory relief. Despite lack of jurisdiction to take cognizance of the petitions, [38] this Court resolved the purely legal questions involved in *Gamboa*, *Salvacion*, and *Alliance of Government Workers* because of the issues' alleged "far-reaching implications." [39]

Gamboa, *Salvacion*, and *Alliance of Government Workers* should be the exception rather than the rule. Subject matter jurisdiction is a matter of law. [40] It cannot be "conferred by the acquiescence of the courts." [41] A court must not change the relief and remedy to accommodate a petition over which it has no subject matter jurisdiction the same way that parties cannot choose, consent to, or agree as to which court or tribunal should decide their disputes. [42] Accommodating a petition which, on its face, this Court cannot resolve for lack of jurisdiction, undermines the impartiality and independence of this Court. It ultimately erodes the public trust in our court system.

III

Even if the present Petition is treated as one for mandamus, it does not satisfy the requirements under Rule 65, Section 3. of the Rules of Court. There is no law that "specifically enjoins as a duty" the protection of sightlines and settings of historical or cultural properties.

Rule 65, Section 3 of the Rules of Court provides:

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 the 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.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

The following are required for mandamus to lie: first, "the plaintiff has a clear legal right to the act demanded"; [43] second, "it must be the duty of the defendant to perform the act, because it is mandated by law"; [44] third, "the defendant unlawfully neglects the performance of the duty enjoined by law"; [45] fourth, "the act to be performed is ministerial, not discretionary"; [46] and, lastly, "there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law." [47]

IV

The first requisite is absent in this case. Petitioner Knights of Rizal has no clear legal right to an injunction against the construction of Torre de Manila. Petitioners failed to point to a law that specifically prohibits the construction of any structure that may obstruct the sightline, setting, or backdrop of a historical or cultural heritage or resource.

Petitioner Knights of Rizal mainly argues that the sightlines and setting of the Rizal Monument are protected under Sections 15 and 16, Article XIV of the Constitution:

SECTION 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations.

SECTION 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

It is argued that Sections 15 and 16, Article XIV of the Constitution are not self-executing provisions and, therefore, cannot be made basis to stop the construction of Torre de Manila. The dissenting opinion considers that Sections 15 and 16 "do not create any judicially enforceable right and obligation for the preservation, protection or conservation of the prominence, dominance, vista points, vista corridors, sightlines and setting of the Rizal Park and the Rizal Monument." [48] It adds that Sections 15 and 16 are "mere statements of principles and policy" [49] and that "[t]he constitutional exhortation to 'conserve, promote, and popularize the nation's historical and cultural heritage and resources' lacks 'specific, operable norms and standards' by which to guide its enforcement." [50]

As examples of other non-self-executing provisions in the Constitution, the dissent enumerates Sections 11, [51] 12, [52] and 13, [53] Article II; Sections 1 [54] and 13, [55] Article XIII; and Sections 1 [56] and 2, [57] Article XIV. Further cited is *Kilosbayan v. Morato* [58] where, according to the dissent, this Court held that the provisions in Article II on the Declaration of Principles and State Policies were not self-executing.

Sections 15 and 16, Article XIV of the Constitution are not legal bases for stopping the construction of Torre de Manila. Textually, nothing in Sections 15 and 16 indicates that the sightlines and setting surrounding a historical and cultural heritage or resource is subject to protection. Sections 15 and 16 contain substantive standards too general to serve as basis for courts to grant any relief to petitioner Knights of Rizal. To attempt to operate with these general substantive standards will "propel courts into uncharted ocean of social and economic policy making," [59] encroaching on the functions properly belonging to the legislative and executive branches.

I do not agree, however, in making distinctions between self--executing and non-self-executing provisions.

A self-executing provision of the Constitution is one "complete in itself and becomes operative without the aid of supplementary or enabling legislation." [60] It "supplies [a] sufficient rule by means of which the right it grants may be enjoyed or protected." [61] "[I]f the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action," [62] the provision is self-executing.

On the other hand, if the provision "lays down a general principle," [63] or an enabling legislation is needed to implement the provision, it is not self--executing.

To my mind, the distinction creates false second-order constitutional provisions. It gives the impression that only self-executing provisions are imperative.

All constitutional provisions, even those providing general standards, must be followed. Statements of general

principles and policies in the Constitution are frameworks within which branches of the government are to operate. The key is to examine if the provision contains a prestation and to which branch of the government it is directed. If addressed either to the legislature or the executive, the obligation is not for this Court to fulfill.

V

There are no second-order provisions in the Constitution. We create this category when we classify the provisions as "self-executing" and "non--self executing." Rather, the value of each provision is implicit in their normative content.

For instance, Sections 14, 15, 16, and 17, Article XIV of the Constitution must be read as provisions that contribute to each other's coherence. That is, we must interpret them holistically to understand the concepts labeled as culture and history. None of these provisions deserve to be read in isolation.

Section 14 reads:

SECTION 14. The State shall foster the preservation, enrichment, and dynamic evolution of a Filipino national culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression.

The object of the provision is a "Filipino national culture." In relation to this object, it is the State's duty to foster its "preservation, enrichment," and development. Our Filipino national culture should be based on the "principle of unity in diversity." It grows "in a climate of free artistic and intellectual expression."

Clearly, the Constitution acknowledges that culture exists at various levels and with many dimensions. In terms of social space, there is a "national" culture and local ones. There is diversity also among cultures. Ours is a multi-ethnic, multi-vocal, and multi-lingual state.

The Constitutional provision further implies that there can be unity both in the diversity of our culture as well as in their commonalities. Thus, the cultures that vary in terms of their spatial, ethnic, or linguistic applications are not mutually exclusive of each other. They interact and reflect each other.

Significantly, culture evolves. It is not only to be preserved; it should also be enriched. It is not to archaically retard; it must develop. Intrinsic in the very concept of culture is that it is dynamic. "Free artistic and intellectual expression" ensures its malleability so that it becomes appropriate to the contemporary world while at the same time maintaining the values embedded in a common framework that defines the implicit ways of life that we transmit through generations.

Section 15 provides:

SECTION 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations.

Section 16 provides:

SECTION 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

These provisions recognize the importance of arts and letters as cultural artifact. This provision, thus, acknowledges the State's duty to "conserve, promote, and popularize" five (5) artifacts: (a) historical heritage, (b) historical resources, (c) cultural heritage, (d) cultural resources, and (e) artistic creations.

Section 15 distinguishes between history and culture. History is a narrative of our past. Culture, on the other hand, encompasses the implicit social understanding of the ways of life that we transmit from generation to generation.

While history is a contemporary narration of our past, culture is always contemporary with inspiration from both our past and our ambitions towards a common future.

History can explain or reflect on our culture. Culture, on the other hand, provides the frame for understanding our history. They both relate to each other. Being aspects of social consciousness, they also both evolve.

History and culture produce material things which can be preserved because they serve the purpose of symbolism. Historical heritage may consist of the monuments that will cause collective reflection. Historical resources are the materials which can be used to understand and perhaps clarify narratives of our past.

Of course, Section 16 also acknowledges artistic creations, which may not be the product of historical narrative or of culture. It thus provides an opening for the introduction of present understandings of culture. Artists are not necessarily bound by a view of the past. Art can also be an insight to our future.

Section 17 provides for acknowledgement of indigenous culture, thus:

SECTION 17. The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

This provision implies that culture may be indigenous, but not entirely so. By giving protection to the culture of indigenous communities in terms of their traditions and institutions, it impliedly also acknowledges that there are portions of our culture borrowed from our interaction with the outside world. In this view, culture is assumed to be dynamic. It is not unchanging.

In a democracy, dominant social, historical, and even cultural understanding is and will always be contested. Present generations are imbued with intrinsic rights to give their own reading of past events. They are not passive receptacles of cultural transmissions of their ancestors. It is they who live through the challenges of their generation and it is they, who armed with their variations on culture and their reading of history, contribute to our sense of nationhood.

Thus, our Constitution acknowledges the importance of freedom of expression. Nuance and dissent provide a rich but continuous stream of contestation. Dominant understanding is always challenged by newer ones. It is through these challenges to understanding of the past that history and culture undergo constant enrichment and development. There is the constant problem of the real significance of events as well as personalities that animate our history. History becomes more contemporarily legible to the present generation.

Historians constantly discover more evidence and factual detail in past events which produce better insights of ourselves.

In this context, no hero can be venerated as unchanging nor as eternal god. No narrative of a hero should be accepted as more impervious than religious truth. No hero should be venerated exclusively as the "soul of the nation."

Similarly, no monument is so sacred that the way that it is seen and the meaning of such gaze should be kept unchanging.

The argument that the background of the Rizal Monument should be unchanging would be to attempt to impose several layers of inference that cumulate into an unreasonable view of how we should understand Jose Rizal, the extent that he was a protagonist during his historical period, and the significance of the events for us at present.

For instance, Jose Rizal's humility can be inferred through a letter he wrote and which was discovered

posthumously. In a letter to his brother, he expressed his desire to be buried in an unmarked grave in a cemetery in Paco, Manila. This humility in public service may be lost when we insist that a monument, which Jose Rizal never imagined, commissioned to a Swiss artist, depicting him as dominant over all others who bled for our freedom, is profusely venerated.

This veneration amounts to a dominant narrative that petitioner wishes to impose. More troubling is that the petitioner wants to do so undemocratically: through a judicial writ.

Symbols mark a consensus which can change through time. By itself, it has no intrinsic value. It is not the material that should be protected. Rather, it is the values implicit in the symbolism which take part in a narrative.

Jose Rizal fought for a democratic society where every citizen could be educated and therefore critical of the dominant understandings imposed by the powerful. We deny him that vision when we impose on others a view of the aesthetic by judicial fiat.

VI

Before Rizal was executed on December 30, 1896, he wrote his family expressing his wishes for his burial. The letter reads, in part:

Bury me in the ground. Place a stone and a cross over it. My name, the date of my birth and of my death. Nothing more. If later you wish to surround my grave with a fence, you can do it. No anniversaries. I prefer Paang Bundok.[64]

After his execution, his body was secretly buried in Paco Cemetery. His sister, Narcisa, was able to convince the gravedigger to place a small marble slab on the gravesite.[65]

Rizal's family had his body exhumed on August 17, 1898 and placed in an ivory urn. The urn was kept in his mother's house in Binondo.[66]

It was on September 28, 1901 when Act No. 243[67] was passed. Act No. 243 authorized the use of Luneta for the building of a monument in honor of Rizal. The cost would be from publicly-raised funds and supervised by a committee composed of Paciano Rizal, Pascual Poblete, Juan Tuason, Teodoro Yangco, Mariano Limjap, Maximino Paterno, Ramon Genato, Tomas del Rosario, and Ariston Bautista. The Philippine Commission then passed Act No. 893[68] in 1903, appropriating US\$15,000.00 to augment the fund.[69]

The committee was also tasked to oversee the international design competition from 1905 to 1907. European and American sculptors were invited to join the competition. The materials, however, would be produced in the Philippines. The estimated cost of the project was P100,000.00.[70]

There were 40 entries for the competition. On January 8, 1908, another committee composed of Governor-General James F. Smith, John T. Macleod, and Maximino M. Paterno announced their decision to the press and declared the *Al Martir de Bagumbayan* (To the Martyr of Bagumbayan) by Carlos Nicoli of Carrara, Italy as the winner of the competition.[71]

The committee was dominated by foreigners. The top two winners were foreigners.

Carlos Nicoli could not post the required bond during the construction period. Thus, the second prize winner, the *Motto Stella* (Guiding Star) by Richard Kissling of Switzerland, was instead built. It consisted of a bronze statue of Rizal dressed in an overcoat facing west and holding a book, two boys reading a book facing south, a mother and child facing north, and a granite obelisk in the middle.[72]

The monument was constructed 100 meters southeast from Rizal's execution site. On December 29, 1912, the urn of Rizal's remains was brought to the Marble Hall of the Ayuntamiento de Manila. "After lying in state for a day, [it] was carried by funeral procession to Luneta." "The remains were buried at the base of the monument." The monument was inaugurated the following year.[73]

In the year of Rizal's centenary in 1961, Kissling's original design was altered by Juan Nakpil and commissioned by the Jose Rizal National Centennial Commission, in response to the concern that new structures in Luneta would dwarf the monument. A stainless steel pylon was superimposed over the obelisk, increasing the structure's height from 41 feet and 8 inches to 100 feet.[74]

The stainless steel pylon, however, divided public opinion. Some artists, such as Napoleon Abueva, supported it, while others were critical of it.[75] The pylon was removed two (2) years later "to avoid a temporary restraining order from a court that shared Nakpil's aesthetic sense." [76] The design of the monument remains unchanged to this day.

In 2013, the Rizal Monument was declared a National Monument[77] and a National Cultural Treasure.[78]

The value we now put on a monument designed by a Swiss, and chosen by a panel dominated by our American colonialists was weaved as part of our narrative. The monument is not a material artifact that was created by the hands of our anti-imperialist revolutionaries.

It would be reasonable to consider that the significance of the Rizal Monument is a postcolonial reflection of those in power.

VII

The statutes cited by petitioner Knights of Rizal are Republic Act No. 4846 or the "Cultural Properties Preservation and Protection Act"; Republic Act No. 7356 or the "Law Creating the National Commission for Culture and the Arts"; and Republic Act No. 10066 or the "National Cultural Heritage Act of 2009."

Enacted in 1966, Republic Act No. 4846 declares it the policy of the State "to preserve and protect the cultural properties of the nation and to safeguard their intrinsic value." [79] With respect to Republic Act No. 7356, it provides:

SECTION 7. Preservation of the Filipino Heritage. - It is the duty of every citizen to preserve and conserve the Filipino historical and cultural heritage and resources. The retrieval and conservation of artifacts of Filipino culture and history shall be vigorously pursued.

Similar to the State policy declared in Republic Act No. 4846, Section 2 of Republic Act No. 10066 more elaborately provides:

SECTION 2. Declaration of Principles and Policies. - Sections 14, 15, 16 and 17, Article XIV of the 1987 Constitution declare that the State shall foster the preservation, enrichment and dynamic evolution of a Filipino culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression. The Constitution likewise mandates the State to conserve, develop, promote and popularize the nation's historical and cultural heritage and resources, as well as artistic creations. It further provides that all the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State, which may regulate its disposition.

In the pursuit of cultural preservation as a strategy for maintaining Filipino identity, this Act shall pursue the following objectives:

(a)

Protect, preserve, conserve and promote the nation's cultural heritage, its property and histories, and the ethnicity of local communities;

(b)

Establish and strengthen cultural institutions; and

(c)

Protect cultural workers and ensure their professional development and well-being.

The State shall likewise endeavor to create a balanced atmosphere where the historic past coexists in harmony with modern society. It shall approach the problem of conservation in an integrated and holistic manner, cutting across all relevant disciplines and technologies. The State shall further administer the heritage resources in a spirit of stewardship for the inspiration and benefit of the present and future generations.

VIII

In case the physical integrity of a national cultural treasure or important cultural property is in danger of destruction or significant alteration from its original state, Republic Act No. 10066 grants the "appropriate cultural agency" the power to issue a cease and desist order. Section 25 of Republic Act No. 10066 provides:

SECTION 25. Power to Issue a Cease and Desist Order. - When the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state, the appropriate cultural agency shall immediately issue a Cease and Desist Order ex parte suspending all activities that will affect the cultural property. The local government unit which has the jurisdiction over the site where the immovable cultural property is located shall report the same to the appropriate cultural agency immediately upon discovery and shall promptly adopt measures to secure the integrity of such immovable cultural property. Thereafter, the appropriate cultural agency shall give notice to the owner or occupant of the cultural property and conduct a hearing on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after due notice and hearing involving the interested parties and stakeholders.

Petitioner Knights of Rizal argues that a national cultural treasure's "physical integrity" includes its "vista points" and "visual corridors" as well as its "site" or its "surrounding areas." As basis for its argument, petitioner Knights of Rizal cites the National Historical Commission of the Philippines' Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages:

1. DOMINANCE

Monuments are landmarks of our cities, towns and provinces. They must be honored, preserved and protected. Monuments should be given due prominence since they symbolize national significance. For the purposes of these guidelines, the Rizal National Monument in Luneta (Rizal Park, Manila) and the Bonifacio National Monument (Caloocan City) are established as objects of reference ...

....

Facade of buildings around a monument, particularly on a rotunda or circle can be retrofitted with a uniform design to enhance the urban renewal of the site and the prominence and dominance of the monument. Likewise, building heights, volume and design should be regulated.

Measures by which dominance could be achieved are the following:

- Maintain a clean and neat environment;

- Keep vista points and visual corridors to monuments clear for unobstructed viewing appreciation and photographic opportunities;
- Maintain a simple and environmental-friendly landscape. Provide plants and trees wherever appropriate, to enhance and soften the built areas;
- Commercial billboards should not proliferate in a town center where a dominant monument is situated; Limit building signage throughout the second level of buildings around the monument; Cities, municipalities and provinces shall adopt these billboard and building signage regulations by passing local ordinances;
- Introduce creative design devices such as paved walkways, attractive ground cover and rows of tall trees to make the monument the main attraction of the site;
- The monument may be elevated on a mound or a platform to emphasize its importance;
- Use strong contrast between the monument and its background. This will enhance the monument as a focal point of site; and,
- Enclosing structures may be used to emphasize and protect the monument.

The scale of the figure of an outdoor monument should be kept to an ideal standard, which may be governed by the following:

Minimum : Life-size

Maximum : Twice the life-size

Landmark/Monumental structures : More than the life-size

The scale would depend on the size of the open space where the monument shall be placed in relation to human perception. The larger the open space, the taller the monument. As a rule of thumb, no full-bodied monument must be smaller than life-size. The scales used by sculptors are usually one-and-a-half times the life-size or twice the life-size. These sizes, when placed on corresponding proportional pedestals, would appear life-size at an appropriate viewing distance. The over-all effect of the site should be an overwhelming experience. This feeling, thus, contributes to the effectiveness of the learning message the monument conveys.

2. SITE AND ORIENTATION

- SITE/SETTING the area or territory where a monument is found or located. The setting is not only limited with the exact area that is directly occupied by the monument, but it extends to the surrounding areas whether open space or occupied by other structures as may be defined by the traditional or juridical expanse of the property.

Articles 1 and 6 of the International Charter for the Conservation and Restoration of Monuments and Sites or the Venice Charter, petitioner argues, also require the conservation of a monument's setting:

ARTICLE 1. The concept of a historic monument embraces not only the single architectural work but also the urban or rural setting in which is found the evidence of a particular civilization, a significant development or a historic event. This applies not only to great works of art but also to more modest works of the past which have acquired cultural significance with the passing of time.

....

ARTICLE 6. The conservation of a monument implies preserving a setting which is not out of scale. Wherever the traditional setting exists, it must be kept. No new construction, demolition or modification which would alter the relations of mass and colour must be allowed.

Again, textually, nothing in Republic Act Nos. 4846, 7356, and 10066 provides that the "physical integrity" of a historical or cultural property includes its sightlines and settings. As for the National Historical Commission of the Philippines' Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages, they do not have any legal effect. It has not been shown that these Guidelines were published^[80] or that a copy was deposited in the University of the Philippines Law Center.^[81]

Assuming that these Guidelines have the force of law, they allow for "urban renewal" of the site surrounding a monument. In this case, there is resistance against this "urban renewal" considering that Torre de Manila is the first high-rise building visible at the Rizal Monument's backdrop. However, as submitted by the National Historical Commission of the Philippines during the hearing on August 27, 2014 conducted by the Senate Committee on Education, Arts and Culture, there is no law prohibiting the construction of Torre de Manila.

Further, the Venice Charter has not been concurred in by at least two--thirds of all the members of the Senate.^[82] Hence, its provisions have no legal effect in this jurisdiction.

IX

Curiously, however, in spite of an acknowledgement that neither the National Historical Commission of the Philippines' Guidelines nor the Venice Charter has legal effect, the dissent of Justice Jardeleza suggests that the Venice Charter should be given weight in legal interpretation. Thus:

Similarly, neither can the Venice Charter be invoked to prohibit the construction of the Torre de Manila project. The Venice Charter provides, in general terms, the steps that must be taken by State Parties for the conservation and restoration of monuments and sites, including these properties' setting. It does not, however, rise to a level of enforceable law. There is no allegation that the Philippines has legally committed to observe the Venice Charter. Neither are we prepared to declare that its principles are norms of general or customary international law which are binding on all states. We further note that the terms of both the NHCP Guidelines and the Venice Charter appear hortatory and do not claim to be sources of legally enforceable rights. These documents only urge (not require) governments to adopt the principles they espouse through implementing laws.

Nevertheless, the Venice Charter and the NHCP Guidelines, along with various conservation conventions, recommendations and resolutions contained in multilateral cooperation and agreements by State and non-state entities, do establish a significant fact: At the time of the enactment of our Constitution in 1987, there has already been a consistent understanding of the term "conservation" in the culture, history and heritage context as to cover not only a heritage property's physical/tangible attributes, but also its settings (e.g., its surrounding neighborhood, landscapes, sites, sight lines, skylines, visual corridors and vista points).

The setting of a heritage culture, site or area is defined as "the immediate and extended environment that is part of, or contributes to, its significance and distinctive character." It is also referred to as "the surroundings in which a place is experienced, its local context, embracing present and past relationships to the adjacent landscape." It is further acknowledged as one of the sources from which heritage structures, sites and areas "derive their significance and distinctive character." Thus, any change to the same can "substantially and irretrievably affect" the significance of the heritage property.

The concept of settings was first formalized with the Xi'an Declaration on the Conservation of the Settings of Heritage Structures, Sites and Areas adopted by the 15th General Assembly of ICOMOS on October 21, 2005. The concept itself, however, has been acknowledged decades before, with references to settings, landscapes, and surroundings appearing as early as 1962.

To reiterate, our examination of the various multilateral and international documents on the matter shows a generally-accepted and oft--repeated understanding of "heritage conservation" as covering more than a cultural

property's physical attributes to include its surroundings and settings. This "understanding" had, unarguably, already acquired "term of art" status even before the enactment of our Constitution in 1987. *Verba artis ex arte*. Terms of art should be explained from their usage in the art to which they belong.

We hold, absent proof of a clear constitutional expression to the contrary, that the foregoing understanding of heritage conservation provide more than sufficient justification against a priori limiting the plenary power of Congress to determine, through the enactment of laws, the scope and extent of heritage conservation in our jurisdiction. Otherwise put, the Congress can choose to legislate that protection of a cultural property extends beyond its physical attributes to include its surroundings, settings, view, landscape, dominance and scale. This flows from the fundamental principle that the Constitution's grant of legislative power to Congress is plenary, subject only to certain defined limitations, such as those found in the Bill of Rights and the due process clause of the Constitution.[83] (Emphasis in the original, citations omitted)

Unless we are ready to supplant the Congress or the National Historical Commission of the Philippines' efforts to discharge their legal process, we cannot impose an interpretation which precisely has not ripened into a legal obligation. Neither can we create international norm of a binding character. We are not the part of the State that participates in the articulation of *opinio juris* for purposes of international customary law. Neither do we, as a Court, participate in the crafting or concurrence of treaties. To do all these in the guise of the Latin principle *verba artis in arte* is to misplace the use of that canon. Terms of art will apply only when there is an art or profession to which it belongs. "Terms of art" is jargon to a profession or art mediums. It does not apply for a normative interpretation that is still contested.

X

The core of the dissent is built on the interpretation that the Comprehensive Land Use Plan and Zoning Ordinance, or Ordinance No. 8119, "provides for a clear specific duty on the part of the City of Manila to regulate development projects insofar as these may adversely affect the view, vista, sightline or setting of a cultural property within the city." [84] Specifically cited were Sections 47 and 48 of Ordinance No. 8119, which allegedly require that the sightlines and settings of a "heritage resource" be free from visual obstruction, as well as Sections 45 and 53 dealing with environmental conservation and protection standards.

I disagree.

Section 47 provides:

SEC. 47. Historical Preservation and Conservation Standards. - Historic sites and facilities shall be conserved and preserved. These shall, to the extent possible, be made accessible for the educational and cultural enrichment of the general public.

The following shall guide the development of historic sites and facilities:

- Sites with historic buildings or places shall be developed to conserve and enhance their heritage values.
- Historic sites and facilities shall be adaptively re-used.
- Any person who proposes to add, to alter, or partially demolish a designated heritage property will require the approval of the City Planning and Development Office (CPDO) and shall be required to prepare a heritage impact statement that will demonstrate to the satisfaction of CPDO that the proposal will not adversely impact the heritage significance of the property and shall submit plans for review by the CPDO in coordination with the National Historical Institute (NHI).
- Any proposed alteration and/or re-use of designated heritage properties shall be evaluated based on criteria established by the heritage significance of the particular property or site.

- Where an owner of a heritage property applies for approval to demolish a designated heritage property or properties, the owner shall be required to provide evidence to satisfaction that demonstrates that rehabilitation and re-use of the property is not viable.
- Any designated heritage property which is to be demolished or significantly altered, shall be thoroughly documented for archival purposes with a history, photographic records, and measured drawings, in accordance with accepted heritage recording guidelines, prior to demolition or alteration.
- Residential and commercial infill in heritage areas will be sensitive to the existing scale and pattern of those areas, which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources.
- Development plans shall ensure that parking facilities (surface lots, residential garages, stand-alone parking garages and parking components as parts of larger developments) are compatibly integrated into heritage areas, and/or are compatible with adjacent heritage resources.
- Local utility companies (hydro, gas, telephone, cable) shall be required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations which do not detract from the visual character of heritage resources, and which do not have a negative impact on its architectural integrity.
- Design review approval shall be secured from the CPDO for any alteration of the heritage property to ensure that design guidelines and standards are met and shall promote preservation and conservation of the heritage property.

Section 47, paragraph 7 does not apply in this case. The provision requires that "residential and commercial infill in heritage areas will be sensitive to the existing scale and pattern of those areas which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources." Torre de Manila is not within a heritage area but within a university cluster zone.

Neither does Section 47, paragraph 9 apply. It is addressed to "local utility companies (hydro, gas, telephone, cable)" who are "required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations which do not detract from the visual character of heritage resources, and which do not have negative impact on its architectural integrity." DMCI Project Developers, Inc. is not a local utility company. Neither is it placing any equipment within a historic site or facility.

Section 48, on the other hand, provides:

SEC. 48. Site Performance Standards. - The City considers it in the public interest that all projects are designed and developed in a safe, efficient and aesthetically pleasing manner. Site development shall consider the environmental character and limitations of the site and its adjacent properties. All project elements shall be in complete harmony according to good design principles and the subsequent development must be visually pleasing as well as efficiently functioning especially in relation to the adjacent properties and bordering streets.

The design, construction, operation and maintenance of every facility shall be in harmony with the existing and intended character of its neighborhood. It shall not change the essential character of the said area but will be a substantial improvement to the value of the properties in the neighborhood in particular and the community in general.

Furthermore, designs should consider the following:

- Sites, buildings and facilities shall be designed and developed with regard to safety, efficiency and high standards of design. The natural environmental character of the site and its adjacent properties shall be

considered in the site development of each building and facility.

- The height and bulk of buildings and structures shall be so designed that it does not impair the entry of light and ventilation, cause the loss of privacy and/or create nuisances, hazards or inconveniences to adjacent developments.
- Abutments to adjacent properties shall not be allowed without the neighbor's prior written consent which shall be required by the City Planning and Development Office (CPDO) prior to the granting of a Zoning Permit (Locational Clearance).
- The capacity of parking areas/lots shall be per the minimum requirements of the National Building Code. These shall be located, developed and landscaped in order to enhance the aesthetic quality of the facility. In no case, shall parking areas/lots encroach into street rights-of-way and shall follow the Traffic Code as set by the City.
- Developments that attract a significant volume of public modes of transportation, such as tricycles, jeepneys, buses, etc., shall provide on-site parking for the same. These shall also provide vehicular loading and unloading bays so as street traffic flow will not be impeded.
- Buffers, silencers, mufflers, enclosures and other noise-absorbing materials shall be provided to all noise and vibration-producing machinery. Noise levels shall be maintained according to levels specified in DENR DAO No. 30 - Abatement of Noise and Other Forms of Nuisance as Defined by Law.
- Glare and heat from any operation or activity shall not be radiated, seen or felt from any point beyond the limits of the property.
- No large commercial signage and/or pylon, which will be detrimental to the skyline, shall be allowed.
- Design guidelines, deeds of restriction, property management plans and other regulatory tools that will ensure high quality developments shall be required from developers of commercial subdivisions and condominiums. These shall be submitted to the City Planning and Development Office (CPDO) for review and approval.

With respect to Section 48, it sets standards for project development to be followed within a "specific site" and its "adjacent properties," i.e., within a specific cluster zone. Torre de Manila and the Rizal Monument are not adjacent or contiguous properties, nor do they belong to the same cluster zone. Neither is there an existing complaint that DMCI Project Developers, Inc. violated the "environmental character or limitations" of the cluster zone where Torre de Manila is constructed. Section 48, therefore, is inapplicable.

The dissent also adds as legal bases for granting mandamus paragraph 1 of Section 45 as well as Section 53 of Ordinance No. 8119 which allegedly provide for "specific operable norms and standards that protect 'views' with 'high scenic quality':[85]

SEC. 45. Environmental Conservation and Protection Standards. - It is the intent of the City to protect its natural resources. In order to achieve this objective, all development shall comply with the following regulations:

- Views shall be preserved for public enjoyment especially in sites with high scenic quality by closely considering building orientation, height, bulk, fencing and landscaping.

....

SEC. 53. Environmental Compliance Certificate (ECC). - Notwithstanding the issuance of zoning permit (locational clearance) Section 63 of this Ordinance, no environmentally critical projects nor projects located in environmentally critical areas shall be commenced, developed or operated unless the requirements of ECC have been complied with.

Sections 45 and 53 of Ordinance No. 8119 concern environmental conservation and protection standards, specifically, the protection of natural resources. Section 45, paragraph 1 relates to protecting views of natural resources. Section 53 requires project developers to secure environmental compliance certificates before commencing or developing environmentally critical projects or projects located in environmentally critical areas.

The Rizal Monument is not a natural resource. There is no allegation that Torre de Manila is an environmentally critical project or is located in an environmentally critical area. To apply Sections 45 and 53 of Ordinance No. 8119, as the dissent suggests, is patently strained.

XI

The second and third requisites for the issuance of a writ of mandamus are likewise absent in this case. Respondents have no legal duty to petitioner Knights of Rizal.

The respondent, DMCI Project Developers, Inc. is a private corporation with no legal obligation to petitioner Knights of Rizal. As for public respondents National Historical Commission of the Philippines, the National Museum, the National Commission for Culture and the Arts, and the City of Manila, they are under no legal obligation to stop the construction of Torre de Manila for, as discussed, there is no law requiring the protection of a historical or cultural property's sightline or setting.

XII

Likewise absent is the fourth requisite. The act sought to be performed in this case is not ministerial.

An act is ministerial if the "duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his [or her] own judgment upon the propriety or impropriety of the act done." [86] On the other hand, an act is discretionary if it "gives [the public officer] the right to decide how or when the duty shall be performed." [87]

For respondent DMCI Project Developers, Inc., it is a private corporation not legally or contractually bound to perform any act in favor of petitioner Knights of Rizal.

For respondents National Historical Commission of the Philippines, National Commission for Culture and the Arts, and the National Museum, they have no duty under our present laws to stop the construction of any structure that obstructs the sightline, setting, or backdrop of a historical or cultural heritage or resource. There is no act, whether ministerial or discretionary, that can be required of them.

For respondent City of Manila, the act sought to be performed is discretionary, not ministerial. Under Ordinance No. 8119, the City of Manila is empowered to decide whether or not to grant project developers, such as DMCI Project Developers, Inc., a variance allowing the construction of a structure beyond the prescribed floor-to-area ratio for a specific cluster zone. [88] Here, the City of Manila, through its Sangguniang Panlungsod, decided to grant DMCI Homes, Inc. a variance that allowed the developer to construct a building beyond the floor-to-area ratio of four (4) for structures within a university cluster zone.

Therefore, I disagree with the proposed disposition of this case by the dissent. Justice Jardeleza proposed to dispose of the case with this fallo:

WHEREFORE, let a writ of mandamus be issued in this case. Public respondent City of Manila, through its representatives, is directed to RE-EVALUATE WITH DISPATCH the permits and variance issued in favor of DMCI-PDI's Torre de Manila project, DETERMINE APPLICABILITY AND/OR COMPLIANCE WITH the standards under Sections 45, 53, 47 and 48, and the provisions under Section 60 (in relation to the grant of a

variance), of Ordinance No. 8119 and GRANT THE APPROPRIATE RELIEFS/SANCTIONS under the law. The TRO issued by this Court shall REMAIN EFFECTIVE until the issuance of the final decision in the re-evaluation proceeding to be conducted by the appropriate officials of the City of Manila.[89]

First, ordering the City of Manila to "re-evaluate with dispatch the permits issued in favor of [DMCI Project Developers, Inc.]" is a futile exercise. It does not solve the constitutional issue presented in this case: whether the sightlines and settings of historical or cultural heritage or resources are protected under Sections 15 and 16, Article XIV of the Constitution.

Second, the grant of a building permit or variance is a discretionary act and, in this case, the discretion has already been exercised.

Third, in awaiting the final decision on the re-evaluation process, we are leaving to the City of Manila the effectivity of the temporary restraining order we issued. We are effectively delegating our power to a local government unit, in avoidance of our duty to finally decide this case.

XIII

There were other plain, speedy, and adequate remedies in the ordinary course of law available to petitioner Knights of Rizal. As earlier discussed, the Petition should have been filed before the regional trial court to resolve the factual issues involved and for a more adequate and exhaustive resolution of this case.

For instance, questions that can be raised regarding the approval of the variance of the construction from the standard Floor Area Ratio were contained in existing ordinances. These questions were revealed during the oral arguments in this case. Thus:

JUSTICE LEONEN:

You are not aware. Okay, now, in the zoning permit if you look at the floor area, it says, "97,549 square meters," do you confirm this Counsel?

ATTY. LAZATIN:

I confirm that, Your Honor.

JUSTICE LEONEN:

And the land area is 7,475 square meters. I understand that this includes right of way?

ATTY. LAZATIN:

That's correct, Your Honor, until an additional lot was added that made the total project area to be 7,556.

JUSTICE LEONEN:

Okay. So, the floor area divided by the land area is 13.05, is that correct? You can get a calculator and compute it, it's 13.05 correct?

ATTY. LAZATIN:

That's correct, Your Honor.

JUSTICE LEONEN:

That is called the FAR?

ATTY. LAZATIN:

Yes, Your Honor.

JUSTICE LEONEN:

Yes, and therefore, when the zoning permit was issued, there was already a variance that was acknowledged by the City Planning Development Office of the City of Manila, is that correct?

ATTY. LAZATIN:

That's right, Your Honor.

JUSTICE LEONEN:

So, in other words, Mr. Resty Rebong approved the application because it fell within four and the variance, is this correct?

ATTY. LAZATIN:

That's our impression, Your Honor.

JUSTICE LEONEN:

May I know what the Ordinance No. or resolution was that authorized Resty Rebong to approve the variance?

ATTY. LAZATIN:

My recollection, Your Honor, it is Section 77 of the ...

JUSTICE LEONEN:

No, I'm sorry, June 19, 2012, is there a Sangguniang Panlungsod Resolution as of June 19, 2012 because Resty Rebong already said that the variance is okay. Is there a resolution from the City Council on June 19, 2012 approving the variance?

ATTY. LAZATIN:

There was none, Your Honor.

JUSTICE LEONEN:

Again, here, I'm confused. The City Planning and Development Officer approved 97,549 which already includes a variance, but [o]n June 19 when he approved it in 2012, there was no resolution, nor ordinance from the City Council allowing the variance.

ATTY. LAZATIN:

There was none yet at that time, Your Honor.

JUSTICE LEONEN:

As a matter of fact the variance was not there the following month, correct?

ATTY. LAZATIN:

No, Your Honor.

JUSTICE LEONEN:

In November 2012, there was no variance approval, correct?

ATTY. LAZATIN:

None ...

JUSTICE LEONEN:

When DMCI was building the building there was no variance, was that not correct?

ATTY. LAZATIN:

That's correct, Your Honor.

JUSTICE LEONEN:

And the only time that there was a variance that was granted, was in 2013, I am sorry 20... ?

ATTY. LAZATIN:

2014, Your Honor ...

JUSTICE LEONEN:

2014?

ATTY. LAZATIN:

Yes, Your Honor.

JUSTICE LEONEN:

So, two years after this Resty Rebong approved the zoning permit with the variance but the approval of the variance came later?

ATTY. LAZATIN:

That's correct, Your Honor. If I may be allowed to explain ...

JUSTICE LEONEN:

Can we go to Section 62 of the Ordinance, I am sorry Section 63, you mentioned 62 awhile ago but I think you meant Section 63 of the Manila Comprehensive Land Use Plan and Zoning Ordinance of 2006. There it is, it's projected counsel, because I was confused based upon the questioning of Justice Dado Peralta and I am always confused when he asked questions, that's why I am asking. Now in Section 63 of the Ordinance, it clearly says there, "City Planning Development Officer provides a clearance for all conforming uses and, in cases of variances and exception from the Sangguniang Panlungsod as per recommendation from the MZBAA through the committee on Housing Urban Development and Resettlement prior to conducting any business activity or construction on their property/land." So, in other words, the Ordinance, said that it will not only be forthcoming from the Sangguniang Panlungsod, there has to be a recommendation from the Manila Zoning Board of Adjustment Appeals who in turn will get a recommendation through the Committee on Housing Urban Development and Resettlement, is this not correct?

ATTY. LAZATIN:

That's correct, Your Honor.

JUSTICE LEONEN:

And prior to means "prior to," "before," "antecedent to," conducting any business activity or construction on their property or lot, correct, Counsel?

ATTY. LAZATIN:

Yes, Your Honor, may I be?

JUSTICE LEONEN:

Did you sell your property before the action of the Sangguniang Panlungsod?

ATTY. LAZATIN:

Your Honor, there is a difference between the approval of the ... (interrupted)

JUSTICE LEONEN:

Did you build prior to the approval of the Sangguniang Panlungsod as per recommendation of the Manila Zoning Board of Adjustment Appeals?

ATTY. LAZATIN:

Your Honor, if I may be allowed to ... ?

JUSTICE LEONEN:

No, I have a pending question, did you build prior to the issuance of that resolution or ordinance allowing the variance?

ATTY. LAZATIN:

We build, Your Honor, in accordance with what was permitted, Your Honor.

JUSTICE LEONEN:

I am again a bit curious. Section 3(J) of Republic Act 3019, the Anti-Graft and Corruption Practices Law, it says, "knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage," that's a crime, correct?

ATTY. LAZATIN:

Your Honor, may I be allowed to explain?

JUSTICE LEONEN:

No, I'm just confirming if there is such a Section 3, paragraph (J)?

ATTY. LAZATIN:

Your Honor, right now I cannot confirm that, Your Honor.

JUSTICE LEONEN:

Okay.

ATTY. LAZATIN:

May I just be allowed to explain, Your Honor ...

JUSTICE LEONEN:

Just to clarify the way it went, there was a zoning clearance, on June 2012, the zoning clearance granted a variance, that variance had not yet been approved by the MZBAA, nor the Sangguniang Panlungsod, and

DMCI sold property, mobilized in October, pre-sold. And you built starting November, but the Ordinance approving the variance only came in 2013, is that correct?

ATTY. LAZATIN:

That's correct, Your Honor, but may I be allowed to explain, Your Honor, please?

JUSTICE LEONEN:

Yes.

ATTY. LAZATIN:

Your Honor, one, you only go to the MZBAA, Your Honor, when your permit request for zoning permit or locational clearance is denied. In this case, it was granted so, there was no opportunity for us to go to the MZBAA ... (interrupted)

JUSTICE LEONEN:

Counsel ... (interrupted)

ATTY. LAZATIN:

Secondly, allow me to complete, Your Honor, allow me to complete, please, very important, Your Honor.

JUSTICE LEONEN:

Allow me to ask questions because I am the one that is going to vote on this case. Now, the second part of Section 63 it says there, "prior to conducting any business activity," can you [c]ite to me an ordinance or a section in an Ordinance which says, "the only time that you go to the MZBAA, is when the zoning permit is denied" because I am showing you Section 63?

ATTY. LAZATIN:

Your Honor, you appeal to the MZBAA, Your Honor, for a variance. So if it is granted, what will you appeal? And here, in addition, Your Honor, if I may be allowed to complete my answer, Your Honor, also the records that we have submitted it was the position of the City Planning Development Officer that the executive branch of Manila suspended the Ordinance and they were implementing the Building Code and in fact, Your Honor, they submitted and gave us a copy, Your Honor, of the opinion of the City Legal Officer that it was not necessary and at that time, Your Honor, all the objections to the project were based on heritage, Your Honor.[90]

However, due process requires that these matters be properly pleaded, alleged, and traversed in the proper action.

Petitioner Knights of Rizal could not effectively assail the issuance of a variance to DMCI Project Developers, Inc. in an action in the Supreme Court. Under Section 77 of Ordinance No. 8119, the remedy of filing an opposition to the application for variance before the Manila Zoning Board of Adjustments and Appeals was available to petitioner Knights of Rizal. Section 77 of the Manila Zoning Ordinance provides:

SEC. 77. Action on Complaints and Opposition. - A verified complaint for any violations of any provision of the Zoning Ordinance or of any clearance or permits issued pursuant thereto shall be filed with the [Manila Zoning Board of Adjustments and Appeals].

However, oppositions to application for clearance, variance or exception shall be treated as a complaint and dealt with in accordance with the provision of this section.

Given the foregoing, a writ of mandamus against the construction of Torre de Manila does not lie.

With petitioner having no clear legal right to the relief sought, there can be no great or irreparable injury^[91] to petitioners and the temporary restraining order issued by this Court has no solid ground. Thus, the temporary restraining order must be lifted.

XIV

Even with the consciousness of his impending death, Jose Rizal did not want to be aggrandized. He did not want to be buried and remembered in the way that the petitioner wants him remembered. He wanted a simple grave in Paang Bundok marked with his name, a simple cross and possibly a fence. He did not give instructions for foreign artists to erect his likeness. He probably did not want that likeness to be clothed in an overcoat so that we remember him in the bosom of our colonial masters. He did not leave instructions that his name be used for a national shrine.

Jose Rizal did not even want his death anniversary celebrated.

Like Elias in *El Filibusterismo*, Rizal wanted to be remembered as an ordinary person, whose death was meaningful because it was the result of his courage to do what was right no matter how fatal the consequences.

Rizal should be valorized because of his humility. He should not be venerated like a saint or a god whose shrines erected in his honor is so sacred that it is protected by putative knights in a country that prohibits titles of royalty or nobility.

I suspect that Jose Rizal would have been uncomfortable being in a pantheon of heroes and with a stature that, in the submissions of the petitioner and the Solicitor General, approaches that of a divinity.

The memory of our heroes symbolized by shrines erected in their honor should not be granted so imperial a status so as to arbitrarily waste the material and physical spaces and natural resources of adjoining properties. This is inconsistent with the egalitarian society they may have imagined. It does not square with a more egalitarian view of social justice.

We cannot immortalize our heroes by privileging an angle for a photograph of our shrines while sacrificing the value of the rule of law for the society at present. Good citizenship requires that we never venerate our heroes without any understanding of their context. Rizal was a Filipino, whose principles and convictions gave them the courage to speak truth to power no matter how fatal the consequences. He will still only be one among many.

It is this courage and this humility that we should remember from Rizal's life. These values should be lived. They should persist and survive beyond the frame of a bad photograph.

ACCORDINGLY, I vote to LIFT the Temporary Restraining Order and DISMISS the Petition.

[1] The penultimate paragraph was cited in rollo, p. 2491, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing Jose Rizal's letter to his family, "A mi familia," undated, believed to have been written in Fort Santiago in December 1896, National Library of the Philippines. Translation by Jose Rizal National Centennial Commission (1964).

For the original text, see rollo, p. 2491, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing Documentos Rizalinos (Manila: Imprenta Publica, 1953), pp. 89-90. See also *Cartas Entre Rizal y Los Miembros de la Familia*, available at <<http://www.cervantesvirtual.com/downloadPdf/caras-entre-rizal-y-los-miembros-de-la-familia-segunda-parte-780268>>. (Last accessed on May 22, 2017). The Spanish text reads:

A mi familia

Os pido perdon del dolor que os ocasiono, pero un dia u otro yo tenia que morir y mas vale que muera hoy en toda la plenitud de mi conciencia.

Queridos padres y hermanos: Dad gracias a Dios que me conserva la tranquilidad, antes de mi muerte. Muero resignado, esperando que con mi muerte os dejen en paz. Ah! es major morir que vivir sufriendo. Consolaos.

Os recomiendo que os perdoneis, unos a otros las pequeñeces de la vida y tratad de vivir unidos en paz y en buena armonia. Tratad nuestros ancianos padres como quisierais ser tratados por vuestros hijos despues. Amadlos mucho, en memoria mia.

Enterradme en tierra, ponedme una piedra encima y una cruz. Mi nombre, la fecha de mi nacimiento y la de mi muerte. Nada mas. Si quereis despues rodear mi fosa con un cerco, lo podreis hacer.-Nada de aniversarios.-Preferio Paang Bundok.

Tened compasion de la pobre Josefina.

[2] Integrated Bar of the Philippines v. Zamora, 392 Phil. 618, 632 (2000) [Per J. Kapunan, En Banc], citing Philippine Constitution Association v. Enriquez, 235 SCRA 506 (1994), citing Luz Farms v. Secretary of the Department of Agrarian Reform, 192 SCRA 51 (1990); Dumlao v. Commission on Elections, 95 SCRA 392 (1980); and, People v. Vera, 65 Phil. 56 (1937).

[3] Id.

[4] Id.

[5] Id.

[6] Integrated Bar of the Philippines v. Zamora, 392 Phil. 618, 632-633 (2000) [Per J. Kapunan, En Banc], citing Joya v. Presidential Commission on Good Government, 225 SCRA 568, 576 (1993).

[7] Integrated Bar of the Philippines v. Zamora, 392 Phil. 618, 633 (2000) [Per J. Kapunan, En Banc], citing Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663, 678 (1962).

[8] Lozano v. Nograles, 607 Phil. 334, 343-344 (2009) [Per C.J. Puno, En Banc].

[9] Funa v. Villar, 686 Phil. 571, 586(2012) [Per J. Velasco, Jr., En Banc], citing David v. Macapagal-Arroyo, G.R. No. 171396, May 3, 2006, 489 SCRA 161.

[10] Id.

[11] Id.

[12] Id.

[13] Araneta v. Dinglasan, 84 Phil. 368, 373 (1949) [Per J. Tuason, En Banc].

[14] CORP. CODE, sec. 36(1) provides:

SECTION 36. Corporate Powers and Capacity. - Every corporation incorporated under this Code has the power and capacity:

1. To sue and be sued in its corporate name.

[15] CORP. CODE, sec. 23 provides:

SECTION 23. The Board of Directors or Trustees. - Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.

[16] See *The Executive Secretary v. Court of Appeals*, 473 Phil. 27, 51 (2004) [Per J. Calleja, Sr., Second Division].

[17] Rollo, p. 36, Secretary's Certificate.

[18] *Id.* at 35, Secretary's Certificate.

[19] *Id.* at 2575-2576, Memorandum for Petitioner.

[20] 392 Phil. 618 (2000) [Per J. Kapunan, En Banc].

[21] *Id.* at 633.

[22] *Id.* at 633-634.

[23] See Justice Ynares-Santiago's Dissenting Opinion in *People v. Lacson*, 459 Phil. 330, 372 (2003) [Per J. Callejo, Sr., En Banc].

[24] See *Ynot v. Intermediate Appellate Court*, 232 Phil. 615, 621 (1987) [Per J. Cruz, En Banc].

[25] For instance, on page 17-19 of its Petition for Injunction, petitioner Knights of Rizal raises the issue of whether the Torre de Manila is a nuisance per se. See *Ramcar, Inc. v. Millar*, 116 Phil. 825, 828-829 (1962) [Per J. J.B.L. Reyes, En Banc] where this Court held that "[w]hether a particular thing is or is not a nuisance is a question of fact[.]"

[26] Ponencia, p. 15.

[27] *Kalipunan ng Mahihirap, Inc. v. Robredo*, G.R. No. 200903, July 22, 2014 [Per J. Brion, En Banc].

[28] See *People v. Cuaresma*, 254 Phil. 418, 426-428 (1989) [Per J. Narvasa, First Division].

[29] G.R. No. 205728, January 21, 2015
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf>> [Per J. Leonen, En Banc].

[30] *Id.* at 14.

[31] *Reyes v. Diaz*, 73 Phil. 484, 486 (1941) [Per J. Moran, En Banc].

[32] See *Bokingo v. Court of Appeals*, 523 Phil. 186, 196-197 (2006) [Per J. Callejo, Sr., First Division].

[33] Batas Blg. 129, sec. 19(1) provides:

SECTION 19. Jurisdiction in Civil Cases. - Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation.

[34] J. Jardeleza's Dissenting Opinion.

[35] 668 Phil. 1 (2011) [Per J. Carpio, En Banc].

[36] 343 Phil. 539 (1997) [Per J. Torres, Jr., En Banc].

[37] 209 Phil. 1(1983) [Per J. Gutierrez, Jr., En Banc].

[38] Petitions for declaratory relief involve subject matters incapable of pecuniary estimation and, therefore, are under the exclusive original jurisdiction of the Regional Trial Courts. See *City of Lapu-Lapu v. Philippine Economic Zone Authority*, G.R. No. 184203, November 26, 2014, [Per J. Leonen, Second Division].

[39] *Gamboa v. Teves*, 668 Phil. 1, 36 (2011) [Per J. Carpio, En Banc]; *Salvacion v. Central Bank of the Philippines*, 343 Phil. 539, 556 (1997) [Per J. Torres, Jr., En Banc]; *Alliance of Government Workers v. Minister of Labor and Employment*, 209 Phil. 1, 12 (1983) [Per J. Gutierrez, Jr., En Banc].

[40] *Republic v. Estipular*, 391 Phil. 211, 218 (2000) [Per J. Panganiban, Third Division].

[41] *Id.*

[42] *Id.*

[43] *De Castro v. Judicial and Bar Council*, 629 Phil. 629,705 (2010) [Per J. Bersamin, En Banc].

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] J. Jardeleza's Dissenting Opinion.

[49] J. Jardeleza's Dissenting Opinion.

[50] J. Jardeleza's Dissenting Opinion.

[51] CONST. art. II, sec. 11 provides:

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

Basco v. Philippine Amusement and Gaming Corporation, 274 Phil. 323, 343 (1991) [Per J. Paras, En Banc].

[52] CONST. art. II, sec. 12 provides:

SECTION 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Basco v. Philippine Amusement and Gaming Corporation, 274 Phil. 323, 343 (1991) [Per J. Paras, En Banc].

[53] CONST. art. II, sec. 13 provides:

SECTION 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect

their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

Basco v. Philippine Amusement and Gaming Corporation, 274 Phil. 323, 343 (1991) [Per J. Paras, En Banc].

[54] CONST. art. XIII, sec. 1 provides:

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

Tolentino v. Secretary of Finance, G.R. No. 115455, August 25, 1994, 235 SCRA 630, 685 [Per J. Mendoza, En Banc].

[55] CONST. art. XIII, sec. 13 provides:

SECTION 13. The State shall establish a special agency for disabled persons for rehabilitation, self-development and self-reliance, and their integration into the mainstream of society.

Basco v. Philippine Amusement and Gaming Corporation, 274 Phil. 323, 343 (1991) [Per J. Paras, En Banc].

[56] CONST. art. XIV, sec. 1 provides:

SECTION 1. The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.

Tolentino v. Secretary of Finance, G.R. No. 115455, August 25, 1994, 235 SCRA 630, 685 [Per J. Mendoza, En Banc].

[57] CONST. art. XIV, sec. 2 provides: SECTION 2. The State shall:

- (1) Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society;
- (2) Establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school age;
- (3) Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the underprivileged;
- (4) Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs; and
- (5) Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.

[58] 316 Phil. 652 (1995) [Per J. Mendoza, En Banc], cited by Justice Jardeleza in his Dissenting Opinion.

[59] Justice Feliciano's Separate Concurring Opinion in Oposa v. Factoran, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 818 [Per J. Davide, Jr., En Banc].

[60] Manila Prince Hotel v. Government Service Insurance System, 335 Phil. 82, 102 (1997) [Per J. Bellosillo, En Banc].

[61] Id.

[62] Id.

[63] Id.

[64] Rollo, p. 2491, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing Jose Rizal, letter to his family, "A mi familia," undated, believed to have been written in Fort Santiago in December 1896, National Library of the Philippines; translation by Jose Rizal National Centennial Commission, 1964.

[65] Id. at 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing Asuncion Lopez Bantug, Lolo Jose (Manila: Asuncion Lopez Bantug, Vibal Foundation, Inc., and Intramuros Administration, 2008), p. 165.

[66] Id. at 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing Bantug, pp. 168-169 and "Jose Rizal (Remains Interred)," in National Historical Institute, Historical Markers, Metro Manila (Manila: National Historical Institute, 1993), p. 274.

[67] An Act granting the right to use public land upon the Luneta in the city of Manila upon which to erect a statue of Jose Rizal, from a fund to be raised by public subscriptions, and prescribing as a condition the method by which such subscription shall be collected and disbursed.

[68] An Act Appropriating Fifteen Thousand Dollars, United States Currency, For The Purpose Of Contributing To The Erection Of The Rizal Monument, And Authorizing The Insular Treasurer To Deposit The Funds Already Collected In A Bank To Draw Interest.

[69] Rollo, p. 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing Act No. 243 (1901) and Act No. 893 (1903).

[70] Id. at 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C.

[71] Id. at 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing "Prize Winners," Manila Times, 8 January 1908; "The Rizal Monument: Story of its Own Erection," Philippines International 8, 2 (June-July 1964): 4-8 and Ambeth R. Ocampo, "Much Ado about Torre: Rizal Asked Only for Cross on Tombstone," Philippine Daily Inquirer, 23 August 2015, A 1.

[72] Id. at 2492-2493, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing Prize Winners," Manila Times, 8 January 1908; Ambeth R. Ocampo, "Much Ado about Torre: Rizal Asked Only for Cross on Tombstone," Philippine Daily Inquirer, 23 August 2015, A 1; and Juan F. Nakpil and Sons, Proposed Improvement of the Rizal Monument, Sheet A-1, Set 1/3, 20 April 1961, NHCP Library.

[73] Id. at 2493, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing Ambeth R. Ocampo, "Much Ado about Torre: Rizal Asked Only for Cross on Tombstone," Philippine Daily Inquirer, 23 August 2015, A 1; Bantug, p. 169; footnote to "De Rizal a su familia (sin firma ni fecha)," in Oficina de Bibliotecas Publicas, Documentos Rizalinos Regalados Por El Pueblo Español Al Pueblo Filipino (Manila: Imprenta Publica, 1953), p. 91; Austin Craig, Rizal's Life and Minor Writings (Manila: Philippine Education Co., Inc., 1927), p. 215; and Sunday Times, 28 December 1947, p. 12.

[74] Id. at 2493, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing The Manila Times, 16 April 1963; The Chronicle magazine, 27 April 1963; and Juan F. Nakpil and Sons, Proposed Improvement of the Rizal Monument, Sheet A-1, Set 1/3, 20 April 1961, NHCP Library.

[75] Id. at 2494, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing A. Ocampo, "Torre de Manila, Flap Repeats Itself," Philippine Daily Inquirer, 30 August 2015.

[76] Id.

[77] Id. at 2494, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing NHCP Board Resolution No. 5 s. 2013, "Declaring the Rizal Monument in Rizal Park a National Monument," 15 April 2013, NHCP Records Section.

[78] Id. at 2494, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing National Museum, Declaration No. 9 2013, "Declaration of the Monument to Dr. Jose Rizal in Rizal Park, City of Manila as a National Cultural Treasure," 14 November 2013.

[79] Rep. Act. No. 4846, sec. 2.

[80] Tañada v. Tuvera, 230 Phil. 528, 535 (1986) [Per J. Cruz, En Banc].

[81] ADM. CODE, Book VII, Chapter 2, sec. 3(1) provides:

SECTION 3. Filing. - (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons.

[82] CONST. art. VII, sec. 21 provides:

SECTION 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

[83] J. Jardeleza's Dissenting Opinion.

[84] J. Jardeleza's Dissenting Opinion.

[85] J. Jardeleza's Dissenting Opinion.

[86] De Castro v. Judicial and Bar Council, 629 Phil. 629, 707 (2010) [Per J. Bersamin, En Banc], citing Espiridion v. Court of Appeals, G.R. No. 146933, June 8, 2006, 490 SCRA 273.

[87] Id.

[88] Manila Ordinance 8119, sec. 60 provides:

SEC. 60. Deviations. - Variances and exceptions from the provisions of this Ordinance may be allowed by the Sangguniang Panlungsod as per recommendation from the Manila Zoning Board of Adjustment and Appeals (MZBAA) through the Committee on Housing, Urban Development and Resettlements only when all the following terms and conditions are obtained/existing:

1. Variance - all proposed projects which do not conformed with the prescribed allowable Land Use Intensity Control (LUIC) in the zone.

- The property is unique and different from other properties in the adjacent locality and because of its uniqueness, the owner/s cannot obtain a reasonable return on the property.

This condition shall include at least three (3) of the following provisions:

-

Conforming to the provisions of the Ordinance will cause undue hardship on the part of the owner or occupant of the property due to physical conditions of the property (topography, shape, etc.), which is not self created.

-

The proposed variance is the minimum deviation necessary to permit reasonable use of the property.

-

The variance will not alter the physical character of the district/zone where the property for which the variance sought is located, and will not substantially or permanently injure the use of the other properties in the same district or zone.

-

That the variance will not weaken the general purpose of the Ordinance and will not adversely affect the public health, safety, and welfare.

-

The variance will be in harmony with the spirit of this Ordinance.

[89] J. Jardeleza's Dissenting Opinion.

[90] TSN dated August 11, 2015, pp. 48-54.

[91] RULES OF COURT, Rule 58, sec. 5 partly provides:

SECTION 5. Preliminary Injunction Not Granted Without Notice; Exception. - No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue ex parte a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

DISSENTING OPINION

JARDELEZA, J.:

Heritage is our legacy from the past, what we live with today, and what we pass on to future generations. Our cultural and natural heritage are both irreplaceable sources of life and inspiration.[1]

The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. - Justice William O. Douglas in *Berman v. Parker*[2]

To make us love our country, our country ought to be lovely. - Edmund Burke

The Rizal Park and the Rizal Monument lie at the heart of this controversy. Petitioner Knights of Rizal (KOR) instituted this original action for injunction to stop what it views as "an impending permanent desecration of a National Cultural Treasure that is the Rizal Monument and a historical, political, socio-cultural landmark that is the Rizal Park." [3] According to KOR, once finished at its highest level, the Torre de Manila will dwarf all surrounding buildings within a radius of two kilometers and "completely dominate the vista and consequently, substantially diminish in scale and importance the most cherished monument to the National Hero." [4] Further alleging that the project is a nuisance per se and constructed in bad faith and in violation of the zoning ordinance of the City of Manila, KOR prayed, among others, for the issuance of an injunction to restrain construction of the Torre de Manila, and for an order for its demolition. [5]

In this case of first impression, the Court was asked to determine the constitutional dimensions of Sections 15 and 16, Article XIV of the Constitution. These Sections mandate the State to conserve and protect our nation's historical and cultural heritage and resources. We should decide this case conscious that we here exercise our symbolic function as an aspect of our power of judicial review. [6] Ours is a heavy burden; how we decide today will define our judicial attitude towards the constitutional values of historic and cultural preservation and protection, involving as they often do fragile and irreplaceable sources of our national identity.

The majority has voted to dismiss the petition.

With respect, I dissent.

I

I shall first discuss the procedural issues.

A.

Petitioner KOR filed a petition for injunction, an action not embraced within our original jurisdiction. [7] As correctly pointed out by DMCI-PDI, actions for injunction lie within the jurisdiction of the RTC pursuant to Sections 19 and 21 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980," as amended. [8]

Nevertheless, I submit that the circumstances of this case warrant a relaxation of the rule.

First. KOR's petition appears to make a case for mandamus.

Section 3, Rule 65 of the Rules of Court provides:

Sec. 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.

A writ of mandamus is a command issuing from a court of law of competent jurisdiction, directed to some inferior court, tribunal, or board, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law.[9] For a petition for mandamus to prosper, petitioner must establish the existence of a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required.[10] In *University of San Agustin, Inc. v. Court of Appeals*, [11] we stated:

While it may not be necessary that the duty be absolutely expressed, it must however, be clear. The writ will not issue to compel an official to do anything which is not his duty to do or which is his duty not to do, or give to the applicant anything to which he is not entitled by law. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.[12] (Emphasis supplied).

Here, KOR's case is essentially founded on Sections 15 and 16, Article XIV of the Constitution giving rise to an alleged duty on the part of respondent DMCI-PDI to protect (or, at the very least, refrain from despoiling) the nation's heritage. In *Uy Kiao Eng v. Lee*, we held that mandamus is a "proper recourse for citizens who seek to enforce a public right and to compel the performance of a public duty, most especially when the public right involved is mandated by the Constitution." [13]

More importantly, a relaxation of procedural rules is warranted considering the significance of the threshold and purely legal question involved in this case. As identified in the Court's Advisory, this threshold and purely legal question is: "whether the definition of the Constitutional mandate to conserve, promote and popularize the nation's historical and cultural heritage and resources, includes, in the case of the Rizal Monument, the preservation of its prominence, dominance, vista points, vista corridors, sightlines and setting." [14] Apropos to this, I proposed that the Court also decide: (2) whether there are laws, statutes, ordinances, and international covenants that implement this mandate and which were breached as a result of the construction of the Torre de Manila; and (3) whether mandamus lies against public respondents.

In *Gamboa v. Teves*, [15] an original petition for prohibition, injunction, declaratory relief, and declaration of nullity was filed to stop the sale of shares of Philippine Telecommunications Investment Corporation (PTIC) stock to Metro Pacific Assets Holdings, Inc. (MPAH), a foreign owned corporation. The sale, if allowed, would increase to 81% the common shareholdings of foreigners in Philippine Long Distance Telephone Company (PLDT), beyond the allowed constitutional limit on foreign ownership of a public utility. In *Gamboa*, this Court acknowledged that it had no original jurisdiction over the petition for declaratory relief, injunction, and annulment of sale filed by petitioners therein. [16] Nevertheless, in view of the threshold and purely legal issue on the definition of the term "capital" in Section 11, Article XII of the Constitution which had far-reaching implications to the national economy, this Court treated the petition as one for mandamus. [17]

Gamboa cited two other precedents where we had relaxed procedural rules and assumed jurisdiction over a petition for declaratory relief- *Salvacion v. Central Bank of the Philippines* [18] and *Alliance of Government Workers v. Minister of Labor and Employment*. [19]

Salvacion presented the issue of whether the protection afforded to foreign currency deposits can be made applicable to a foreign transient. *Alliance of Government Workers*, on the other hand, involved the issue of whether government agencies are considered "employers" under a law requiring payment of 13th month pay to

certain employees. As in *Gamboa*, in both cases, we ruled that while we had no original jurisdiction over the petitions as filed, "exceptions to this rule have been recognized." In *Salvacion*, we declared: "where the petition has far-reaching implications and raises questions that should be resolved, it may be treated as one for mandamus."^[20] More, as in *Alliance of Government Workers*, "considering the important issues propounded and the fact that constitutional principles are involved," we decided "to give due course to the petition, to consider the various comments as answers and to resolve the questions raised through a full length decision in the exercise of this Court's symbolic function as an aspect of the power of judicial review."^[21] *Alliance of Government Workers*, in turn, cited as precedent the earlier cases *Nacionalista Party v. Bautista*^[22] and *Aquino, Jr. v. Commission on Elections*.^[23] There we also relaxed the application of procedural rules and treated the petition for prohibition filed as one for quo warranto in view of "peculiar and extraordinary circumstances" and "far-reaching implications" attendant in both cases.

Here, the Court's judicial power has been invoked to determine the extent of protection afforded by the Constitution and our laws, if any, over cultural heritage properties. Our resolution of this issue will settle whether the Constitution's heritage conservation provisions are self-executing, and if not, whether the State has translated them into judicially enforceable norms through enabling legislation. Similar to *Gamboa*, *Salvacion*, and *Alliance of Government Workers*, I find that this case presents serious constitutional issues of far-reaching implications and significance warranting a liberal application of procedural rules.

B.

Legal standing (*locus standi*) is defined as "a right of appearance in a court of justice on a given question."^[24] In *Belgica v. Ochoa, Jr.*, we explained that "[t]he gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."^[25]

While rules on standing in public suits have in some cases been relaxed especially in relation to non-traditional plaintiffs like citizens, taxpayers, and legislators,^[26] we have generally adopted the "direct injury test" to determine whether a party has the requisite standing to file suit. Under this test, for a party to have legal standing, it must be shown that he has suffered or will suffer a direct injury as a result of the act being challenged,^[27] that is, he must show that: (1) he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.^[28]

I am of the view that petitioner KOR sufficiently meets the requirements of the direct injury test.

Petitioner KOR is a public, non-profit organization created under Republic Act No. 646,^[29] one of whose main purposes include the organization and holding of programs to commemorate Rizal's nativity and martyrdom.^[30] These programs honoring the birth and death of our national hero are held by KOR at the Rizal Park at least twice a year.^[31] During oral arguments, counsel for KOR asserted that there is a violation of KOR's legal mandate, as stated in its articles of incorporation, to celebrate the life of Jose Rizal at the Rizal Park insofar as the Torre de Manila mars the Park's previously "unhampered" and "unobstructed" panorama.^[32]

Sierra Club v. Morton^[33] recognized that "[a]esthetic and environmental wellbeing, like economic wellbeing, are important ingredients of the quality of life in our society," similarly deserving of legal protection such that direct injury may be rooted on the destruction of "the scenery, natural and historic objects and wildlife of the park, and would impair the enjoyment of the park for future generations."^[34] While the US Supreme Court refused to grant standing to *Sierra Club* due to the latter's failure to allege that "it or its members would be affected in any of their activities or pastimes by the [challenged] Disney development,"^[35] the same is not true here. KOR has

sufficiently demonstrated that it has suffered (or stands to suffer) a direct injury on account of the allegedly "illegal" condominium project insofar as KOR's regular commemorative activities in the Park have been (and continues to be) marred by the allegedly unsightly view of the Torre de Manila.

In any case, where compelling reasons exist, such as when the matter is of common and general interest to all citizens of the Philippines;^[36] when the issues are of paramount importance and constitutional significance;^[37] when serious constitutional questions are involved;^[38] or there are advance constitutional issues which deserve our attention in view of their seriousness, novelty, and weight as precedents,^[39] this Court, in the exercise of its sound discretion, has brushed aside procedural barriers and taken cognizance of the petitions before us. The significant legal issues raised in this case far outweigh any perceived impediment in the legal personality of petitioner KOR to bring this suit.^[40]

II

I shall now discuss the substantive issues raised in the petition.

A.

Petitioner KOR invokes Sections 15 and 16, Article XIV of the Constitution as bases for its claim that there is a constitutional "obligation of the State" to protect the Rizal Monument.^[41] The Court has consequently identified the threshold legal issue to be whether Sections 15 and 16, Article XIV of the Constitution extend protection to the Rizal Monument and/or its prominence, dominance, vista points, vista corridors, sightlines, and setting. To me, the resolution of this issue largely depends on whether these sections are self-executing and thus judicially enforceable "in their present form."^[42] I will thus discuss these issues together.

Sections 15 and 16, Article XIV of the Constitution read:

Sec. 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations.

Sec. 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

In constitutional construction, it is presumed that constitutional provisions are self-executing. The reason is that "[i]f the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law."^[43] This, however, does not make all constitutional provisions immediately self-executing.

In *Basco v. Philippine Amusement and Gaming Corporation*,^[44] we held that Sections 11 (Personal Dignity), 12 (Family), and 13 (Role of Youth) of Article II; Section 12 (Social Justice and Human Rights) of Article XIII and Section 2 (Educational Values) of Article XIV of the 1987 Constitution are merely statements of principles and policies. They are not self-executing and would need a law to be passed by Congress to clearly define and effectuate such principles.

Three years later, in the 1994 case of *Tolentino v. Secretary of Finance*,^[45] we held that the constitutional directives under Section 1, Article XIII (Social Justice and Human Rights) and Section 1, Article XIV (Education) to give priority to the enactment of laws for the enhancement of human dignity, the reduction of social, economic and political inequalities, and the promotion of the right to "quality education" were put in the fundamental law "as moral incentives to legislation, not as judicially enforceable rights."^[46] In the subsequent case of *Kilosbayan, Inc. v. Morato*,^[47] we held that the provisions under Article II (Declaration of State Principles and Policies) of

the Constitution are not self-executing provisions, "the disregard of which can give rise to a cause of action in the courts. They do not embody judicially enforceable constitutional rights but guidelines for legislation." [48] In *Tañada v. Angara*, [49] we affirmed that far from being provisions ready for enforcement through the courts, the sections found under Article II are there to be "used by the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws." [50]

To determine whether a provision is self-executory, the test is to see whether the provision is "complete in itself as a definitive law, or if it needs future legislation for completion and enforcement." [51] In other words, the provision must set forth "a specific, operable legal right, rather than a constitutional or statutory policy." [52] Justice Feliciano, in his Separate Opinion in the landmark case of *Oposa v. Factoran*, explained:

It seems to me important that the legal right which is an essential component of a cause of action be a specific, operable legal right, rather than a constitutional or statutory policy, for at least two (2) reasons. One is that unless the legal right claimed to have been violated or disregarded is given specification in operational terms, defendants may well be unable to defend themselves intelligently and effectively; in other words, there are due process dimensions to this matter.

The second is a broader-gauge consideration-where a specific violation of law or applicable regulation is not alleged or proved, petitioners can be expected to fall back on the expanded conception of judicial power in the second paragraph of Section 1 of Article VIII of the Constitution x x x.

When substantive standards as general as "the right to a balanced and healthy ecology" and "the right to health" are combined with remedial standards as broad ranging as "a grave abuse of discretion amounting to lack or excess of jurisdiction," the result will be, it is respectfully submitted, to propel courts into the uncharted ocean of social and economic policy making. At least in respect of the vast area of environmental protection and management, our courts have no claim to special technical competence and experience and professional qualification. Where no specific, operable norms and standards are shown to exist, then the policy making departments-the legislative and executive departments-must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene. [53] (Emphasis supplied.)

Following this test, I am of the view that Sections 15 and 16, Article XIV of the Constitution invoked by petitioner KOR are not self-executing provisions. These provisions relied upon by KOR, textually and standing alone, do not create any judicially enforceable right and obligation for the preservation, protection or conservation of the "prominence, dominance, vista points, vista corridors, sightlines and setting" of the Rizal Park and the Rizal Monument.

Similar to those constitutional provisions we have previously declared to be non-self-executing, Sections 15 and 16 are mere statements of principle and policy. The constitutional exhortation to "conserve, promote, and popularize the nation's historical and cultural heritage and resources," lacks "specific, operable norms and standards" by which to guide its enforcement. [54] Enabling legislation is still necessary to define, for example, the scope, permissible measures, and possible limitations of the State's heritage conservation mandate. Congress, in the exercise of its plenary power, is alone empowered to decide whether and how to conserve and preserve historical and cultural property. As in the situation posed by Justice Feliciano, Sections 15 and 16, by themselves, will be of no help to a defendant in an actual case for purposes of preparing an intelligent and effective defense. These sections also lack any comprehensible standards by which to guide a court in resolving an alleged violation of a right arising from the same.

The view that Sections 15 and 16 are not self-executing provisions is, in fact, supported by the deliberations of the Constitutional Commission, insofar as they reveal an intent to direct Congress to enact a law that would provide

guidelines for the regulation as well as penalties for violations thereof.[55] In particular, during the interpellation of Commissioner Felicitas Aquino, one of the proponents of the provision on heritage conservation, she conceded that there is a need for supplementary statutory implementation of these provisions.[56]

Petitioner KOR also claimed that the Torre de Manila project (1) "violates" the National Historical Commission of the Philippines (NHCP) "Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages" which "guidelines have the force of law" and (2) "runs afoul" an "international commitment" of the Philippines under the International Charter for the Conservation and Restoration of Monuments and Sites, otherwise known as the Venice Charter.[57]

I disagree.

The NHCP Guidelines is neither law nor an enforceable rule or regulation. Publication[58] and filing with the Law Center of the University of the Philippines[59] are indispensable requirements for statutes, including administrative implementing rules and regulations, to have binding force and effect.[60] As correctly pointed out by respondent DMCI-PDI, no showing of compliance with these requirements appears in this case. The NHCP Guidelines cannot thus be held as binding against respondent.

Similarly, neither can the Venice Charter be invoked to prohibit the construction of the Torre de Manila project. The Venice Charter provides, in general terms, the steps that must be taken by State Parties for the conservation and restoration of monuments and sites, including these properties' setting. It does not, however, rise to a level of an enforceable law. There is no allegation that the Philippines has legally committed to observe the Venice Charter. Neither am I prepared to declare that its principles are norms of general or customary international law which are binding on all states.[61] I further note that the terms of both the NHCP Guidelines and the Venice Charter appear hortatory and do not claim to be sources of legally enforceable rights. These documents only urge (not require) governments to adopt the principles they espouse through implementing laws.[62]

Nevertheless, the Venice Charter and the NHCP Guidelines, along with various conservation conventions, recommendations, and resolutions contained in multilateral cooperation and agreements by State and non-state entities, do establish a significant fact: At the time of the enactment of our Constitution in 1987, there has already been a consistent understanding of the term "conservation" in the culture, history, and heritage context as to cover not only a heritage property's physical/tangible attributes, but also its settings (e.g., its surrounding neighborhood, landscapes, sites, sight lines, skylines, visual corridors, and vista points).

The setting of a heritage structure, site, or area is defined as "the immediate and extended environment that is part of, or contributes to, its significance and distinctive character." [63] It is also referred to as "the surroundings in which a place is experienced, its local context, embracing present and past relationships to the adjacent landscape." [64] It is further acknowledged as one of the sources from which heritage structures, sites, and areas "derive their significance and distinctive character." [65] Thus, any change to the same can "substantially or irretrievably affect" the significance of the heritage property. [66]

The concept of settings was first formalized with the Xi'an Declaration on the Conservation of the Setting of Heritage Structures, Sites and Areas adopted by the 15[th] General Assembly of International Council on Monuments and Sites (ICOMOS) on October 21, 2005. The concept itself, however, has been acknowledged decades before, with references to settings, landscapes, and surroundings appearing as early as 1962. [67]

To reiterate, my examination of the various multilateral and international documents on the subject shows a generally-accepted and oft--repeated understanding of "heritage conservation" as covering more than a cultural property's physical attributes to include its surroundings and settings. [68] This "understanding" had, unarguably,

already acquired "term of art" status even before the enactment of our Constitution in 1987. Verba artis ex arte. Terms of art should be explained from their usage in the art to which they belong.[69]

To me, absent proof of a clear constitutional expression to the contrary, the foregoing understanding of heritage conservation provide more than sufficient justification against a priori limiting the plenary power of Congress to determine, through the enactment of laws, the scope and extent of heritage conservation in our jurisdiction. Otherwise put, the Congress can choose to legislate that protection of a cultural property extends beyond its physical attributes to include its surroundings, settings, view, landscape, dominance, and scale. This flows from the fundamental principle that the Constitution's grant of legislative power to Congress is plenary, subject only to certain defined limitations, such as those found in the Bill of Rights and the due process clause of the Constitution.[70]

B.

Having established that Sections 15 and 16, Article XIV of the Constitution invoked by petitioner KOR are not self-executing constitutional provisions, I will discuss the existing laws or statutes that can be sources of judicially demandable rights for purposes of the ends sought to be attained by petitioner.

a.

Over the years, Congress has passed a number of laws to carry out the constitutional policy expressed in Sections 15 and 16, Article XIV of the Constitution. Conservation and preservation have, notably, been recurring themes in Philippine heritage laws.

Republic Act No. 4368,[71] enacted in 1965 and which created the National Historical Commission, declared it the duty, among others, of the Commission to "identify, designate, and appropriately mark historic places in the Philippines and x x x to maintain and care for national monuments, shrines and historic markets x x x." [72] A year later, Republic Act No. 4846, otherwise known as the "Cultural Properties Preservation and Protection Act," was passed declaring it an explicit state policy to "preserve and protect the important x x x cultural properties x x x of the nation and to safeguard their intrinsic value." [73]

Republic Act No. 7356[74] (RA 7356) later declared that culture is a "manifestation of the freedom of belief and of expression," and "a human right to be accorded due respect and allowed to flourish." [75] Thus, it was provided that:

Sec. 3. National Identity. - Culture reflects and shapes values, beliefs, aspirations, thereby defining a people's national identity. A Filipino national culture that mirrors and shapes Philippine economic, social and political life shall be evolved, promoted and conserved.

Sec. 7. Preservation of the Filipino Heritage. - It is the duty of every citizen to preserve and conserve the Filipino historical and cultural heritage and resources. The retrieval and conservation of artifacts of Filipino culture and history shall be vigorously pursued. (Emphasis and underscoring supplied.)

With RA 7356, Congress created the National Commission for Culture and the Arts (NCCA) which had, among its principal mandates, the conservation and promotion of the nation's historical and cultural heritage.[76] Later on, Republic Act No. 8492[77] (RA 8492) was enacted, converting the National Museum (NM) into a trust of the government whose primary mission includes the acquisition, preservation, and exhibition of works of art, specimens and cultural and historical artifacts.[78] Our National Building Code also prohibits the construction of signboards which will "obstruct the natural view of the landscape x x x or otherwise defile, debase, or offend the aesthetic and cultural values and traditions of the Filipino people." [79]

Republic Act No. 10066[80] (RA 10066) and Republic Act No. 10086[81] (RA 10086) are heritage laws of recent vintage which further affirm the mandate to protect, preserve, conserve, and promote the nation's historical and cultural heritage and resources.[82] Section 2 of RA 10066, for example, reads:

Sec. 2. Declaration of Principles and Policies. - Sections 14, 15, 16 and 17, Article XIV of the 1987 Constitution declare that the State shall foster the preservation, enrichment and dynamic evolution of a Filipino culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression. The Constitution likewise mandates the State to conserve, develop, promote and popularize the nation's historical and cultural heritage and resources, as well as artistic creations. It further provides that all the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State, which may regulate its disposition.

In the pursuit of cultural preservation as a strategy for maintaining Filipino identity, this Act shall pursue the following objectives:

(a)

Protect, preserve, conserve and promote the nation's cultural heritage, its property and histories, and the ethnicity of local communities;

(b)

Establish and strengthen cultural institutions; and

(c)

Protect cultural workers and ensure their professional development and well-being.

The State shall likewise endeavor to create a balanced atmosphere where the historic past coexists in harmony with modern society. It shall approach the problem of conservation in an integrated and holistic manner, cutting across all relevant disciplines and technologies. The State shall further administer the heritage resources in a spirit of stewardship for the inspiration and benefit of the present and future generations. (Emphasis and underscoring supplied.)

According to the City of Manila, "[u]nobstructed viewing appreciation and photographic opportunities have not risen to the level of a legislated right or an imposable obligation in connection with engineering works or even cultural creations." [83] The NHCP, for its part, claims that there is "no law or regulation [which] imposes a specific duty on [the part of] the NHCP to issue a Cease and Desist Order (CDO) to protect the view of the Rizal Monument and Rizal Park." [84] Even assuming that views are protected, the NHCP claims that it is the City of Manila in the exercise of its police power-not the NHCP-that should pass legislation to protect the Rizal Park and Rizal Monument.[85]

DMCI-PDI maintains that there is "absolutely no law, ordinance or rule prohibiting the construction of a building, regardless of height, at the background of the Rizal Monument and the Rizal Park." [86] It argues that RA 10066, the law passed by Congress to implement the constitutional mandate of heritage conservation, "does not include provisions on the preservation of the prominence, dominance, vista points, vista corridors, sightlines, and settings of historical monuments like the Rizal Monument." [87] It further claims that what RA 10066 protects is merely the physical integrity of national cultural treasures and important cultural properties "by authorizing the issuance of CDOs pursuant to Section 25 of the law." [88]

In my view, respondents are only PARTLY correct.

My reading of the foregoing statutes shows no clear and specific duty on the part of public respondents NCCA,

NM, or NHCP to regulate, much less, prohibit the construction of the Torre de Manila project on the ground that it adversely affects the view, vista, sightline, or setting of the Rizal Monument and the Rizal Park.[89]

Nevertheless, there is to me existing local legislation implementing the constitutional mandate of heritage conservation. Ordinance No. 8119 provides for a clear and specific duty on the part of the City of Manila to regulate development projects insofar as these may adversely affect the view, vista, sightline, or setting of a cultural property within the city.

b.

Republic Act No. 7160, otherwise known as the Local Government Code, vests local government units with the powers to enact ordinances to promote the general welfare, which it defines to include:

Sec. 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. (Emphasis supplied.)

It also provides that zoning ordinances serve as the primary and dominant bases for the use of land resources.[90] These are enacted by the local legislative council as part of their power and duty to promote general welfare,[91] which includes the division of a municipality/city into districts of such number, shape, and area as may be deemed best suited to carry out the stated purposes, and within such districts "regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied x x x." [92]

Ordinance No. 8119 is a general zoning ordinance similar to the one upheld by the United States Supreme Court in the case of *Village of Euclid v. Ambler Realty Co.*[93] as a valid exercise of police power. The validity of a municipal ordinance dividing the community into zones was challenged in that case on the ground that "it violates the constitutional protection to the right of property x x x by attempted regulations under the guise of the police power, which are unreasonable and confiscatory." [94] The US Supreme Court there stated that:

Building zone laws are of modern origin. They began in this country about twenty-five years ago. Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for, while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise. x x x [95]

This Court has similarly validated the constitutionality of zoning ordinances in this jurisdiction.[96] In *Victorias Milling Co., Inc. v. Municipality of Victorias, Negros Occidental*, [97] we held that an ordinance carries with it the presumption of validity. In any case, the validity of Ordinance No. 8119, while subsequently raised by petitioner

KOR as an issue, can be challenged only in a direct action and not collaterally.[98] While the question of its reasonableness may still be subject to a possible judicial inquiry in the future,[99] Ordinance No. 8119 is presumptively valid and must be applied.

Ordinance No. 8119, by its terms, contains specific, operable norms and standards that implement the constitutional mandate to conserve historical and cultural heritage and resources. A plain reading of the Ordinance would show that it sets forth specific historical preservation and conservation standards which textually reference "landscape and streetscape,"[100] and "visual character"[101] in specific relation to the conservation of historic sites and facilities located within the City of Manila. We quote:

Sec. 47. Historical Preservation and Conservation Standards. - Historic sites and facilities shall be conserved and preserved. These shall, to the extent possible, be made accessible for the educational and cultural enrichment of the general public.

The following shall guide the development of historic sites and facilities:

- Sites with historic buildings or places shall be developed to conserve and enhance their heritage values.
- Historic sites and facilities shall be adaptively re-used.
- Any person who proposes to add, to alter, or partially demolish a designated heritage property will require the approval of the City Planning and Development Office (CPDO) and shall be required to prepare a heritage impact statement that will demonstrate to the satisfaction of the CPDO that the proposal will not adversely impact the heritage significance of the property and shall submit plans for review by the CPDO in coordination with the National Historical Institute (NHI).
- Any proposed alteration and/or re-use of designated heritage properties shall be evaluated based on criteria established by the heritage significance of the particular property or site.
- Where an owner of a heritage property applies for approval to demolish a designated heritage property or properties, the owner shall be required to provide evidence to satisfaction that demonstrates that rehabilitation and re-use of the property is not viable.
- Any designated heritage property which is to be demolished or significantly altered shall be thoroughly documented for archival purposes with a history, photographic records, and measured drawings, in accordance with accepted heritage recording guidelines, prior to demolition or alteration.
- Residential and commercial infill in heritage areas will be sensitive to the existing scale and pattern of those areas, which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources.
- Development plans shall ensure that parking facilities (surface lots, residential garages, stand-alone parking garages and parking components as parts of larger developments) are compatibly integrated into heritage areas, and/or are compatible with adjacent heritage resources.
- Local utility companies (hydro, gas, telephone, cable) shall be required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations which do not detract from the visual character of heritage resources, and which do not have negative impact on its architectural integrity.
- Design review approval shall be secured from the CPDO for any alteration of the heritage property to ensure that design guidelines and standards are met and shall promote preservation and conservation of the heritage property. (Emphasis and underscoring supplied.)

Section 47, by its terms, provides the standards by which to "guide the development of historic sites and

facilities," which include, among others, consideration of the "existing landscape, streetscape and visual character" of heritage properties and resources. Under Section 47, the following matters are issues for consideration: (1) whether a certain property is considered a historic site, area and facility which has heritage value and significance; (2) whether the proposed development adds to or alters a historic site, area and facility; (3) whether a proposed development adversely impacts the heritage significance of a historic site, area or facility; (4) whether a project proponent needs to submit a heritage impact statement (HIS) and plans for review; and (5) whether the CPDO is required to coordinate with the respondent NHCP in assessing a proposed development's adverse impact, if any, to the heritage significance of a historic site, area, and facility.

Petitioner KOR asserted that the Rizal Park is "sacred ground in the historic struggle for freedom"[102] and the Rizal Monument is a "National Cultural Treasure." [103] It alleged that respondent DMCI-PDI's Torre de Manila condominium project will have an "adverse impact" by ruining the sightline of the Rizal Park and Rizal Monument thereby diminishing its value,[104] scale, and importance.[105] To my mind, petitioner's foregoing allegations should be sufficiently addressed by the City upon due consideration of the standards expressed under Section 47.

In fact, Ordinance No. 8119 contains another provision that declares it in "the public interest" that all projects be designed in an "aesthetically pleasing" manner. It makes express and specific reference to "existing and intended character of [a] neighborhood,"[106] "natural environmental character" of its neighborhood, and "skyline,"[107] among others. Section 48 mandates consideration of skylines as well as "the existing and intended character of the neighborhood" where the proposed facility is to be located, thus:

Sec. 48. Site Performance Standards. - The City considers it in the public interest that all projects are designed and developed in a safe, efficient and aesthetically pleasing manner. Site development shall consider the environmental character and limitations of the site and its adjacent properties. All project elements shall be in complete harmony according to good design principles and the subsequent development must be pleasing as well as efficiently functioning especially in relation to the adjacent properties and bordering streets.

The design, construction, operation and maintenance of every facility shall be in harmony with the existing and intended character of its neighborhood. It shall not change the essential character of the said area but will be a substantial improvement to the value of the properties in the neighborhood in particular and the community in general.

Furthermore, designs should consider the following:

- Sites, buildings and facilities shall be designed and developed with regard to safety, efficiency and high standards of design. The natural environmental character of the site and its adjacent properties shall be considered in the site development of each building and facility.

- The height and bulk of buildings and structures shall be so designed that it does not impair the entry of light and ventilation, cause the loss of privacy and/or create nuisances, hazards or inconveniences to adjacent developments.

x x x

- No large commercial signage and/or pylon, which will be detrimental to the skyline, shall be allowed.

- Design guidelines, deeds of restriction, property management plans and other regulatory tools that will ensure high quality developments shall be required from developers of commercial subdivisions and condominiums. These shall be submitted to the City Planning and Development Office (CPDO) for review and approval. (Emphasis and underscoring supplied.)

Under the pertinent provisions of Section 48, the following items must be considered: (1) whether a proposed development was designed in an aesthetically pleasing manner in relation to the environmental character and limitations of its site, adjacent properties, and bordering streets; (2) whether the proposed development's design (including height, bulk and orientation) is in harmony with the existing and intended character of its neighborhood; (3) whether the development will change the essential character of the area; and (4) whether the development would be akin to a large commercial signage and/or pylon that can be detrimental to the skyline.

I find that Section 48 appears relevant especially considering petitioner KOR's allegations that the Torre de Manila sticks out "like a sore thumb"[108] and respondent NHCP's statement to the Senate that the Commission does find that the condominium structure (Torre de Manila) "look[s] ugly,"[109] and "visually obstructs the vista and adds an unattractive sight to what was once a lovely public image x x x." [110] The foregoing allegations should likewise be sufficiently addressed by the City of Manila upon due consideration of the standards stated under Section 48.

Finally, Ordinance No. 8119, by its terms, contains specific operable norms and standards that protect "views" with "high scenic quality," separately and independently of the historical preservation, conservation, and aesthetic standards discussed under Sections 47 and 48. Sections 45 and 53 obligate the City of Manila to protect views of "high scenic quality" which are the objects of "public enjoyment," under explicit "environmental conservation and protection standards:"

Sec. 45. Environmental Conservation and Protection Standards. - It is the intent of the City to protect its natural resources. In order to achieve this objective, all development shall comply with the following regulations:

- Views shall be preserved for public enjoyment especially in sites with high scenic quality by closely considering building orientation, height, bulk, fencing and landscaping.

x x x

Sec. 53. Environmental Compliance Certificate (ECC). - Notwithstanding the issuance of zoning permit (locational clearance) Section 63 of this Ordinance, no environmentally critical projects nor projects located in environmentally critical areas shall be commenced, developed or operated unless the requirements of ECC have been complied with. (Emphasis and italics supplied.)

I note that the Torre de Manila is in a University Cluster Zone (INS-U), which is assigned a permissible maximum Percentage Land Occupancy (PLO) of 0.6 and a maximum Floor-Area Ratio (FAR) of 4. Applying these Land Use Intensity Controls (LUICs), petitioner KOR claims that the City of Manila violated the zoning restrictions of Ordinance No. 8119 when it: (1) permitted respondent DMCI-PDI to build a structure beyond the seven-floor limit allowed within an "institutional university cluster;" and (2) granted respondent DMCI-PDI a variance to construct a building "almost six times the height limit." [111] Petitioner KOR asserts that even at 22.83% completion, or at a height of 19 floors as of August 20, 2014, the Torre de Manila already obstructs the "view" of the "background of blue sky" and the "vista" behind the Rizal Park and the Rizal Monument. [112]

I am aware that KOR does not in its petition invoke the constitutional right of the people to a balanced and healthful ecology, [113] other environmental protection statutes, or Sections 45 and 53 of Ordinance No. 8119. Considering, however, the language of the petition's allegations, the texts of Sections 45 and 53, and the greater public interest in the just and complete determination of all issues relevant to the disposition of this case, I include the following consideration of Sections 45 and 53 in my analysis.

In my view, Section 45 in relation to Section 53, by their terms, provide standards by which "views" with "high scenic quality" enjoyed by the public should be preserved, i.e., "all developments shall comply with x x x

regulations" including those relating to "building orientation, height, [and] bulk x x x."

To me, these Sections thus present the following questions for the City of Manila to consider and decide: (1) whether the Rizal Park and the Rizal Monument generate a view of high scenic quality that is enjoyed by the public;[114] (2) whether this view comes within the purview of the term "natural resources;" (3) whether the orientation, height, and bulk of the Torre de Manila, as prescribed in its LUIC rating under the University Cluster Zone, or as approved by the variance granted by the City of Manila, will impair the protection of this view; and (4) whether the Torre de Manila is an environmentally critical project or is a project located in an environmentally critical area, as to require compliance with the requirements of an ECC.[115]

C.

The majority states that the main purpose of zoning is the protection of public safety, health, convenience, and welfare. It is argued that there is no indication that the Torre de Manila project brings any harm, danger or hazard to the people in the surrounding areas except that the building allegedly poses an unsightly view on the taking of photos or the visual appreciation of the Rizal Monument by locals and tourists.

I disagree.

The modern view is that health and public safety do not exhaust or limit the police power purposes of zoning. It is true that the concept of police power (in general) and zoning (in particular) traditionally developed alongside the regulation of nuisance and dangers to public health or safety. The law on land development and control, however, has since dramatically broadened the reach of the police power in relation to zoning.

The protection of cultural, historical, aesthetic, and architectural assets as an aspect of the public welfare that a State is empowered to protect pursuant to the police power would find its strongest support in *Berman v. Parker*. [116] This 1954 landmark case broke new and important ground when it recognized that public safety, health, morality, peace and quiet, law and order—which are some of the more conspicuous examples of the traditional application of the police power—merely illustrate the scope of the power and do not limit it. [117] Justice William O. Douglas in his opinion famously said:

We deal, in other words, with what traditionally has been known as the police power. An attempt to define its reach or trace its outer limits is fruitless, for each case must turn on its own facts. The definition is essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically capable of complete definition. Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well nigh conclusive. x x x

The concept of public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. [118] (Emphasis supplied. Citations omitted.)

Building on *Berman* and later statutes, courts would, over time, accept newer definitions of the public welfare in support of expansive zoning laws. Some of the most significant applications of this expansion will occur in the use of zoning to effect public welfare interests in historical preservation, protection of the environment and ecology, and aesthetics. [119]

At this juncture, I would like to put into historical perspective the development of, and inter-relation between, town planning, police power and zoning.

a.

Town planning, at least in the United States, traces its origins from early colonial days. Civil engineers and land surveyors dominated the design of frontier settlements.[120] The advent of widespread land speculation then triggered the era of city-building. When unplanned growth led to disease, poor sanitation, and problems of drainage and disposal of waste, the "water--carriage sewerage system" was invented, paving the way for what we now know as the era of the Sanitary Reform Movement.[121]

After the Civil War, American cities rapidly grew, leading to "an increased awareness of the need for civic beauty and amenities in America's unplanned urban areas." [122] With the growing agitation for "greater attention to aesthetics in city planning" came the City Beautiful Movement, whose debut is commonly attributed to the Chicago World Fair of 1893.[123] This Movement is considered the precursor to modern urban planning whose hallmarks include "[w]ell-kept streets, beautiful parks, attractive private residences, fresh air and sanitary improvements." [124] In the 1890s, townspeople formed ad hoc "village improvement associations" to propagate the movement.[125] Over time, the village improvement associations would give way to planning commissions. Much later, local governments adopted city plans which they eventually incorporated into comprehensive zoning ordinances.[126] Thereafter, the United States Supreme Court in 1926 would uphold the constitutionality of a general zoning ordinance in *Village of Euclid*.

b.

Historic preservation and conservation has a long history. It is said to have started in the United States in the mid 1800's, with efforts to save Mt. Vernon, the home of George Washington. Before the Civil War, the United States (US) Congress initially harbored "strong doubts" as to the constitutional basis of federal involvement in historic preservation.[127] Since the government at the time was not financing the acquisition of historic property,[128] a group of ladies organized a private effort to acquire the property and save it from ruin.[129] The US Congress injected itself into the preservation field only when it began purchasing Civil War battlefield sites. Sometime in 1893, the US Congress passed a law which provided for, among others, the acquisition of land to preserve the lines of the historic Battle of Gettysburg. This law was challenged on constitutional grounds and gave rise to the landmark decision in *United States v. Gettysburg Elec. Ry. Co.*[130]

Gettysburg Electric Railway Co., a railroad company which acquired property for its railroad tracks that later became subject of condemnation, filed a case questioning the kind of public use for which its land is being condemned. In unanimously ruling in favor of the federal government, the United States Supreme Court held that the taking of the property "in the name and for the benefit of all the citizens of the country x x x seems x x x not only a public use, but one so closely connected with the welfare of the republic itself x x x"[131] With this Decision, historic preservation law was "canonized by the legislative, executive, and judicial branches of the Federal Government"[132] and given "a constitutional foundation." [133]

On the other hand, environmental aspects of land use control were scarcely a concern before the 1960s.[134] This, however, would change in 1969 with the passage of the federal National Environmental Policy Act[135] (NEPA) which mandated that federal agencies consider the environmental effects of their actions. The policy goals as specified in the NEPA include "responsibilities of each generation as trustee of the environment for succeeding generations"[136] and to "assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings"[137] through the preparation of environmental impact statements on major federal actions which may have a significant impact on the environment, natural or built.[138]

The NEPA later led to the adoption of similar laws in over 75 countries.[139] In the Philippines, President Marcos in 1977 issued Presidential Decree No. 1151, entitled "Philippine Environmental Policy," declaring it the responsibility of the government to, among others, "preserve important historic and cultural aspects of the

Philippine heritage." It declared that an impact statement shall be filed in every action, project, or undertaking that significantly affects the quality of the environment. Presidential Decree No. 1586,[140] issued in 1978, then authorized the President to declare certain projects, undertaking, or areas in the country as "environmentally critical." Pursuant to this authority, President Marcos, under Proclamation No. 1586, declared areas of unique historic, archaeological, or scientific interests as among the areas declared to be environmentally critical and within the scope of the Environmental Impact Statement System.[141]

The broadening concept of the public welfare would also extend to considerations of aesthetics. The traditional rule has been that the authority for statutes and ordinances is the state's police power to promote the public safety, health, morals, or general welfare.[142] Aesthetic considerations as a "primary motivation" to the enactment of ordinances are "insufficient" where they are only "auxiliary or incidental" to the interests in health, morals and safety.[143]

In early court decisions concerning aesthetic regulation, the US Supreme Court viewed aesthetics as "not sufficiently important in comparison with traditional police power uses." [144] At that time, the US Supreme Court would hold that aesthetic values were not important enough to warrant an infringement of more highly valued property rights.[145] Aesthetic regulations were perceived to carry "great a danger of unbridled subjectivity, unlike other areas of state regulation, where objective evaluation of the governmental purpose is possible." [146] The lack of any objective standard to determine what is aesthetically pleasing created a real danger that the state will end up imposing its values upon the society which may or may not agree with it.

As earlier noted, this would change in 1954 with *Berman*. Courts would thereafter take a more liberal and hospitable view towards aesthetics.[147] "The modern trend of judicial decision x x x is to sanction aesthetic considerations as the sole justification for legislative regulation x x x." [148] Writers and scholars would articulate the bases for extending to aesthetic stand-alone acceptance as a public welfare consideration. Newton D. Baker, a noted authority in zoning regulations, argued that beauty is a valuable property right.[149] Professor Paul Sayre argued that since "aesthetics maintains property values," the greater the aesthetic value of property the more it is worth, therefore it will generate more taxes to fund public needs "thereby making aesthetics a community need worthy of the protection of the police power." [150] DiCello would make the formulation thus: "consequently, the general welfare may be defined as the health, safety and morals or aesthetics of the public." [151] Costonis[152] proposed that the legal justification for aesthetic laws is not beauty but rather our individual and group psychological well-being.[153] Bobrowski argued that visual resource protection supports tourism which has undeniable economic benefits to the society; the protection of the visual resource is related to the preservation of property values.[154] "Scenic quality is an important consideration for prospective purchasers. Obstruction of views, and noxious or unaesthetic uses of land plainly decrease market value." [155] Coletta explained that "an individual's aesthetic response to the visual environment is founded on the cognitive and emotional meanings that the visual patterns convey." [156]

c.

In the Philippines, this Court, in the 1915 seminal case of *Churchill v. Rafferty*, [157] declared that objects which are offensive to the sight fall within the category of things which interfere with the public safety, welfare, and comfort, and therefore, within the reach of the State's police power. Thus:

Without entering into the realm of psychology, we think it quite demonstrable that sight is as valuable to a human being as any of his other senses, and that the proper ministration to this sense conduces as much to his contentment as the care bestowed upon the senses of hearing or smell, and probably as much as both together. x x x Man's [a]esthetic feelings are constantly being appealed to through his sense of sight. x x x [158]

Forty years later, in *People v. Fajardo*,^[159] we would hold that "the State may not, under the guise of police power, permanently divest owners of the beneficial use of their property and practically confiscate them solely to preserve or assure the aesthetic appearance of the community."^[160] In that case, we invalidated an ordinance that empowered the Municipal Mayor to refuse to grant a building permit to a proposed building that "destroys the view of the public plaza." In the more recent case of *Fernando v. St. Scholastica's College*,^[161] this Court struck down a Marikina City ordinance which provided, among others, a six-meter setback requirement for beautification purposes. There, we held: "the State may not, under the guise of police power, permanently divest owners of the beneficial use of their property solely to preserve or enhance the aesthetic appearance of the community."^[162]

Of course, *Churchill* and *Fajardo* were decided under the 1935 Constitution which simply provided that arts and letters shall be under the State's patronage.^[163] The 1973 and 1987 Constitutions would change this. The 1973 Constitution provided that "Filipino culture shall be preserved and developed for national identity."^[164] Then, in 1987, the Constitution devoted a whole new sub-section to arts and culture, including Sections 15 and 16 of Article XIV, which are subjects of this case. More than that, it provided for a right of the people to a balanced and healthy ecology, which spawned *Oposa v. Factoran, Jr.*^[165]

As also previously noted, Congress in 1991 enacted the Local Government Code which specifically defined as concerns of the public welfare, the preservation and enrichment of culture and enhancing the rights of the people to a balanced ecology.

Then in 2006, the City of Manila enacted Ordinance No. 8119, which amended Ordinance No. 81-01^[166] of the Metropolitan Manila Commission. A "City Beautiful Movement," appears as one of the five-item "Plan Hi--Lights" of Ordinance No. 8119 and includes, among others, "city imageability."^[167] I quote:

This promotes the visual "imageability" of the City according to the Burnham Plan of 1905. As per plan recommendation from Daniel Burnham, it gives emphasis on the creation and enhancement of wide boulevards, public buildings, landscaped parks and pleasant vistas. It also encourages the connectivity of spaces and places through various systems/networks (transport/parkways). But most of all, it is the establishment of a symbolic focus that would identify the City of Manila as well as become its unifying element. These are the main themes for Place Making revolving around creating a "sense of place" and distinction within the City. (Emphasis and underscoring supplied.)

I have compared the provisions of Ordinance No. 8119 with those of Ordinance No. 81-01 and find that they are both general zoning ordinances. Both similarly divide the City of Manila into zones, prescribe height, bulk and orientation standards applicable to the zones, and provide for a procedure for variance in case of non-conforming uses. They, however, differ in one very significant respect relevant to the determination of this case. Ordinance No. 8119 provides for three completely new standards not found in Ordinance No. 81-01, or for that matter, in any of the other current zoning ordinances of major cities within Metro Manila, such as Marikina,^[168] Makati,^[169] or Quezon City.^[170] These, as discussed, are: (a) the historical preservation and conservation standards under Section 47; (b) the environmental conservation and protection standards under Sections 45 and 53; and (c) the aesthetic/site performance standards under Section 48. To my mind, these sets of distinctive provisions introduced into Ordinance No. 8119 constitute indubitable and irrefutable proof that the City of Manila has aligned itself with jurisdictions that have embraced the modern view of an expanded concept of the public welfare. For this reason, I cannot accept the majority's view that zoning as an aspect of police power covers only "traditional" concerns of public safety, health, convenience, and welfare.

I am also of the view that mandamus lies against respondents.

Generally, the writ of mandamus is not available to control discretion nor compel the exercise of discretion.[171] The duty is ministerial only when its discharge requires neither the exercise of official discretion nor judgment.[172] Indeed, the issuance of permits per se is not a ministerial duty on the part of the City. This act involves the exercise of judgment and discretion by the CPDO who must determine whether a project should be approved in light of many considerations, not excluding its possible impact on any protected cultural property, based on the documents to be submitted before it.

Performance of a duty which involves the exercise of discretion may, however, be compelled by mandamus in cases where there is grave abuse of discretion, manifest injustice, or palpable excess of authority.[173] In *De Castro v. Salas*,[174] a writ of mandamus was issued against a lower court which refused to go into the merits on an action "upon an erroneous view of the law or practice." [175] There, it was held:

No rule of law is better established than the one that provides that mandamus will not issue to control the discretion of an officer or a court, when honestly exercised and when such power and authority is not abused. A distinction however must be made between a case where the writ of mandamus is sought to control the decision of a court upon the merits of the cause, and cases where the court has refused to go into the merits of the action, upon an erroneous view of the law or practice. If the court has erroneously dismissed an action upon a preliminary objection and upon an erroneous construction of the law, then mandamus is the proper remedy to compel it .to reinstate the action and to proceed to hear it upon its merits.[176]

In *Association of Beverage Employees v. Figueras*,[177] the Court en banc explained:

That mandamus is available may be seen from the following summary in 38 C. J. 598-600, of American decisions on the subject, including a U. S. Supreme Court decision:

While the contrary view has been upheld, the great weight of authority is to the effect that an exception to the general rule that discretionary acts will not be reviewed or controlled exists when the discretion has been abused. The discretion must be exercised under the established rules of law, and it may be said to be abused within the foregoing rule where the action complained of has been arbitrary or capricious, or based on personal, selfish, or fraudulent motives, or on false information, or on a total lack of authority to act, or where it amounts to an evasion of a positive duty, or there has been a refusal to consider pertinent evidence, hear the parties when so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which if adopted would be effective. If by reason of a mistaken view of the law or otherwise there has been in fact no actual and bona fide exercise of judgment and discretion, as, for instance, where the discretion is made to turn upon matters which under the law should not be considered, or where the action is based upon reasons outside the discretion imposed, mandamus will lie. So where the discretion is as to the existence of the facts entitling the relator to the thing demanded, if the facts are admitted or clearly proved, mandamus will issue to compel action according to law. x x x[178] (Emphasis and underscoring supplied.)

I find that the aforementioned provisions of Ordinance No. 8119 set out clear duties on the part of public respondent City of Manila for purposes of resolving whether the Torre de Manila construction project should be allowed and that the City, by reason of a mistaken or erroneous construction of its own Ordinance, had failed to consider its duties under this law when it issued permits in DMCI-PDI's favor.[179] Thus, while a writ of mandamus generally only issues to compel the performance of a ministerial duty, where, as in this case, there is a neglect or failure on the part of the City to consider the standards and requirements set forth under the law and its own comprehensive land use plan and zoning ordinance, mandamus may lie to compel it to consider the same for purposes of the exercise of the City's discretionary power to issue permits.

I have earlier shown that Ordinance No. 8119 contains three provisions which, by their terms, must be considered in relation to the determination by the City of Manila of the issue of whether the Torre de Manila condominium

project should be allowed to stand as is. Article VII (Performance Standards) of Ordinance No. 8119 provides the standards under which "[a]ll land uses, developments or constructions shall conform to x x x." The Ordinance itself provides that in the construction or interpretation of its provisions, "the term 'shall' is always mandatory." [180] These standards, placed in the Ordinance for specific, if not already expressed, reasons must be seriously considered for purposes of issuance of building permits by the City of Manila.

Sections 43 in relation to 53, and 47 and 48, however, were not considered by the City of Manila when it decided to grant the different permits applied for by DMCI-PDI. The City has, in fact, adamantly maintained that there is no law which regulates, much less prohibits, such construction projects. [181] While I hesitate to find grave abuse of discretion on the part of the City of Manila in its actuations relating to its issuance of the permits and the variance, this is due to the disputed facts respecting these issues. There is, for example, a serious allegation of non-compliance with FAR and variance requirements under the Ordinance; this issue was, in fact, discussed and debated at great length during oral arguments. [182] While I believe that the Court should refrain from making a determination of this particular issue, involving as it does findings of fact and technical matters, I do not hesitate to find that the City was mistaken in its view that there was no law which regulates development projects in relation to views, vista points, landscape, and settings of certain properties.

This law, as I have earlier sought to demonstrate, is Ordinance No. 8119, whose purposes include the protection of the "character" of areas within the locality and the promotion of the general welfare of its inhabitants. [183] The standards and requirements under Ordinance No. 8119 were included in the law to ensure that any proposed development to be approved be mindful of the numerous public welfare considerations involved. Ordinance No. 8119 being the primary and dominant basis for all uses of land resources within the locality, the City of Manila, through the CPDO, knows or ought to know the existence of these standards and ought to have considered the same in relation to the application of DMCI-PDI to construct the Torre de Manila project.

Worse, the City has apparently been "suspending" the application of several provisions of the Ordinance purportedly to follow the more desirable standards under the National Building Code. In a letter dated October 10, 2012, the Manila CPDO wrote DMCI-PDI stating that while Torre de Manila exceeded the FAR allowed under the Manila Zoning Ordinance, it granted DMCI-PDI a zoning permit "because the FAR restriction was suspended by the executive branch, for the City Planning Office opted to follow the National Building Code." [184] Neither does it appear that compliance was made pursuant to the requirements of Section 47(b) of Ordinance No. 8119 on the submission of a heritage impact statement (i.e., that the project will not adversely impact the heritage significance of the cultural property) for review by the CPDO in coordination with the NHCP.

Ordinance No. 8119's inclusion of standards respecting historic preservation, environmental protection, and aesthetics puts the City of Manila at the forefront of local governments that have embraced the expanded application of the public welfare. It is thus a major source of bafflement for me as to how the City of Manila could have missed these distinctive features of Ordinance No. 8119 when it processed DMCI-PDI's applications, up to and including its grant of the variance. The City of Manila's selective attitude towards the application of its own rules reminds of Justice Brion's statement in *Jardeleza v. Sereno*: [185]

The JBC, however, has formulated its own rules, which even commanded that a higher standard for procedural process be applied to *Jardeleza*. But even so, by opting to selectively apply its own rules to the prejudice of *Jardeleza*, the JBC not only violated the precepts of procedural due process; it also violated the very rules it has set for itself and thus violated its own standards.

This kind of violation is far worse than the violation of an independently and externally imposed rule, and cannot but be the violation contemplated by the term grave abuse of discretion. The JBC cannot be allowed to create a rule and at the same time and without justifiable reason, choose when and to whom it shall apply,

particularly when the application of these rules affects third persons who have relied on it.[186] (Emphasis and underscoring supplied.)

The City of Manila may have been of the honest belief that there was no law which requires it to regulate developments within the locality following the standards under Sections 45, 47, and 48. Still, the Court, without offending its bounden duty to interpret the law and administer justice, should not permit a disregard of an Ordinance by diminishing the duty imposed by Congress, through the local legislature, to effectuate the general welfare of the citizens of the City of Manila. The protection of general welfare for all citizens through the protection of culture, health and safety, among others, is "an ambitious goal but over time, x x x something that is attainable." [187] To me, such mandate is as much addressed to this Court, as it is to the other branches of Government. For this reason, I hesitate for the Court to allow the resulting effective disregard of the Ordinance (on the guise of technicalities) and be ourselves a stumbling block to the realization of such a laudable state goal.

Under Section 75 of Ordinance No. 8119, responsibility for the administration and enforcement of the same shall be with the City Mayor, through the CPDO.[188] For as long as it has not been repealed by the local sanggunian or annulled by the courts, Ordinance No. 8119 must be enforced.[189] The City of Manila cannot simply, and without due justification, disregard its obligations under the law and its own zoning ordinance. Officers of the government from the highest to the lowest are creatures of the law and are bound to obey it.[190] In this specific sense, enforcement of the ordinance has been held to be a public duty,[191] not only ministerial,[192] the performance of which is enforceable by a writ of mandamus.

I hasten to clarify that, by so doing, the Court would not be directing the City of Manila to exercise its discretion in one way or another. That is not the province of a writ of mandamus.[193] Lest I be misconstrued, I propose that the writ of mandamus issued in this case merely compel the City of Manila, through the CPDO, to consider the standards set out under Ordinance No. 8119 in relation to the applications of DMCI-PDI for its Torre de Manila project. It may well be that the City of Manila, after exercising its discretion, finds that the Torre de Manila meets any or all of the standards under the Ordinance. The Court will not presume to preempt the action of the City of Manila, through the CPDO, when it re-evaluates DMCI-PDI's application with particular consideration to the guidelines provided under the standards.

The majority makes much of the grant of a variance in respondent DMCI-PDI's favor and views the same as the exercise of discretion by the City of Manila which can only be corrected where there is a showing of grave abuse of discretion. This is inaccurate on two counts.

First, the rule that mandamus only lies to compel the performance of a ministerial duty has several exceptions; it is not limited to a case of grave abuse of discretion. As I have tried to discuss in detail, where respondent's exercise of discretion was based on an erroneous or mistaken view of the law, mandamus may be the proper remedy to compel it to reinstate the action and to proceed to hear it upon its merits.[194]

Second, the majority's view fails to appreciate the province of a variance, which is, essentially an exemption, under certain specified and stringent conditions, from compliance with the corresponding land use intensity controls (LUICs) provided for a specific zone, in this case, an institutional university cluster zone.

Ordinance No. 8119 seeks to "[p]rotect the character and stability of residential, commercial, industrial, institutional, urban, open spaces and other functional areas within the locality" [195] and "[p]romote and protect public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the City." [196] It divided the City of Manila into 11 types of zones or districts,[197] each assigned with their corresponding LUIC ratings.[198] LUICs, in turn, specifically relate/pertain to percentages of land occupancy (PLO), floor-area ratios (FAR), and building height limits (BHL).

At this point, some discussion of the zoning concepts of orientations, height, and bulk of buildings will be helpful.

Building height limits can be regulated in several ways. One involves the prescription of maximum building heights in terms of feet or stories or both:

Height regulations state maximum heights either in terms of feet or number of stories or both. Their general validity was accepted by *Welch v. Swasey*, and most litigation questions their validity as applied. The regulations are imposed to effectuate some of the purposes, as stated in the Standard Act, namely "to secure safety from fire," "to provide adequate light and air" and "to prevent the overcrowding of land." They also are adopted for aesthetic reasons.[199] (Citation omitted.)

Building height can also be regulated through a combination of bulk and floor limits. The PLO, for example, sets the maximum bulk of the building, or how much of the land a proposed building can occupy. The FAR, on the other hand, provides the maximum number of floors a building can have relative to its area. The zoning control devices for bulk (PLO) and floor (FAR) limits jointly determine height. These concepts are explained as follows:

Bulk zone regulations are those which provide a zoning envelope for buildings by horizontal measurement. They include such regulations as minimum lot size, minimum frontage of lots, the area of a lot that may be covered, yard requirements and setbacks. FAR, meaning floor-area ratio, is a device that combines height and bulk provisions.

x x x

Under the FAR, the ordinance designates a floor-area ratio for a particular zone. If the ratio is 1:1, for example, a one-story building can cover the entire buildable area of the lot, a two-story building can cover one-half of the buildable area, a four-story building can cover one-fourth of the buildable area and so on. In commercial office building areas in large cities the ratios may be 10:1, which would permit a twenty[-]story building on half of the buildable area of the lot.

FAR may be used in conjunction with maximum height limits and other bulk controls, so that in a 10:1 area, it may not be possible to build a 200-story building on 1/20[th] of the buildable area of a lot or to eliminate yards entirely and build a 10-story building up to all lot lines. Nevertheless, FAR does give the builder some flexibility. In effect[,] it provides an inducement to the builder to leave more of his lot open by permitting him to build higher.[200]

Following this, a zoning ordinance can prescribe a maximum height for buildings: (1) directly, that is, by expressly providing for height limits in terms of feet or number of stories or both; or (2) indirectly, by employing a combination of bulk and floor limits.

Ordinance No. 8119 does not provide for an express BHL.[201] Neither, for that matter, does the Building Code.[202] Instead, Ordinance No. 8119 sets up a system whereby building height is controlled by the combined use of a prescribed maximum FAR and a prescribed maximum PLO. Theoretically, a property owner can maximize the allowed height of his building by reducing the area of the land which the building will occupy (PLO). This process, however, can only achieve an allowed height up to a certain point as the allowable number of floors is, at the same time, limited by the FAR. Beyond the allowable maximum PLO or FAR, the property owner must avail of a mitigating device known in zoning parlance as a variance.

Variances are provided under zoning ordinances to meet challenges posed by so-called "nonconforming uses," a generic term covering both nonconforming buildings and nonconforming activities.[203] A nonconforming building, in the context of Ordinance No. 8119, is one that exceeds the LUIC rating, i.e., PLO and FAR limits, assigned to its zone. The Ordinance allows the City of Manila to grant a variance, provided the project proponent complies with the stringent conditions and the procedure prescribed by Sections 60 to 62.[204] Section 60

provides in pertinent part:

Sec. 60. Deviations. - Variances and exceptions from the provisions of this Ordinance may be allowed by the Sangguniang Panlungsod as per recommendation from the Manila Zoning Board of Adjustment and Appeals (MZBAA) through the Committee on Housing, Urban Development and Resettlements only when all the following terms and conditions are obtained/existing:

- Variance - all proposed projects which do not conformed (sic) with the prescribed allowable Land Use Intensity Control (LUIC) in the zone.
- The property is unique and different from other properties in the adjacent locality and because of its uniqueness, the owner/s cannot obtain a reasonable return on the property.

This condition shall include at least three (3) of the following provisions:

-

Conforming to the provisions of the Ordinance will cause undue hardship on the part of the owner or occupant of the property due to physical conditions of the property (topography, shape, etc.), which is not self created.

-

The proposed variance is the minimum deviation necessary to permit reasonable use of the property.

-

The variance will not alter the physical character of the district/zone where the property for which the variance sought is located, and will not substantially or permanently injure the use of the other properties in the same district or zone.

-

That the variance will not weaken the general purpose of the Ordinance and will not adversely affect the public health, safety, and welfare.

-

The variance will be in harmony with the spirit of this Ordinance.

Thus, "deviations," "variances and exceptions" from the standard LUICs of the Ordinance may be allowed by the Sangguniang Panlungsod as per "recommendation" from the Manila Zoning Board of Adjustment and Appeals (MZBAA) through the Committee on Housing, Urban Development and Resettlements only when specified conditions are obtained.

As earlier explained, LUICs specifically relate and pertain to PLOs, FARs, and BHLs. Variances, on the other hand, are essentially exemptions from the prescribed LUICs within a specific zone. By their terms, these standards and the considerations for the grant of a variance from the same are starkly different from the heritage, environmental, and aesthetic factors for consideration under Section 45 in relation to Sections 53, 47, and 48.

The first set of considerations governs the determination of the question of whether a property, in the first instance, is so physically "unique" in terms of its topography and shape that a strict enforcement of the standard LUICs in the area will deprive its owner from obtaining a "reasonable return" on the property. The second set of considerations, on the other hand, pertains to the standards of heritage conservation, environmental protection, and aesthetics required from a developer as conditions to the issuance of a zoning and building permit. Compliance with one does not necessarily presuppose compliance with the other. For these reasons, I cannot

accept the majority's view that the grant of a variance in this case should be treated as the City's exercise of discretion insofar as the standards under Section 45 in relation to Section 53, and Sections 47 and 48 are concerned.

Nevertheless, I wish to emphasize that while different, these two sets of considerations work to further general welfare concerns as seen fit by the local legislature. To my mind, these standards are inextricably intertwined and mutually reinforcing zoning concepts that operate as enforcement mechanisms of Ordinance No. 8119. Where the standards contained under these Sections represent the rule, a variance defines the exception. In the context of an actual case, such as the litigation before us, where a deviation (i.e., variance) from prescribed standards is invoked, its legality as based on the facts must be established. Variances exist to mitigate the harsh application of the rule, but they were not invented to operate as ruses to render the rule inutile. The determination of how the balance is struck between law and equity will require a judicious appreciation of the attendant facts.

The record, however, is absolutely bereft of evidence supporting the City of Manila's approval of the variance. By its terms, Section 60 of Ordinance No. 8119 allows for only a single instance when a variance from the prescribed LUICs can be allowed: the property must be "unique and different from other properties in the adjacent locality and because of its uniqueness, the owners cannot obtain a reasonable return on the property." To hurdle this, an applicant for the variance must show at least three of the express qualifications under Section 60. These qualifications, we reiterate, are as follows: (1) conforming to the provisions of the Ordinance will cause undue hardship on the part of the property owner or occupant due to physical conditions of the property (i.e., topography, shape, etc.) which are not self-created; (2) the proposed variance is the minimum deviation necessary to permit reasonable use of the property; (3) the variance will not alter the physical character of the district/zone where the property for which the variance sought is located, and will not substantially or permanently injure the use of the other properties in the same district or zone; (4) that the variance will not weaken the general purpose of the Ordinance and will not adversely affect the public health, safety, and welfare; and (5) the variance will be in harmony with the spirit of this Ordinance.

Significantly, none of the documents submitted by DMCI-PDI show compliance with any of the foregoing qualifications. The record does not refer to any piece of evidence to show how: (1) the DMCI-PDI's property is physically "different" in topography and shape from the other properties in its zone; and (2) the DMCI-PDI cannot obtain a "reasonable return" on its property if it was compelled to comply with the prescribed LUICs in the area.

While I hesitate, at this time, to find the City of Manila's grant of the zoning and building permits and the variance to be unlawful or made in grave abuse of discretion, I do not endorse a finding that the City of Manila, under the facts of the case, acted in compliance with the requirements of Ordinance No. 8119. On the contrary, I would like to note a concern raised by Justice Peralta, during the oral arguments, that the grant of the permits for the Torre de Manila development may have violated the LUIC requirements of Ordinance No. 8119 from the very beginning. His concern is expressed in the following exchanges he had with respondent DMCI-PDI's counsel:

(a)

On the allowable seven-storey building based on FAR 4 without a variance:

JUSTICE PERALTA:

Allowable storeys, so, you have gross floor area divided by building footprint or 29,900 square meter in slide number 4, over 4,485 square meters, you are only allowed to build 6.6 storeys rounded up to 7 storeys. My computation is still correct?

ATTY. LAZATIN:

On the assumption that your building footprint is 4,485, Your Honor. Meaning, your building is fat and squat.

x x x

JUSTICE PERALTA:

That's correct. That's why I'm saying your maximum building footprint is 4,845. So, your gross floor area of 29,000 over 4,000... 'yun nanga ang maximum, eh, unless you want to rewrite it down, where will you get the figure? Yan na nga ang maximum, eh. So, you got 6.6 storeys rounded up to 7 storeys. That's my own computation. I do not know if you have your own computation.

ATTY. LAZATIN:

Your Honor, that is correct but that is the maximum footprint.[205]

(b)

On the resulting 49-storey building based on FAR 13, with the variance:

JUSTICE PERALTA:

So, the building permit official here knew already from the very beginning that he was constructing, that DMCI was constructing a 49-storey?

ATTY. LAZATIN:

That's correct, Your Honor.

x x x

JUSTICE PERALTA:

It's even bigger no. So, your FAR, your FAR is 13, based on [these] documents, I'm basing this from your own documents, eh, because the zoning permit is based on the application of the builder, eh, diba? Am I correct, Atty. Lazatin?

ATTY. LAZATIN:

That's correct, Your Honor, except that ...

JUSTICE PERALTA:

So your FAR exceeded the prescribed FAR of 4 because your FAR is now [13.05]?[206]

ATTY. LAZATIN:

Without any variance, that is correct, Your Honor.[207]

(c)

How adjusting the building footprint enables a developer, by means of a variance, to increase height of a building from FAR 4 to FAR 13:

JUSTICE PERALTA:

I think there is no prohibition to build a 30-storey as long as you do not violate the FAR.

ATTY. LAZATIN:

That is correct, Your Honor. The height will be dependent on the so called building footprint. We can have like

in the example that we gave, Your Honor, if you have a building of what they call the maximum allowable footprint, then the building that you will build is short and squat. But if you have a smaller building footprint, then you can have a thin and tall building, Your Honor.

JUSTICE PERALTA:

A higher building?

ATTY. LAZATIN:

Yes, Your Honor. That's exactly ...

JUSTICE PERALTA:

So, it's not accurate to say that just because there is a proposed 30-storey building, we will be violating this ordinance, is it right?

ATTY. LAZATIN:

That's exactly our point, Your Honor.[208]

Certainly, the variance cannot be declared legal simply because it was already issued. On the contrary, the circumstances thus far shown appear to support a view that the general presumption of regularity in the performance of official duties should not be applied here:

JUSTICE PERALTA:

You include that in the memorandum. It should be able to convince me that your computation is accurate and correct. Now, so, after all, from the zoning permit up to the building permit, the public officials here already knew that the DMCI was actually asking for permission to build 49-storeys although it is covered by the university cluster zone?

ATTY. LAZATIN:

Yes, Your Honor. All the plans submitted to all the regulatory agencies show that it was for a 49-storey building, Your Honor.

JUSTICE PERALTA:

But using the computation in the building code, I mean, in the city ordinance, it could seem that the application should not have been approved from the very beginning because it violates the zoning law of the [C]ity of Manila?

ATTY. LAZATIN:

The client DMCI was aware, Your Honor, that there have been other developers who have been able to get a variance, Your Honor.

JUSTICE PERALTA:

You know I'm not talking about the variance

ATTY. LAZATIN:

That's why there are so many buildings in Manila, Your Honor, that are almost 50-storeys high, Your Honor.

JUSTICE PERALTA:

I will go into that. I will go into the variance later. My only concern is this, presumption of regularity in the performance of duty is not conclusive, you understand that, right? Presumption of regularity in the performance of duty is not conclusive, that is always disputable.

ATTY. LAZATIN:

Agree, Your Honor, but

JUSTICE PERALTA:

If the public officials themselves do not follow the procedure, the law or the ordinance, are they presumed to [] have performed their duties in the regular manner?[209]

Justice Leonen would have even stronger words, suggesting that the grant of the permits, long prior to the grant of the variance, violated not only Ordinance No. 8119 but even Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act.[210]

More importantly, I would like to emphasize the difference in opinions as to the correct application of the FAR provisions of Ordinance No. 8119. For example, respondent DMCI-PDI, during the oral arguments, claimed that it is allowed to build up to 66 storeys under the National Building Code and 18 storeys under the Ordinance even without a variance.[211] Amicus curiae Architect Emmanuel Cuntapay posits that with the maximum FAR of 4, respondent DMCI-PDI "is allowed to construct 18.24 habitable stories or floors for Torre de Manila" or up to 25 actual floors if we add the seven floors allotted as parking areas, even without a variance.[212] The OSG, on the other hand, would argue that DMCI-PDI is entitled to build only up to seven floors without a variance.[213] Meanwhile, Acting Executive Director Johnson V. Domingo of the Department of Public Works and Highways computes the BHL at 7, 19, or 56 storeys, depending on the factors to be considered.[214] All told, the issue as to the correct application of the FAR provisions and the resulting maximum allowable building height of the Torre de Manila sans variance is a technical issue which this Court is not equipped to answer at this time. This issue is separate and distinct (albeit, admittedly related) to the issue regarding the propriety of the grant of the variance, which as earlier explained also involves the resolution of certain factual issues attending its grant. Thus, I find that a remand to the City of Manila is all the more appropriate and necessary in view of the critical questions of fact and technical issues still to be resolved.

In any case, the City of Manila would be well advised to note that many of the textual prescriptions of Sections 45, 53, 47, and 48 are also textually imbedded in the terms of Section 60.

The first condition requires a showing that conforming to the provisions of the Ordinance will cause "undue hardship" on the part of the owner due to the physical conditions of the property, e.g., topography, shape, etc., which are not "self-created." Petitioner KOR has alleged that the Torre de Manila, because of its height, will have an "adverse impact" on the Rizal Park and the Rizal Monument by "diminishing its value," "scale and importance." Section 47 of Ordinance No. 8119, on the other hand, prohibits any development that will "adversely impact" the heritage significance of a property. Correlating the foregoing to this first condition of Section 60, the City of Manila should consider what is it in the physical (and not self--created) conditions of the lot on which the Torre de Manila stands will cause undue hardship to DMCI-PDI unless a variance is granted. The City of Manila should also consider whether granting the variance will be consistent with the heritage, environmental and aesthetic standards of the Ordinance, including Section 47.

The second condition requires a showing that the proposed variance is the "minimum deviation necessary to permit reasonable use of the property." Petitioner KOR alleges that the Torre de Manila, at 19 floors, obstructs the view of the Rizal Monument, among its other allegations relating to the height of the Torre de Manila. The City of Manila should thus consider what the minimum deviation from the prescribed FAR 4 may be allowed the project, again consistent with the heritage, environmental, and aesthetic standards of Ordinance No. 8119. This includes a determination of the maximum number of storeys Torre de Manila may be allowed to have that would cause: (1) minimum deviation from the prescribed FAR; and (2) minimal to no adverse effect on the heritage significance of nearby cultural properties.

The third condition requires a showing that the variance will not "alter the physical character of the zone, or substantially or permanently injure the use of the other properties in the zone." Petitioner KOR has alleged that the Torre de Manila has diminished the scale and importance of the Rizal Park and the Rizal Monument. Section 48, on aesthetic considerations, requires that all projects be designed in an "aesthetically pleasing manner" and that their "natural environmental character" be considered especially in relation to "adjacent properties." In these lights, the City of Manila should consider the FAR variance that may be allowed the Torre of Manila, if any, which will not injure or alter the physical character of the zone and its adjacent properties, pursuant to the standards both laid down by Section 48.

The fourth condition requires a showing that the variance will not "weaken the general purpose of the Ordinance" or "adversely affect the public health, safety, and welfare." The fifth condition requires that the variance will be in "harmony with the spirit of the Ordinance." These two conditions encapsulate my view that the City of Manila has purposively embraced the modern, expanded concept of police power in the context of zoning ordinances. To my mind, they stand as shorthand instructions to the City of Manila in deciding the balance between enforcing the standards set forth in Sections 45, 53, 47 and 48; and Sections 60 to 62, to consider the Ordinance's overriding heritage, environmental, and aesthetic objectives.

Further, I would like to emphasize that my view and proposed disposition of the case do not entail a finding that Section 45, in relation to Section 53, and Sections 47 and 48, are already applicable for purposes of prohibiting the Torre de Manila construction project. On the contrary, the proposed ruling is limited to this: that Section 45 in relation to Sections 53, 47, and 48, by their terms and express intent, must be considered by the City of Manila in making its decisions respecting the challenged development. I propose that the City of Manila must consider DMCI-PDI's proposal against the standards clearly set by the provisions before it makes its decisions. The standard under Section 47 is clear: that the proposed development will not adversely impact the heritage significance of the heritage property. Section 48 is also clear when it states that it is "in the public interest that all projects are designed and developed in a safe, efficient and aesthetically pleasing manner." Section 53 also clearly characterizes the protection of view enjoyed by the public as a "regulation." These are standards textually operating as regulations and not mere guidelines.

To clarify, I do not propose that the Court rule on the legality or propriety of the variance granted to DMCI-PDI under Section 60. Rather, I propose that the ruling be limited thus: the City of Manila must consider whether DMCI-PDI's proposed project meets the definition and conditions of a "unique" property under Section 60, standing alone by the terms of Section 60, but also in relation to the heritage, environmental, and aesthetic standards of Sections 45, 53, 47 and 48. Without controlling how its discretion will thereafter be exercised, I vote that the Court direct the re-evaluation by the City of Manila, through the CPDO, of the permits previously issued in favor of the Torre de Manila project, including conducting a hearing, receiving evidence, and deciding compliance with the foregoing standards/requirements under Ordinance No. 8119.

I also do not propose a pro hac vice conversion of the proceedings into a "contested case" under the terms of the Administrative Code.[215] I do, however, believe that notice and hearing requirements[216] must be observed, with all concerned parties given the opportunity to present evidence and argument on all issues.[217] Section 77 of Ordinance No. 8119 allows for the filing of a verified complaint before the MZBAA for any violation of any provision of the Ordinance or of any clearance or permits issued pursuant thereto, including oppositions to applications for clearances, variance, or exception. Otherwise put, I believe that the requirements of *Ang Tibay v. Court of Industrial Relations*[218] and *Alliance for the Family Foundation, Philippines, Inc. v. Garin*[219] are deemed written into Section 77.

With these clarifications, I vote that the City, through the Mayor and his representatives, be compelled by

mandamus to consider its own conservation standards and LUIC requirements.

I find the concern about estoppel irrelevant inasmuch as petitioner KOR's alleged development proposals appear to have been made more than five decades ago, and long before either the 1987 Constitution or Ordinance No. 8119 were ever conceived.

Finally, it may well have been Rizal's wish to be buried a certain place and in a certain way. If we were to pursue this line of reasoning to its logical conclusion, this argument would forbid the establishment of a Rizal Monument, a Rizal Park, and celebration of Rizal Day. In any case, and while not blind to history, we must be reminded that this Court, in the words of Justice Tinga, is a judge not of history but of the Constitution and the law.[220]

To reiterate, I do not propose to resolve the factual issues raised by the parties regarding DMCI-PDI's alleged violation of existing regulations under Ordinance No. 8119 (including compliance with the FAR and variance requirements), whether the Torre de Manila is a nuisance, and whether DMCI-PDI acted in good faith in the construction of the project. The constitutional guarantee of due process requires that such matters first be heard and resolved by the City of Manila, the appropriate administrative agency, or the courts.

I realize that, for all the debates during the oral arguments, it was only after the case has been submitted for resolution that the Court was first made aware, through the writer of this Dissenting Opinion, of the existence of Section 45 in relation to 53, and Sections 47 and 48 of Ordinance No. 8119, and their relevance in the resolution of this case. No party to the case or member of this Court had previously raised the applicability of these Sections of Ordinance No. 8119. I argued to remand the case to the City of Manila precisely for it to re-evaluate the grant of the permits to DMCI-PDI in light of the cited Sections and to hear the parties thereon.

A careful reading of the Decision would show that the majority concedes that there is a law that "provides for standards and guidelines to regulate development projects x x x within the City of Manila." [221] However, instead of a remand, they went on to find that the standards and guidelines do not apply to "the construction of a building outside the boundaries of a historic site or facility, where such building may affect the background of a historic site." [222] With respect, I disagree with the majority's peremptory dismissal of the case on the basis of such finding, considering that none of the parties were ever heard on this specific issue, i.e., the application of Section 45 in relation to 53, and Sections 47 and 48 of Ordinance No. 8119 based on the facts of the case.

The constitutional guarantee of due process dictates that parties be given an opportunity to be heard before judgment is rendered. Here, the parties were not heard on the specific subject of the performance standards prescribed by Ordinance No. 8119, insofar as they appear relevant to this case. A remand would have been the just course of action. The absence of such a hearing, I would like to emphasize, is precisely the reason why I hesitate to attribute bad faith or grave abuse of discretion, at this point, on the part of any one party. A remand would have allowed for the building of a factual foundation of record with respect to underlying questions of fact (and even policy) not appropriate to be decided, in the first instance, by the Court. I imagine that a remand would provide the opportune venue to hear and receive evidence over alternate/moderate views, including, as I said, the maximum number of storeys the Torre de Manila may be allowed that would pose minimal deviation from the prescribed LUICs and still be considered consistent with the other performance standards under the Ordinance.

Furthermore, while the majority insists on according respect to the City of Manila's exercise of discretion, it seems to me that their finding at this point that the standards provided under Ordinance No. 8119 are not applicable does more to preempt the City of Manila in the exercise of its discretion than an order requiring it to merely consider their application. This, despite clear indications that they have not been considered at all during the processing of DMCI-PDI's application. That the City of Manila has not considered these standards is a finding

of fact that the Court can make because this was admitted as much by the local government itself when, based on its erroneous reading of its own zoning ordinance, it claimed that there is no law which regulates constructions alleged to have impaired the sightlines of a historical site/facility. At the risk of sounding repetitive, I believe a remand would, at the very least, allow the City of Manila to consider and settle, at the first instance, the matter of whether the Sections in question are applicable or not.

To end, I am reminded of the view, first expressed in *Tañada v. Angara*,^[223] that even non-self-executing provisions of the Constitution may be "used by the judiciary as aids or as guides in the exercise of its power of judicial review."^[224] More than anything, this case presented an opportunity for the Court to recognize that aspirational provisions contained in Article II (Declaration of Principles and State Policies) and many more similar provisions spread in the Constitution, such as Sections 14 and 15, Article XIV, are not, in the words of Chief Justice Reynato Puno, "meaningless constitutional patter."^[225] These provisions have constitutional worth. They define our values and embody our ideals and aspirations as a people. The command under Section 15, Article XIV of the Constitution for the State to conserve the nation's historical and cultural heritage is as much addressed to this Court, as it is to Congress and to the Executive. We should heed this command by ordering a remand, more so where there is an obvious intent on the part of the City of Manila, in the exercise of its delegated police power from Congress, to incorporate heritage conservation, aesthetics, and environment protection of views into its zoning ordinance.

In this modern world, heritage conservation has to constantly compete with other equally important values such as property and property development. In litigations involving such clash of values, this Court sets the tone on the judicial solicitude it is duty-bound to display towards aspirational constitutional values, especially when implemented by specific and operable legislation. Here, we had the unique opportunity to give the value of heritage conservation, involving as it does the preservation of fragile and vulnerable resources, all the breathing space^[226] to make its case. This Decision, however, seems to have achieved the complete' opposite.

For all the foregoing reasons, I vote to PARTIALLY GRANT the petition.

[1] About World Heritage, UNESCO World Heritage Centre, <<http://whc.unesco.org/en/about/>> (last accessed June 14, 2016).

[2] 348 U.S. 26, 33 (1954).

[3] Rollo, p. 3.

[4] Id. at 23.

[5] Id. at 27-28.

[6] *Alliance of Government Workers v. Minister of Labor and Employment*, G.R. No. L-60403, August 3, 1983, 124 SCRA 1, 9-10.

[7] CONSTITUTION, Art. VIII, Sec. 5. The Supreme Court shall have the following powers:

(1)

Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus; x x x.

[8] Rollo, pp. 308-309 citing *Bank of the Philippine Islands v. Hong*, G.R. No. 161771, February 15, 2012, 666 SCRA 71.

- [9] Uy Kiao Eng v. Lee, G.R. No. 176831, January 15, 2010, 610 SCRA 211, 216-217.
- [10] Henares, Jr. v. Land Transportation Franchising and Regulatory Board, G.R. No. 158290, October 23, 2006, 505 SCRA 104, 115 citing University of San Agustin, Inc. v. Court of Appeals, G.R. No. 100588, March 7, 1994, 230 SCRA 761, 771.
- [11] G.R. No. 100588, March 7, 1994, 230 SCRA 761.
- [12] Id. at 771-772.
- [13] Uy Kiao Eng v. Lee, supra at 217.
- [14] Rollo, pp. 1229-1230.
- [15] G.R. No. 176579, June 28, 2011, 652 SCRA 690.
- [16] Id. at 705-706.
- [17] Id. at 706-709.
- [18] G.R. No. 94723, August 21, 1997, 278 SCRA 27.
- [19] G.R. No. L-60403, August 3, 1983, 124 SCRA 1.
- [20] Salvacion v. Central Bank of the Philippines, supra at 39-40.
- [21] Alliance of Government Workers v. Minister of Labor and Employment, supra at 9-10.
- [22] 85 Phil. 101 (1949).
- [23] G.R. No. L-40004, January 31, 1975, 62 SCRA 275.
- [24] Biraogo v. Philippine Truth Commission of 2010, G.R. No. 192935, December 7, 2010, 637 SCRA 78, 149-150 citing David v. Macapagal-Arroyo, G.R. No. 171396, May 3, 2006, 489 SCRA 160, 216.
- [25] G.R. No. 208566, November 19, 2013, 710 SCRA 1, 99. (Citations omitted.)
- [26] Arigo v. Swift, G.R. No. 206510, September 16, 2014, 735 SCRA 102, 128.
- [27] David v. Macapagal-Arroyo, G.R. No. 171396, May 3, 2006, 489 SCRA 160, 217-218 citing People v. Vera, 65 Phil. 56 (1937).
- [28] Tolentino v. Commission on Elections, G.R. 148334, January 21, 2004, 420 SCRA 438, 452.
- [29] An Act to Convert the "Orden de Caballeros de Rizal" into a Public Corporation to be known in English as "Knights of Rizal" and in Spanish as "Orden de Caballeros de Rizal," and to Define its Purposes and Powers, Sec. 2. See also Rollo, p. 5.
- [30] Republic Act No. 646, Sec. 2.
- [31] TSN, July 21, 2015, p. 13-14.
- [32] TSN, July 21, 2015, p. 13-14:

JUSTICE JARDELEZA: Now, do you organize and hold programs to commemorate the birth and death of Dr. Jose Rizal?

ATTY. JASARINO: Yes, Your Honor, we do.

JUSTICE JARDELEZA: And where do you hold these programs?

ATTY. JASARINO: Rizal Park, Your Honor.

JUSTICE JARDELEZA: You have been there yourself.

ATTY. JASARINO: Yes, Your Honor.

JUSTICE JARDELEZA: How often do you do this?

ATTY. JASARINO: Talking of nativity and martyrdom, at least, twice a year.

JUSTICE JARDELEZA: And how does, again, the Torre injure you or the organization in the [discharge] of this specific corporate purpose?

ATTY. JASARINO: I cannot imagine having the celebrations, the programs with Torre at the back. I cannot imagine that activity to be inspiring, to be reminding us of Rizal, of his works, of his ideals while looking at Torre marring the background that we used to have, the panorama that is unhampered, that is unobstructed. (Underscoring supplied.)

[33] 405 U.S. 727 (1972).

[34] Id. at 734.

[35] Id. at 735.

[36] Oposa v. Factoran, Jr., G.R. No. 101083, July 30, 1993, 224 SCRA 792, 802.

[37] Bagong Alyansang Makabayan v. Zamora, G.R. No. 138570, October 10, 2000, 342 SCRA 449, 480.

[38] Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, G.R. No. 78742, July 14, 1989, 175 SCRA 343, 364-365.

[39] Tolentino v. Commission on Elections, supra at 453-454.

[40] Gamboa v. Teves, supra note 15, at 713.

[41] Rollo, pp. 15-16.

[42] See Oposa v. Factoran, Jr., supra at 816-817 (Feliciano, J., concurring).

[43] Manila Prince Hotel v. Government Service Insurance System, G.R. No. 122156, February 3, 1997, 267 SCRA 408, 431-432.

[44] G.R. No. 91649, May 14, 1991, 197 SCRA 52.

[45] G.R. No. 115455, August 25, 1994, 235 SCRA 630.

[46] Id. at 684-685.

[47] G.R. No. 118910, July 17, 1995, 246 SCRA 540.

[48] Id. at 564.

[49] G.R. No. 118295, May 2, 1997, 272 SCRA 18.

[50] Id. at 54.

[51] Agabon v. National Labor Relations Commission, G.R. No. 158693, November 17, 2004, 442 SCRA 573,

688 (Tinga, J., concurring).

[52] *Oposa v. Factoran, Jr.*, supra note 36, at 817.

[53] *Id.* at 817-818.

[54] See *Agabon v. National Labor Relations Commission*, supra (Tinga, J., concurring).

[55] IV RECORD, CONSTITUTIONAL COMMISSION 558-560 (September 11, 1986).

[56] *Id.*

[57] Rollo, pp. 19-20.

5.10 This PROJECT blatantly violates the National Historical Commission of the Philippines' "Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages" which guidelines have the force of law. The said guidelines dictate that historic monuments should assert a visual "dominance" over the surroundings by the following measures, among others:

DOMINANCE

(i) Keep vista points and visual corridors to monuments clear for unobstructed viewing and appreciation and photographic opportunities;

(ii) Commercial buildings should not proliferate in a town center where a dominant monument is situated;

SITE AND ORIENTATION

(i) The conservation of a monument implies preserving a setting, which is not out of scale. Wherever the traditional setting exists, it must be kept. No new construction, demolition or modification, which would alter the relations of mass and color, must be allowed.

(ii) The setting is not only limited with the exact area that is directly occupied by the monument, but it extends to the surrounding areas whether open space or occupied by other structures as may be defined by the traditional or juridical expense of the property.

5.11 The PROJECT also runs afoul of an international commitment of the Philippines, the International Charter for the Conservation and Restoration of Monuments and Sites, otherwise known as the Venice Charter.

That agreement says, in part, as follows:

ARTICLE 1. The concept of an historic monument embraces not only the single architectural work but also the urban or rural setting in which is found the evidence of a particular civilization, a significant development or a historic event. This applies not only to great works of art but also to more modest works of the past which have acquired cultural significance with the passing of time;

x x x x

ARTICLE 6. The conservation of a monument implies preserving a setting which is not out of scale. Wherever the traditional setting exists, it must be kept. No new construction, demolition or modification which would alter the relations of mass and colour, must be allowed. (Underscoring in the original.)

[58] *Tañada v. Tuvera*, G.R. No. L-63915, December 29, 1986, 146 SCRA 446, 453-454.

[59] ADMINISTRATIVE CODE, Book VII, Chapter 2, Sec. 3.

[60] *Republic v. Pilipinas Shell Petroleum Corporation*, G.R. No. 173918, April 8, 2008, 550 SCRA 680, 689.

[61] See *Pharmaceutical and Health Care Association of the Philippines v. Duque*, G.R. No. 173034, October 9,

2007, 535 SCRA 265.

[62] The NHCP Guidelines, for example, reads in pertinent part:

11. DEVELOPMENT OF THE VICINITY (EXISTING AND FUTURE)

It is highly recommended that towns and cities formulate zoning guidelines or local ordinances for the protection and development of monument sites and the promotion of a clean and green environment, and strictly implement these laws, especially in places where important monuments and structures are located.

A buffer zone should be provided around the vicinity of monuments/sites, and should be made part of the respective city or municipal land use and zoning regulations through local legislation.

Height of buildings surrounding or in the immediate vicinity of the monument/site should be regulated by local building code regulation or special local ordinance to enhance the prominence, dominance and dignity of the monument, more importantly, the national monuments.

[63] Xi'an Declaration on the Conservation of the Setting of Heritage Structures, Sites and Areas, par 1. [hereinafter "Xi'an Declaration"]

[64] ICOMOS Guidance on Heritage Impact Assessments for Cultural World Heritage Properties, par. 5-3.

[65] Xi'an Declaration, par. 2.

[66] Xi'an Declaration, par. 9.

[67] UNESCO Recommendation concerning the Safeguarding of the Beauty and Character of Landscapes and Sites (1962). See International Charter for the Conservation and Restoration of Monuments and Sites (1964 Venice Charter), UNESCO Recommendation concerning the Preservation of Property Endangered by Public or Private Works (1968), Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage (1972), UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, otherwise known as the World Heritage Convention (1972), Declaration of Amsterdam (1975), UNESCO Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas (1976), ICOMOS Committee for Historic Gardens (1981), Charter for the Conservation of Historic Towns and Urban Areas (1987), among others.

[68] See Takahiro Kenjie C. Aman & Maria Patricia R. Cervantes-Poco, What's in a Name?: Challenges in Defining Cultural Heritage in Light of Modern Globalization, 60 ATENEO L.J. 965 (2016).

[69] BLACK'S LAW DICTIONARY 1200 (1995). See Laurence H. Tribe, I AMERICAN CONSTITUTIONAL LAW 60 (2000). See also Dante Gatmaytan, LEGAL METHOD ESSENTIALS 46 (2012) citing Francisco, Jr. v. House of Representatives, G.R. No. 160261, November 10, 2003, 415 SCRA 44.

[70] See Vera v. Avelino, 77 Phil. 192 (1946).

[71] An Act to Establish a National Historical Commission, to Define Its Powers and Functions, Authorizing the Appropriation of Funds erefor, and for Other Purposes (1965).

[72] Republic Act No. 4368, Sec. 4(e).

[73] Republic Act No. 4846, Sec. 2.

[74] Law Creating the National Commission for Culture and the Arts (1992).

[75] Republic Act No. 7356, Sec. 2.

[76] Republic Act No. 7356, Sec. 12(b).

[77] National Museum Act of 1998.

[78] Republic Act No. 8492, Sec. 3.

[79] Republic Act No. 6541, Chapter 10.06, Sec. 10.06.01: General -

(a) No signs or signboards shall be erected in such a manner as to confuse or obstruct the view or interpretation of any official traffic sign signal or device.

(b) No signboards shall be constructed as to unduly obstruct the natural view of the landscape, distract or obstruct the view of the public as to constitute a traffic hazard, or otherwise defile, debase, or offend the aesthetic and cultural values and traditions of the Filipino people. (Emphasis supplied.)

[80] National Cultural Heritage Act of 2009.

[81] Strengthening Peoples' Nationalism Through Philippine History Act (2009).

[82] Republic Act No. 10066, Sec. 2 and Republic Act No. 10086, Sec. 2.

[83] Rollo, p. 435.

[84] Id. at 2428.

[85] Id. at 2440.

[86] Id. at 3213.

[87] Id. at 1279.

[88] Id.

[89] Considering the pendency of Civil Case No. 15-074 (before the Regional Trial Court in Makati City) and G.R. No. 222826 (before this Court), we shall refrain from discussing the matter of the propriety of the NCCA's issuance of a CDO at this time.

[90] Republic Act No. 7160, Sec. 20(c).

[91] The pertinent portions of the Local Government Code provide:

Sec. 458. Powers, Duties, Functions and Compensation. - The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:

(1)

Approve ordinances and pass resolutions necessary for an efficient and effective city government, and in this connection, shall:

x x x

(ix) Enact integrated zoning ordinances in consonance with the approved comprehensive land use plan, subject to existing laws, rules and regulations; establish fire limits or zones, particularly in populous centers; and regulate the construction, repair or modification of buildings within said fire limits or zones in accordance with the provisions of the Fire Code;

x x x

(4)

Regulate activities relative to the use of land, buildings and structures within the city in order to promote the general welfare

x x x. (Emphasis supplied.)

[92]Donald G. Hagman & Julian Conrad Juergensmeyer, URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW 55 (1986) [hereinafter "HAGMAN & JUERGENSMEYER"].

[93] 272 U.S. 365 (1926).

[94] Id. at 386.

[95] Id. at 386-387.

[96] Gancayco v. City Government of Quezon, G.R. No. 177807, October 11, 2011, 658 SCRA 853; Social Justice Society v. Atienza, Jr., G.R. No. 156052, February 13, 2008, 545 SCRA 92; United BF Homeowners' Association, Inc. v. City Mayor of Parañaque, G.R. No. 141010, February 7, 2007, 515 SCRA 1; Sangalang v. Intermediate Appellate Court, G.R. No. 71169, December 22, 1988, 168 SCRA 634; People v. De Guzman, 90 Phil. 132 (1951); Tan Chat v. Municipality of Iloilo, 60 Phil. 465 (1934); Seng Kee & Co. v. Earnshaw, 56 Phil. 204 (1931); People v. Cruz, 54 Phil. 24 (1929).

[97] G.R. No. L-21183, September 27, 1968, 25 SCRA 192 cited in Smart Communications, Inc. v. Municipality of Malvar, Batangas, G.R. No. 204429, February 18, 2014, 716 SCRA 677.

[98] Solicitor General v. Metropolitan Manila Authority, G.R. No. 102782, December 11, 1991, 204 SCRA 837, 842.

[99] Id.

[100] Ordinance No. 8119, Sec. 47(7).

[101] Ordinance No. 8119, Sec. 47(9).

[102] Rollo, p. 10.

[103] Id. at 12.

[104] Id. at 13.

[105] Id. at 23.

[106] Ordinance No. 8119, Sec. 48(2).

[107] Ordinance No. 8119, Sec. 48(8).

[108] Rollo, p.13.

[109] Id. at 172.

[110] Id.

[111] Rollo, p. 22.

[112] Id. at 23.

[113] CONSTITUTION, Art. II, Sec. 16.

[114] The Rizal Park is described by the National Parks Development Committee, the entity tasked with Rizal Park's maintenance and development, "the Philippine's premier open space, the green center of its historical capital" and the "central green of the country." NATIONAL PARKS DEVELOPMENT COMMITTEE, PARKS FORA NATION 11 (2013).

[115] The record shows that an Environmental Compliance Certificate was issued by the DENR to the City of Manila. (Rollo, p. 385) However, the record does not contain the Environmental Impact Statement (EIS) on which the ECC was based, and whether the EIS considered the impact of the Torre de Manila on the Rizal Park land and the Rizal Monument, under the terms of Sections 45 and 53. It is well to remember that it was the concern of the Environmental Management Bureau-National Capital Region, over the impact of the Torre de Manila on the setting of the Rizal Park and the Rizal Monument that triggered the first contact of DMCI-PDI with NHCP. The ECC refers to an Initial Environmental Examination (IEE) Checklist which was submitted and intended to protect and mitigate the Torre de Manila's adverse impacts on the environment. The IEE Checklist Report, which the DENR uses for projects to be located within Environmentally Critical Areas (ECA), is not itself part of the record. The IEE Checklist Report form requires the DENR to consider, under Environmental Impacts and Management Plan, "possible environmental/social impacts" in the form of "impairment of visual aesthetics." The record is bereft of information on how this possible impact to the visual aesthetics of the Rizal Park and the Rizal Monument was considered or handled.

[116] Supra note 2. See Terence H. Benbow & Eugene G. McGuire, Zoning and Police Power Measures for Historic Preservation: Properties of Nonprofit and Public Benefit Corporations, 1 PACE L. REV. 635 (1981).

[117] Berman v. Parker, supra note 2, at 32-33.

[118] Id.

[119] HAGMAN & JUERGENSMEYER, supra note 92, at 378-388, 446-472.

[120] Id. at 13-14.

[121] Id. at 14-16.

[122] Id. at 16.

[123] Id.

[124] Id. at 17.

[125] Id.

[126] Id. at 18-24.

[127] Richard West Sellars, Pilgrim Places: Civil War Battlefields, Historic Preservation, and America's First National Military Parks, 1863-1900, 2 CRM: THE JOURNAL OF HERITAGE STEWARDSHIP 45-47 (2005) [hereinafter "SELLARS"].

[128] HAGMAN & JUERGENSMEYER, supra note 92, at 461.

[129] Seth Porges, The Surprising Story of How Mount Vernon Was Saved From Ruin, FORBES, January 14, 2016, <<http://ift.tt/1SkfcVp>> (last accessed April 5, 2017).

[130] 160 U.S. 668 (1896).

[131] Id. at 682. The US Supreme Court held:

Upon the question whether the proposed use of this land is public one, we think there can be no well founded doubt. And also, in our judgment, the government has the constitutional power to condemn the land for the proposed use. x x x

The end to be attained by this proposed use, as provided for by the act of Congress, is legitimate, and lies within the scope of the Constitution. The battle of Gettysburg was one of the great battles of the world. x x x Can it be that the government is without power to preserve the land and properly mark out the various sites upon which this struggle took place? Can it not erect the monuments provided for by these acts of Congress, or even take possession of the field of battle in the name and for the benefit of all the citizens of the country for the present and for the future? Such a use seems necessarily not only a public use, but one so closely connected with the welfare of the republic itself as to be within the powers granted Congress by the Constitution for the purpose of protecting and preserving the whole country. x x x (Id. at 680-682. Emphasis supplied.)

[132] SELLARS, supra at 46-47.

[133] J. Peter Byrne, Hallowed Ground: The Gettysburg Battlefield in Historic Preservation Law, GEORGETOWN LAW FACULTY WORKING PAPERS, Paper 91 (2008), <http://scholarship.law.georgetown.edu/fwps_papers/91> (last accessed July 25, 2016). See also SELLARS, supra.

[134] HAGMAN & JUERGENSMEYER, supra note 92, at 378.

[135] Pub. L. No. 91-190, 83 Stat. 852, codified at 42 U.S.C §§4321-4361.

[136] 42 USC §4331.

[137] Id.

[138] HAGMAN & JUERGENSMEYER, supra note 92, at 382.

[139] Larry W. Canter, ENVIRONMENTAL IMPACT ASSESSMENT 35 (1996).

[140] Establishing an Environmental Impact Statement System Including Other Environmental Management Related Measures and for Other Purposes.

[141] See HAGMAN & JUERGENSMEYER, supra note 92, at 385-386:

Alternatives are at the heart of the EIS [requirement]. All reasonable alternatives are to be described and analyzed for their environmental impacts. Alternatives include abandonment of the project and delay for further study. Even those alternatives which are not within the preparing agency's powers are to be discussed. x

x x

Properly utilized, the EIS process achieves two goals. First, it forces agencies to consider the environmental effect of their decisions. Second, it provides a disclosure statement showing both the environmental consequences of the proposed action and the agency's decision-making process.

[142] Aesthetic Purposes in the Use of the Police Power, 9 DUKE L.J. 299, 303 (1960).

[143] Robert J. DiCello, Aesthetics and the Police Power, 18 CLEV. MARSHALL L. REV. 384, 387 (1969) [hereinafter "DICELLO"].

[144] James Charles Smith, Law, Beauty, and Human Stability: A Rose Is a Rose Is a Rose, 78 CAL. L. REV. 787, 788 (1990) [hereinafter "SMITH"] reviewing John Costonis, ICONS AND ALIENS: LAW, AESTHETICS, AND ENVIRONMENTAL CHANGE (1989).

[145] Id. at 788-789.

[146] Id. at 789.

[147] Id. at 790-791.

[148] Aesthetic Purposes in the Use of the Police Power, 1960 DUKE L.J. 299, 301.

[149] DICELLO, supra at 380-390.

[150] Id. at 390 citing Paul Sayre, Aesthetics and Property Values: Does Zoning Promote the Public Welfare?, 35 A.B.A. J. 471 (1949).

[151] Id.

[152] See John Costonis, ICONS AND ALIENS: LAW, AESTHETICS, AND ENVIRONMENTAL CHANGE (1989).

[153] See SMITH, supra at 793.

[154] See Mark Bobrowski, Scenic Landscape Protection Under the Police Power, 22 B.C. ENVTL. AFF. L. REV. 697 (1995).

[155] Id.

[156] See also J.J. Dukeminier, Jr., Zoning For Aesthetic Objectives: a Reappraisal, 20 LAW & CONTEMPORARY PROBLEMS 218 (1955), which confronts squarely the problem raised by the subjective quality of the central element of aesthetics: what is beauty?:

Now it seems fairly clear that among the basic values of our communities, and of any society aboriginal or civilized, is beauty. Men are continuously engaged in its creation, pursuit, and possession; beauty, like wealth, is an object of strong human desire. Men may use a beautiful object which they possess or control as a basis for increasing their power or wealth or for effecting a desired distribution of any one or all of the other basic values of the community, and, conversely, men may use power and wealth in an attempt to produce a beautiful object or a use of land which is aesthetically satisfying. It is solely because of man's irrepressible aesthetic demands, for instance, that land with a view has always been more valuable for residential purposes than land without, even though a house with a view intruding everywhere is said to be terribly hard to live in. Zoning regulations may, and often do, integrate aesthetics with a number of other community objectives, but it needs to be repeatedly emphasized that a healthful, safe and efficient community environment is not enough. More thought must be given to appearances if communities are to be really desirable places in which to live. Edmund

Burke-no wild-eyed radical-said many years ago, "To make us love our country, our country ought to be lovely." It is still so today.

x x x x

Furthermore, in specifying and evaluating indices of attractive environments, it is important that community decision-makers-judges and planning officials-realize that they must promote land use which in time will succeed in appealing to people in general. In public planning that environment is beautiful which deeply satisfies the public; practical success is of the greatest significance. In the long run, what the people like and acclaim as beautiful provides the operational indices of what is beautiful so far as the community is concerned. All popular preferences will never be acceptable to connoisseurs who urge their own competence to prescribe what is truly beautiful, yet it seems inescapable that an individual's judgment of beauty cannot be normative for the community until it is backed with the force of community opinion. History may be of some comfort to the connoisseurs: widely acknowledged great artists and beautiful architectural styles produced popular movements and not cults. A great age of architecture has not existed without the popular acceptance of a basic norm of design. (Emphasis in the original.)

[157] 32 Phil. 580 (1915).

[158] Id. at 608.

[159] 104 Phil. 443 (1958).

[160] Id. at 447-448.

[161] G.R. No. 161107, March 12, 2013, 693 SCRA 141.

[162] Id. at 160.

[163] 1935 CONSTITUTION, Art. XIII, Sec. 4.

[164] 1973 CONSTITUTION, Article XV, Sec. 9(2)

[165] Supra note 36.

[166] Comprehensive Zoning Ordinance for the National Capital Region (1981).

[167] II MANILA COMPREHENSIVE LAND USE PLAN AND ZONING ORDINANCE 2005-2020, Sec. 3. "Imageability" was defined as "that quality in a physical object which gives it a high probability of evoking a strong image in any given observer."

[168] Ordinance No. 161 (2006).

[169] Ordinance No. 2012-102.

[170] Ordinance No. SP-2200, S-2013.

[171] Metropolitan Bank and Trust Company v. Reynado, G.R. No. 164538, August 9, 2010, 627 SCRA 88, 106.

[172] Civil Service Commission v. Department of Budget and Management, G.R. No. 158791, July 22, 2005, 464 SCRA 115, 133-134.

[173] See MA. Jimenez Enterprises, Inc. v. Ombudsman, G.R. No. 155307, June 6, 2011, 650 SCRA 381, 399; Corpuz v. Sandiganbayan, G.R. No. 162214, November 11, 2004, 442 SCRA 294, 308; Civil Service Commission v. Department of Budget and Management, supra. See also Licaros v. Sandiganbayan, G.R. No. 145851, November 22, 2001, 370 SCRA 394, 411; Angchangco, Jr. v. Ombudsman, G.R. No. 122728, February 13, 1997,

268 SCRA 301, 306; *Antiquera v. Baluyot*, 91 Phil. 213, 220 (1952).

[174] 34 Phil. 818 (1916).

[175] *Id.* at 823-824. See also *Eraña v. Vera*, 74 Phil. 272 (1943).

[176] *De Castro v. Salas*, *supra* at 823-824.

[177] 91 Phil. 450 (1952).

[178] *Id.* at 455. See also *Rene de Knecht v. Desierto*, G.R. No. 121916, June 28, 1998, 291 SCRA 292 and *Eraña v. Vera*, *supra* (where the Court held that a mistaken or erroneous construction of the law may be a ground for the issuance of a writ of mandamus).

[179] Ordinance No. 8119, Sec. 47.

[180] Ordinance No. 8119, Sec. 6(f).

[181] *Rollo*, p. 434.

[182] See interpellations by Justices Diosdado Peralta and Francis Jardeleza, among others. TSN, August 11, 2015, pp. 6-7, 20-36, 48-52, 65-67; TSN, August 18, 2015, pp. 26-onwards.

[183] Ordinance No. 8119, Sec. 3.

[184] *Rollo*, p. 302. (Emphasis supplied.)

[185] G.R. No. 213181, August 19, 2014, 733 SCRA 279.

[186] *Id.* at 427 (Brion, J., concurring).

[187] Aquilino Pimentel, Jr., *THE LOCAL GOVERNMENT CODE REVISITED* 70 (2011).

[188] Ordinance No. 8119, Sec. 75. Responsibility for Administration and Enforcement. - This Ordinance shall be enforced and administered by the City Mayor through the City Planning and Development Office (CPDO) in accordance with existing laws, rules and regulations. For effective and efficient implementation of this Ordinance, the CPDO is hereby authorized to reorganize its structure to address the additional mandates provided for in this Ordinance.

[189] *Social Justice Society v. Atienza*, G.R. No. 156052, March 7, 2007, 517 SCRA 657, 665-666.

[190] *Id.* at 666 citing *Dimaporo v. Mitra, Jr.*, G.R. No. 96859, October 15, 1991, 202 SCRA 779, 795.

[191] *Miguel v. Zulueta*, G.R. No. L-19869, April 30, 1966, 16 SCRA 860, 863.

[192] See *Social Justice Society v. Atienza Jr.*, *supra* at 665-666.

[193] *Angchangco, Jr. v. Ombudsman*, G.R. No. 122728, February 13, 1997, 268 SCRA 301, 306 citing *Kant Kwong v. Presidential Commission on Good Government*, G.R. No. L-79484, December 7, 1987, 156 SCRA 222, 232-233.

[194] See *De Castro v. Salas*, *supra* note 174, at 823-824 (1916).

[195] Ordinance No. 8119, Sec. 3(2).

[196] Ordinance No. 8119, Sec. 3(3).

[197] Namely: high density residential/mixed use; medium intensity commercial/mixed use; high intensity

commercial/mixed use; industrial; general institutional; university cluster; general public open space; cemetery; utility; water, and overlay. (Ordinance No. 8119, Sec. 7.)

[198] The LUIC ratings are in the form of prescribed percentage of land occupancy and floor area ratio maximums.

[199] HAGMAN & JUERGENSMEYER, *supra* note 92, at 82.

[200] *Id.* at 83.

[201] Ordinance No. 8119, Sec. 27. Height Regulations. - Building height must conform to the height restrictions and requirements of the Air Transportation Office (ATO), as well as the requirements of the National Building Code x x x.

[202] NATIONAL BUILDING CODE, Sec. 3.01.07.

[203] See HAGMAN & JUERGENSMEYER, *supra* note 92, at 114-129.

[204] Sec. 61. Procedures for Granting Variances and Exceptions. - The procedure for the granting of exception and/or variance is as follows:

- A written application for an exception for variance and exception shall be filed with the Manila Zoning Board of Adjustment and Appeals (MZBAA) through the CPDO citing the section of this Ordinance under which the same is sought and stating the ground/s thereof.

- Upon filing of application, a visible project sign, (indicating the name and nature of the proposed project) shall be posted at the project site.

- The CPDO shall conduct studies on the application and submit report within fifteen (15) working days to the MZBAA. The MZBAA shall then evaluate the report and make a recommendation and forward the application to the Sangguniang Panlungsod through the Committee on Housing, Urban Development and Resettlements.

- A written affidavit of non-objection to the project/s by the owner/s of the properties adjacent to it shall be filed by the applicant with the MZBAA through the CPDO for variance and exception.

- The Sangguniang Panlungsod shall take action upon receipt of the recommendation from MZBAA through the Committee on Housing, Urban Development and Resettlements.

Sec. 62. Approval of the City Council. - Any deviation from any section or part of the original Ordinance shall be approved by the City Council.

[205] TSN, August 11, 2015, pp. 25-26.

[206] See also following interpellation by Justice Marvic Leonen:

JUSTICE LEONEN:

x x x Okay, now, in the zoning permit if you look at the floor area, it says, "97,549 square meters," do you confirm this Counsel?

ATTY. LAZATIN:

I confirm that, Your Honor.

JUSTICE LEONEN:

And the land area is 7,475 square meters. I understand that this includes right of way?

ATTY. LAZATIN:

That's correct, Your Honor, until an additional lot was added that made the total project area to be 7,556.

JUSTICE LEONEN:

Okay. So, the floor area divided by the land area is 13.05, is that correct? You can get a calculator and compute it, it's 13.05 correct?

ATTY. LAZATIN:

That's correct, Your Honor.

JUSTICE LEONEN:

That is called the FAR?

ATTY. LAZATIN:

Yes, Your Honor. (TSN, August 11, 2015, pp. 48-49).

[207] TSN, August 15, 2015, pp. 22-24.

[208] TSN, August 15, 2015, p. 21.

[209] TSN, August 11, 2015, pp. 30-31.

[210] TSN, August 11, 2015, pp. 52-53.

JUSTICE LEONEN:

Did you sell your property before the action of the Sangguniang Panlungsod?

ATTY. LAZATIN:

Your Honor, there is a difference between the approval of the ... (interrupted)

JUSTICE LEONEN:

Did you build prior to the approval of the Sangguniang Panlungsod as per recommendation of the Manila Zoning Board of Adjustment Appeals?

ATTY. LAZATIN:

Your Honor, if I may be allowed to...?

JUSTICE LEONEN:

No, I have a pending question, did you build prior to the issuance of that resolution or ordinance allowing the variance?

ATTY. LAZATIN:

We build, Your Honor, in accordance with what was permitted, Your Honor.

JUSTICE LEONEN:

I am again a bit curious. Section 3 (J) of Republic Act 3019, the Anti-graft and Corruption Practices Law, it says, "knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage," that's a crime, correct?

ATTY. LAZATIN:

Your honor, may I be allowed to explain?

JUSTICE LEONEN:

No, I'm just confirming if there is such a Section 3, paragraph (J)?

ATTY. LAZATIN:

Your Honor, right now I cannot confirm that, Your Honor.

JUSTICE LEONEN:

Okay.

[211] DMCI Handout on the Computation of Building Height Limit

[212] According to Architect Cuntapay, this is because the GFA computation in the IRR of the Building Code excludes non-habitable areas such as covered areas for parking and driveways, among others. (Rollo, pp. 2749-2750.)

[213] Id. at 2884.

[214] Id. at 2974-2977.

[215] ADMINISTRATIVE CODE, Book VII, Chapter 1, Sec. 2(5). "Contested case" means any proceeding, including licensing, in which the legal rights, duties or privileges asserted by specific parties as required by the Constitution or by law are to be determined after hearing. (Emphasis supplied.)

[216] ADMINISTRATIVE CODE, Book VII, Chapter III, Sec. 11. Notice and Hearing in Contested Cases. -

(1) In any contested case, all parties shall be entitled to notice and hearing. The notice shall be served at least five (5) days before the date of the hearing and shall state the date, time and place of the hearing.

(2) The parties shall be given opportunity to present evidence and argument on all issues. If not precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement or default.

(3) The agency shall keep an official record of its proceedings.

[217] See *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, G.R. No. 217872, August 24, 2016.

[218] 69 Phil. 635 (1940).

[219] *Supra*.

[220] *Gudani v. Senga*, G.R. No. 170165, August 15, 2006, 498 SCRA 671, 698-699.

[221] Decision, p. 9.

[222] Decision, pp. 11, 12-13.

[223] *Supra* note 49.

[224] Id. at 54.

[225] *Agabon v. National Labor Relations Commission*, *supra* note 51, at 634 (Puno, J., dissenting).

[226] See *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*, G.R. No. L-31195, June 5, 1973, 51 SCRA 189.

CONCURRING OPINION

TIJAM, J.:

On 12 September 2014, the Knights of Rizal filed a petition for injunction directly with the Supreme Court to halt the construction of the Torre de Manila and have it demolished. Petitioner averred that once finished, said structure would completely dominate the vista of the Rizal Park and substantially diminish in scale and

importance our national hero's monument. It asserted that the project is a nuisance per se, constructed in bad faith and in violation of the City of Manila's zoning ordinance.

Private respondent, however, argued that there is absolutely no law, ordinance or rule prohibiting the construction of a building, regardless of height, at the background of the Rizal Park and Rizal Monument, and that Republic Act No. 10066 (National Cultural Heritage Act of 2009) protects merely the physical integrity of national cultural treasures. It denied acting in bad faith and that the Torre de Manila is a nuisance per se.

On 25 November 2014, the Supreme Court resolved to treat the petition as one for mandamus, and to implead the City of Manila, the National Historical Commission of the Philippines, the National Museum and the National Commission on Culture and the Arts as public respondents.

For the reasons hereinafter set forth, I concur in the result reached by my distinguished colleague, J. Carpio, in his ponencia.

No clear legal right for mandamus to issue.

Mandamus is a command issuing from a court of law of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law.[1] Mandamus will lie if the tribunal, corporation, board, officer, or person unlawfully neglects the performance of said duty.[2]

It is, thus, essential to the issuance of a writ of mandamus that the applicant should have a clear, certain and well-defined legal right to the thing demanded, and it must be the clear and imperative duty of the respondent to perform the act required.[3]

Accordingly, for mandamus to issue in this case, it must be shown that petitioner has a well-defined legal right to judicially demand, and public respondents or any of them has the concomitant legal duty to carry out, the preservation of the vista, sightline and setting of the Rizal Park and the Rizal Monument.

Petitioner anchored its petition on Sections 15 and 16, Article XIV[4] of the 1987 Constitution which read:

Section 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as its artistic creations.

Section 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

The foregoing constitutional provisions mandate the conservation, promotion and protection of historical and cultural heritage and resources, but do not specify a clear legal right to the protection of the vista, sightline and setting thereof.

Broadly written, the provisions use the words "conserve," "promote," "popularize" and "protect" which are open to different interpretations, as demonstrated no less by the parties' conflicting positions on their breadth and scope when applied to the construction of the Torre de Manila. The provisions further refer to but do not define what constitutes the nation's "historical and cultural heritage and resources," "artistic creations," and "artistic and historic wealth." The authority given to the State to regulate the disposition of the country's artistic and historic wealth also indicates that further government action is intended to enforce the constitutional policy of conserving and protecting our heritage resources.

Legislation is, thus, necessary to supply the norms and standards and define the parameters for the implementation

of the constitutional protection of historical and cultural heritage and resources.

In this regard, J. Florentino P. Feliciano's separate concurring opinion[5] in the landmark case of *Oposa v. Factoran, Jr.*[6] is illuminating:

It seems to me important that the legal right which is an essential component of a cause of action be a specific, operable legal right, rather than a constitutional or statutory policy, for at least two (2) reasons. One is that unless the legal right claimed to have been violated or disregarded is given specification in operational terms, defendants may well be unable to defend themselves intelligently and effectively; in other words, there are due process dimensions to this matter.

The second is a broader-gauge consideration - where a specific violation of law or applicable regulation is not alleged or proved, petitioners can be expected to fall back on the expanded conception of judicial power in the second paragraph of Section 1 of Article VIII of the Constitution which reads:
Section 1....

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

When substantive standards as general as "the right to a balanced and healthy ecology" and "the right to health" are combined with remedial standards as broad ranging as "a grave abuse of discretion amounting to lack or excess of jurisdiction," the result will be, it is respectfully submitted, to propel courts into the uncharted ocean of social and economic policy making. At least in respect of the vast area of environmental protection and management, our courts have no claim to special technical competence and experience and professional qualification. Where no specific, operable norms and standards are shown to exist, then the policy making departments - the legislative and executive departments - must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene. (Emphasis supplied.)

Similarly, in his Separate Opinion[7] in *Agabon v. National Labor Relations Commission*,[8] J. Dante O. Tinga explained why "the right to security of tenure, while recognized in the Constitution, cannot be implemented uniformly absent a law prescribing concrete standards for its enforcement," thus:

x x x However, to declare that the constitutional provisions are enough to guarantee the full exercise of the rights embodied therein, and the realization of ideals therein expressed, would be impractical, if not unrealistic. The espousal of such view presents the dangerous tendency of being overbroad and exaggerated. The guarantees of "full protection to labor" and "security of tenure", when examined in isolation, are facially unqualified, and the broadest interpretation possible suggests a blanket shield in favor of labor against any form of removal regardless of circumstance. This interpretation implies an unimpeachable right to continued employment - a utopian notion, doubtless - but still hardly within the contemplation of the framers. Subsequent legislation is still needed to define the parameters of these guaranteed rights to ensure the protection and promotion, not only the rights of the labor sector, but of the employers' as well. Without specific and pertinent legislation, judicial bodies will be at a loss, formulating their own conclusion to approximate at least the aims of the Constitution.

Thus, the constitutional mandate expressed in Sections 15 and 16, Article XIV of the Constitution cannot, on its own, be the source of the avowed right to the preservation of the vista, sightline and setting of the Rizal Park and Rizal Monument.[9]

The ensuing question, therefore, is whether legislation enacted pursuant to said mandate provide for specific and

operable norms and standards that extend the constitutional protection to the vista, sightline and setting of historical and cultural heritage and resources. An examination of Philippine statutes relating to heritage preservation reveals no such norms or standards.

Republic Act No. (RA) 10066, known as the National Cultural Heritage Act of 2009, involves the protection of the physical integrity of the heritage property or site. This is evident from Sections 25 and 48 of the Act.

Section 25 of RA 10066 authorizes the appropriate cultural agency to issue a Cease and Desist Order ex parte "when the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state."^[10]

Furthermore, Section 48 of RA 100066, which enumerates the prohibited acts under the law, provides:

Section 48. Prohibited Acts. - To the extent that the offense is not punishable by a higher punishment under another provision of law, violations of this Act may be made by whoever intentionally:

(a) Destroys, demolishes, mutilates or damages any world heritage site, national cultural treasures, important cultural property and archaeological and anthropological sites;

(b) Modifies, alters, or destroys the original features of or undertakes construction or real estate development in any national shrine, monument, landmark and other historic edifices and structures, declared, classified, and marked by the National Historical Institute as such, without the prior written permission from the Commission. This includes the designated security or buffer zone, extending five (5) meters from the visible perimeter of the monument or site;

xxx xxx

Demolition, destruction and mutilation are acts applied upon something physical rather than non-physical such as the view, dominance, vista or sightline of a heritage site or property. Furthermore, the prohibited acts referred to in paragraph (b) applies to the original features of the monument or shrine itself or any real estate development therein. It will likewise be noted that the security or buffer zone protected under the provision extends only to five (5) meters from the visible perimeter of the monument or site. Records show that the Torre de Manila is located about 870 meters outside and to the rear of Rizal Park.

RA 10086 (Strengthening Peoples' Nationalism Through Philippine History Act) empowers the National Historical Commission of the Philippines (NHCP) to "(d)etermine the manner of identification, maintenance, restoration, conservation and preservation of historical sites, shrines, structures and monuments," and to "(r)egulate activities pertaining to the preservation, restoration and conservation of historical property or resources."^[11] The law, however, does not indicate specific and operable norms and standards for the protection of the vista, sightline or setting of historic monuments and sites.

Invoked by petitioner, the NHCP's Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and other Personages (Guidelines) provide that monuments should be given due prominence since they symbolize national significance.^[12] As a measure to achieve the monument's dominance, the Guidelines state that vista points and visual corridors to monuments should be kept clear for unobstructed viewing appreciation and photographic opportunities.^[13] Citing the International Charter for the Conservation and Restoration of Monuments and Sites (Venice Charter), the Guidelines further declare that the conservation of a monument implies preserving a setting which is not out of scale, defining "setting" as not only limited to the exact area directly occupied by the monument, but also to surrounding areas whether open space or occupied by other structures as may be defined by the traditional or juridical expanse of the property.^[14]

However, as noted by my esteemed colleagues, J. Leonen and J. Jardeleza, it has not been shown that these

Guidelines had been published and a copy thereof deposited with the Office of the National Administrative Register in the University of the Philippines' Law Center. Thus, they cannot be considered effective and binding.[15] Both the requirements of publication and filing of administrative issuances intended to enforce existing laws are mandatory for the effectivity of said issuances.[16] These requirements of publication and filing were put in place as safeguards against abuses on the part of lawmakers and as guarantees to the constitutional right to due process and to information on matters of public concern and, therefore, require strict compliance.[17]

In any event, the language of the NHCP Guidelines do not appear to rule out the presence or construction of buildings within the sightline or setting of the historic monument. Thus, the Guidelines provide that: "(t)he monument should preferably be the focal point of a city or town center," and the (f)acade of buildings around a monument, particularly on a rotunda or circle can be retrofitted with a uniform design to enhance the urban renewal of the site and the prominence and dominance of the monument.[18] Furthermore, the Guidelines allow for urban renewal projects and adaptation of historic sites to contemporary life.[19] It also looks to regulation by the local government of the design, volume and height of buildings surrounding or in the immediate vicinity of the monument/site to enhance the prominence, dominance and dignity of the monument.[20] Such local regulation was notably made to apply to development in the vicinity, both "existing and future." [21] In relation to the monument's setting, the Guidelines also state that new construction would not be allowed but only if it would alter the relations of mass and color.[22] What it specifically rejects is the encroachment or "direct abutment of structures" into the monument site.[23]

Thus, assuming the Guidelines are effective, they may not be deemed to impose an absolute prohibition against structures erected within the monument's vicinity, sightline or setting, subject only to the structures' compliance with the local government's regulatory restrictions on height, design and volume, and to urban renewal standards.

RA 8492 (National Museum Act of 1998), which tasked the National Museum to supervise the restoration, preservation, reconstruction, demolition, alteration, relocation and remodeling of immovable properties and archaeological landmarks and sites,[24] contains no indication that such duty extended to the preservation of the vista, sightline and setting of cultural properties. RA 8492 was also amended by RA 10066 which distributed the responsibilities over cultural properties among several cultural agencies based on the categorization of the property, and assigned to the National Museum the responsibility for significant movable and immovable cultural and natural property pertaining to collections of fine arts, archaeology, anthropology, botany, geology, zoology and astronomy, including its conservation aspect.[25]

RA 7356 or the Law Creating the National Commission for the Culture and the Arts (NCCA) mandated the NCCA to "support and promote the establishment and preservation of cultural and historical monuments, markers, names and sites,"[26] and empowered it to "regulate activities inimical to preservation/conservation of national cultural heritage/properties." It designated the NCCA as the over-all policy-making and coordinating body that will harmonize the policies of national cultural agencies.[27] RA 7356 was amended by RA 10066 which, among others, expanded the authority and responsibility of the NCCA. As previously noted, RA 10066 refers to the protection of the physical integrity of the heritage property or site, and does not specify operable norms and standards indicating that the protection extends to its vista, sightline or setting.

The Venice Charter, also invoked by petitioner, provides:

Article 1.

The concept of a historic monument embraces not only the single architectural work but also the urban or rural setting in which is found the evidence of a particular civilization, a significant development or a historic event. This applies not only to great works of art but also to more modest works of the past which have acquired

cultural significance with the passing of time.

xxx xxx

Article 6.

The conservation of a monument implies preserving a setting which is not out of scale. Wherever the traditional setting exists, it must be kept. No new construction, demolition or modification which would alter the relations of mass and colour must be allowed.

The Venice Charter indeed declares that preservation of the setting is integrated in conservation efforts involving historic monuments. However, as pointed out by J. Jardeleza, the Charter does not rise to the level of enforceable law absent any showing of the country's commitment thereto.

In any event, it cannot be said that the Venice Charter provides specific, operable norms and standards, or sufficient parameters, to hold that the setting of the Rizal Monument, in particular, was not preserved by reason of the subject building. By its language, the Charter merely laid down basic and guiding "principles," "with each country being responsible for applying the plan within the framework of its own culture and traditions." Thus, even assuming that the Philippines committed to adhere to said principles, the Charter cannot, by itself, be the basis for the mandamus sought.

In fine, a clear legal right to the protection of the vista, sightline and setting of the Rizal Monument and the Rizal Park has not been established in legislation as an aspect of the constitutional policy to conserve, promote and protect historical and cultural heritage and resources. It is settled that legislative failure to pursue state policies cannot give rise to a cause of action in the courts.[28]

During the deliberations on this case, it was posited that while existing statutes show no clear and specific duty on the part of public respondents to regulate, much less, prohibit the construction of structures that obstruct the view, sightline or setting of the Rizal Monument, Manila's zoning ordinance (Ordinance No. 8119) imposes such duty on the City Government of Manila under the guidelines and standards prescribed in Sections 47 and 48 thereof.

Sections 47 and 48 of Ordinance No. 8119, in pertinent part, state:

Sec. 47. Historical Preservation and Conservation Standards. - Historical sites and facilities shall be conserved and preserved. x x

The following shall guide the development of historic sites and facilities:

1. Sites with historic buildings or places shall be developed to conserve and enhance their heritage values.

2. x x

3. Any person who proposes to add, to alter, or partially demolish a designated heritage property will require the approval of the City Planning and Development Office (CPDO) and shall be required to prepare a heritage impact statement that will demonstrate to the satisfaction of the CPDO that the proposal will not adversely impact the heritage significance of the property and shall submit plans for review by the CPDO in coordination with the National Historical Institute (NHI).

4. Any proposed alteration and/or re-use of designated heritage properties shall be evaluated based on criteria established by the heritage significance of the particular property or site.

5. x x

6. x x

7. Residential and commercial infill in heritage areas will be sensitive to the existing scale and pattern of those areas, which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources.

8. Development plans shall ensure that parking facilities (surface lots, residential garages, stand-alone parking garages and parking components as part of larger developments) are compatibly integrated into heritage areas, and/or are compatible with adjacent heritage resources.

9. Local utility companies (hydro-gas, telephone, cable) shall be required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations which do not detract from the visual character of heritage resources, and which do not have negative impact on its architectural integrity.

10. Design review approval shall be secured from the CPDO for any alteration of heritage property to ensure that design guidelines and standards are met and shall promote preservation and conservation of the heritage property. (Underscoring supplied)

Sec. 48. Site Performance Standards. The City considers it in the public interest that all projects are designed and developed in a safe, efficient and aesthetically pleasing manner. Site development shall consider the environmental character and limitations of the site and its adjacent properties. All project elements shall be in complete harmony according to good design principles and the subsequent development must be pleasing as well as efficiently functioning especially in relation to the adjacent properties and bordering streets.

The design, construction, operation and maintenance of every facility shall be in harmony with the existing and intended character of its neighborhood. It shall not change the essential character of the said area but will be a substantial improvement to the value of the properties in the neighborhood in particular and the community in general.

Furthermore, designs should consider the following:

1. Sites, buildings and facilities shall be designed and developed with regard to safety, efficiency and high standards of design. The natural environmental character of the site and its adjacent properties shall be considered in the site development of each building and facility.

2. The height and bulk of buildings and structures shall be

so designed that it does not impair the entry of light and ventilation, cause the loss of privacy and/or create nuisances, hazards or inconveniences to adjacent developments.

3. x x

4. x x

5. x x

6. x x

7. x x

8. No large commercial signage or pylon, which will be detrimental to the skyline, shall be allowed.

9. Design guidelines, deeds of restriction, property management plans and other regulatory tools that will ensure high quality developments shall be required from developers of commercial subdivisions and condominiums. These shall be submitted to the City Planning and Development Office (CPDO) for review and approval. (Underscoring supplied)

An examination of Section 47 of Ordinance No. 8119, however, will reveal that the guidelines set therein refer to the historical site or the heritage area itself, or to the physical integrity of the designated heritage property. Thus, Section 47 speaks of the conservation and enhancement of the heritage value of the historical site; it also refers to the alteration demolition and re-use of designated heritage properties, and development plans within the heritage area. In fact, it is expressly prefaced by a statement alluding to the enumeration as guidelines in the "development of historic sites and facilities."

Records show that Torre de Manila is located in the University Cluster Zone, 870 meters outside and to the rear of Rizal Park. The zone is not a historical site, a heritage area, or a designated heritage property. Thus, Section 47 of Ordinance No. 8119 will not apply.

Section 48 of Ordinance No. 8119, which enumerates the "Site Performance Standards," appears to apply to all development projects in the City of Manila. It requires that the development project should be "aesthetically pleasing" and "in harmony with the existing and intended character of its neighborhood," and that it should consider the "natural environmental character of the site and its adjacent properties."

The neighborhood within which the Torre de Manila is situated is the University Cluster Zone. Furthermore, the building is not adjacent to or adjoining the Rizal Park or the Rizal Monument. By the language of Section 48, the "adjacent properties" mentioned therein would refer to properties adjoining the Torre de Manila site within the University Cluster Zone, such that "harmony with the existing and intended character of the neighborhood" would be achieved. It is, thus, doubtful that Section 48 provides norms and standards intended to preserve the sightline or setting of the Rizal Monument.

It has been held that mandamus will not issue to enforce a right which is in substantial dispute or as to which a substantial doubt exists.[29]

Even assuming that Ordinance No. 8119 extends protection to the vista, sightline or setting of a historical site or property, it does not specify the parameters by which the City Development and Planning Office (CDPO) shall determine compliance, thereby giving the CDPO wide discretion in ascertaining whether or not a project preserves the heritage site or area.

Under the guidelines and standards of Sections 47 and 48 of Ordinance No. 8119, development projects: should conserve and enhance the heritage value of the historic site; should not adversely impact the heritage significance of the heritage property; should not result in the loss of any heritage resources; should not detract from the visual character of heritage resources; and should be aesthetically pleasing.

There are no parameters, definitions or criteria to ascertain how heritage value is deemed to have been conserved and enhanced, what adversely impacts the heritage significance of a property, what sufficiently detracts from the visual character of a heritage property, and what is aesthetically pleasing. The absence of such parameters creates considerable room for subjective interpretation and use of discretion that could amount to an undue delegation of legislative power.

Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. Under the first test or the so-called completeness test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it. The second test or the sufficient standard test, mandates that there should be adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot.[30]

By their language and provisions, Sections 47 and 48 of Ordinance No. 8119 fail to comply with the completeness

test.

A writ of mandamus can be issued only when petitioner's legal right to the performance of a particular act which is sought to be compelled is clear and complete. A clear legal right is a right which is indubitably granted by law or is inferable as a matter of law.[31] No clear and complete legal right to the protection of the vista, sightline and setting of the Rizal Park and Rizal Monument has been shown to exist.

The Court cannot, in the guise of interpretation, enlarge the scope of a statute or insert into a statute what the legislature omitted, whether intentionally or unintentionally.[32] To read into an ordinance objects which were neither specifically mentioned nor enumerated would be to run afoul of the dictum that where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters.[33] Thus, in *Canet v. Mayor Decena*,[34] the Court explained:

Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because a legislative lacuna cannot be filled by judicial fiat. Indeed, courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission.

Courts should not, by construction, revise even the most arbitrary and unfair action of the legislature, nor rewrite the law to conform with what they think should be the law. Nor may they interpret into the law a requirement which the law does not prescribe. Where a statute contains no limitations in its operation or scope, courts should not engraft any. And where a provision of law expressly limits its application to certain transactions, it cannot be extended to other transactions by interpretation. To do any of such things would be to do violence to the language of the law and to invade the legislative sphere. (Emphasis supplied.)

In the absence of a clear legal right to the protection of the vista, sightline and setting of the Rizal Monument, and the concomitant legal duty to enforce such right, mandamus will not lie. The writ of mandamus will not issue to compel an official to do anything which is not his duty to do or which it is his duty not to do, or to give to the applicant anything to which he is not entitled by law.[35]

Direct recourse to the Supreme Court was improper.

An important principle followed in the issuance of the writ of mandamus is that there should be no plain, speedy and adequate remedy in the ordinary course of law other than the remedy of mandamus being invoked. In other words, mandamus can be issued only in cases where the usual modes of procedure and forms of remedy are powerless to afford relief.[36]

Petitioner brought this case to the Supreme Court, arguing that that the Torre de Manila was being constructed in violation of the zoning ordinance. Petitioner claims that the City of Manila violated the height restrictions under Ordinance No. 8119 when it granted private respondent a variance almost six (6) times the seven (7)-floor height limit in a University Cluster Zone. Petitioner notes that at 22.83% completion, or at the height of nineteen (19) floors, as of 20 August 2014, the structure already obstructs the vista of the Rizal Park and the Rizal Monument.

Section 77 of Ordinance No. 8119, however, expressly provides for a remedy in case of violation of its provisions; it allows for the filing of a verified complaint before the Manila Zoning Board of Assessment and Appeals for any violation of the Ordinance or of any clearance or permits issued pursuant thereto, including oppositions to applications for clearances, variance or exception.

The general rule is that before a party is allowed to seek the intervention of the court, he or she should have

availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the courts' judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.[37]

An exception to said rule is when the issue raised is a purely legal question, well within the competence and the jurisdiction of the court and not the administrative agency.[38]

It is clear, however, that factual issues are involved in this case. The calculation of the maximum allowable building height, the alleged violation of existing regulations under Ordinance No. 8119, and the existence or non-existence of the conditions[39] for approval of a variance by reason of non-conformity with the height restrictions, are questions of fact which the City of Manila could pass upon under Section 77 of Ordinance No. 8119.

Likewise, whether or not the Torre de Manila is a nuisance, and whether or not private respondent acted in good faith, are factual issues that should not have been raised at the first instance before this Court.

The Supreme Court is not a trier of facts and it is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. More so, this Court is not duty-bound to analyze and weigh evidence pertaining to factual issues which have not been subject of any proper proceedings below.[40]

Any judicial intervention should have been sought at the first instance from the Regional Trial Court which has the authority to resolve constitutional issues,[41] more so where questions of fact are involved.

A direct recourse to this Court is highly improper for it violates the established policy of strict observance of the judicial hierarchy of courts. While we have concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals to issue the extraordinary writs, this concurrence is not to be taken as an unrestrained freedom of choice as to which court the application for the writ will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. This Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition.[42]

Mandamus cannot compel the performance of a discretionary act.

A key principle to be observed in dealing with petitions for mandamus is that such extraordinary remedy lies to compel the performance of duties that are purely ministerial in nature, not those that are discretionary. A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done. The duty is ministerial only when its discharge requires neither the exercise of official discretion or judgment.[43]

In issuing permits to developers and in granting variances from height restrictions, the City of Manila exercises discretion and judgment upon a given set of facts. Such acts are not purely ministerial functions that can be compelled by mandamus.

Petitioner failed to comply with requisites for judicial review.

Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations. The following requisites must be complied with before this Court can take cognizance of the case: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[44]

Petitioner failed to show its legal standing to file the case.

This Court, in determining *locus standi*, has applied the "direct injury" test which requires that for a private individual to invoke the judicial power to determine the validity of an executive or legislative action, he must show that he has sustained a direct injury as a result of that action. It is not sufficient that he has a general interest common to all members of the public.[45]

Accordingly, *locus standi* or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.[46]

Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest"[47]

By the foregoing standards, petitioner cannot be considered to have satisfied the "direct injury" test

Petitioner alleged that it is a public, non-profit organization created under RA 646, and pursuant to its mandate, it conducts activities at the Rizal Park to commemorate Jose Rizal's birth and martyrdom at least twice a year. Petitioner asserted that its legal mandate to celebrate Rizal's life was violated on account of private respondent's Torre de Manila project which continue to mar the previously unobstructed view of the Rizal Park. Such interest, however, cannot be said to be personal and substantial enough to infuse petitioner with the requisite *locus standi*. It certainly is not a present or immediate interest, as petitioner's commemorative activities are not constantly conducted in the Rizal Park.

The experience of looking at the vista of the Rizal Park and the Rizal Monument and finding it marred by the subject structure does not give rise to a substantial and personal injury that will give *locus standi* to petitioner to file this case. It is what can be considered as an incidental, if not a generalized, interest. Generalized interests, albeit accompanied by the assertion of a public right, do not establish *locus standi*. [48] Evidence of a direct and personal interest is key. [49]

The rule on *locus standi* is not a plain procedural rule but a constitutional requirement derived from Section 1, Article VIII of the Constitution, which mandates courts of justice to settle only "actual controversies involving rights which are legally demandable and enforceable." [50] This Court, in *Lozano v. Nograles*, [51] explained:

x x x [C]ourts are neither free to decide all kinds of cases dumped into their laps nor are they free to open their doors to all parties or entities claiming a grievance. The rationale for this constitutional requirement of *locus standi* is by no means trifling. It is intended "to assure a vigorous adversary presentation of the case, and, perhaps more importantly to warrant the judiciary's overruling the determination of a coordinate, democratically elected organ of government." It thus goes to the very essence of representative democracies.

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A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.

Petitioner has likewise failed to justify an exemption from the locus standi rule on grounds of "transcendental importance."

In *Galicto v. Aquino*,^[52] this Court held that "even if (it) could have exempted the case from the stringent locus standi requirement, such heroic effort would be futile because the transcendental issue could not be resolved any way, due to procedural infirmities and shortcomings." The Court explained that giving due course to a petition saddled with such formal and procedural infirmities would be "an exercise in futility that does not merit the Court's liberality."^[53]

As hereinbefore discussed, it was error for petitioner to have filed this case directly before the Supreme Court, as other plain, speedy and adequate remedies were still available and the case indubitably involves questions of fact. Thus, the resolution of any transcendental issue in this case will be rendered futile by reason of these procedural infirmities. Furthermore, it could not escape this Court's attention that what petitioner filed before this Court was, in fact, a petition for injunction over which the Court does not exercise original jurisdiction.^[54]

While the Court has taken an increasingly liberal approach to the rule of locus standi, evolving from the stringent requirements of personal injury to the broader transcendental importance doctrine, such liberality is not to be abused.^[55]

Indeed, the "transcendental importance" doctrine cannot be loosely invoked or broadly applied, for as this Court previously explained:

In the final scheme, judicial review is effective largely because it is not available simply at the behest of a partisan faction, but is exercised only to remedy a particular, concrete injury. When warranted by the presence of indispensable minimums for judicial review, this Court shall not shun the duty to resolve the constitutional challenge that may confront it. (Emphasis supplied.)

Thus, this Court, in the recent case of *Roy v. Herbosa*,^[56] held that an indiscriminate disregard of the requisites for this Court's judicial review, every time "transcendental or paramount importance or significance" is invoked would result in unacceptable corruption of the settled doctrine of locus standi as every worthy cause is an interest shared by the general public.

Petitioner has also failed to present a justiciable controversy.

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. The Court can decide the constitutionality of an act or treaty only when a proper case between opposing parties is submitted for judicial determination.^[57]

The existence of an actual case or controversy, thus, presupposes the presence of legally enforceable rights. In this case, petitioner asserts that it has the right to stop the construction of the Torre de Manila on the strength of Sections 15 and 16, Article XIV of the Constitution, which requires the State to conserve and protect the nation's historical and cultural heritage and resources. Petitioner argues that heritage preservation includes the sightline

and setting of the Rizal Park and Rizal Monument.

However, as hereinbefore shown, neither the Constitution nor existing legislation, including Manila's Ordinance No. 8119, provides for specific and operable norms and standards that give rise to a judicially enforceable right to the protection of the vista, sightline and setting of the Rizal Park and Rizal Monument.

Furthermore, related to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action. It must show that it has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.[58]

As previously discussed, petitioner has failed to show that it has sustained or is immediately in danger of sustaining a direct injury as a result of the construction of the Torre de Manila.

In sum, absent a clear legal right to the protection of the vista, sightline and setting of the Rizal Park and Rizal Monument, and for petitioner's failure to establish its legal standing and the existence of an actual controversy ripe for judicial adjudication, mandamus will not lie.

Accordingly, I vote to DISMISS the petition.

[1] Star Special Watchman and Detective Agency, Inc., et al. v. Puerto Princesa City, et al., G.R. No. 181792, April 21, 2014, citing Uy Kiao Eng vs. Nixon Lee, G.R. No. 176831, January 15, 2010.

[2] Ibid.

[3] Villanueva v. Judicial and Bar Council, G.R. No. 211833, April 7, 2015, Ongsuco v. Malones, G.R. No. 182065, October 27, 2009.

[4] On Education, Science and Technology, Arts, Culture and Sports.

[5] Subsequently applied in Pamatong v. COMELEC, G.R. No. 161872, April 13, 2004.

[6] G.R. No. 101083, July 30, 1993.

[7] Subsequently applied in Tondo Medical Center Employees Association, et al. v. Court of Appeals, et al., G.R. No. 167324, July 17, 2007.

[8] G.R. No. 158693, November 17, 2004.

[9] See Separate Opinion of J. Dante O. Tinga in Agabon v. NLRC; Id.

[10] Section 25. Power to Issue a Cease and Desist Order. - When the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state, the appropriate cultural agency shall immediately issue a Cease and Desist Order ex parte suspending all activities that will affect the cultural property. The local government unit which has the jurisdiction over the site where the immovable cultural property is located shall report the same to the appropriate cultural agency immediately upon discovery and shall promptly adopt measures to secure the integrity of such immovable cultural property. Thereafter, the appropriate cultural agency shall give notice to the owner or occupant of the cultural property and conduct a hearing on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after

due notice and hearing involving the interested parties and stakeholders.

[11] Section 7, RA 10086.

[12] Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and other Personages, Supra Note. 1.

[13] Supra Note. 2.

[14] Ibid.

[15] Sections 3, 4 and 5, Chapter 2 of Book VII of the Administrative Code; Quezon City PTCA Federation, Inc. v. Department of Education, G.R. No. 188720, February 23, 2016; Republic v. Pilipinas Shell Petroleum Corporation, G.R. No. 173918, April 8, 2008.

[16] Republic v. Pilipinas Shell Petroleum Corporation, Id., citing National Association of Electricity Consumers for Reforms v. Energy Regulatory Board, G.R. No. 163935, February 2, 2006.

[17] Republic v. Pilipinas Shell Petroleum Corporation, Id.

[18] Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and other Personages, item no. 1.

[19] Supra Note. 11.

[20] Supra Note. 1 and 11.

[21] Item no. 11 of the Guidelines is captioned "Development of the Vicinity (Existing and Future)".

[22] Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and other Personages, item no. 2.

[23] Supra Note. 8.

[24] Section 7, RA 8492.

[25] Section 31 of RA 10066 provides that: (a) The Cultural Center of the Philippines shall be responsible for significant cultural property pertaining to the performing arts; (b) The National Archives of the Philippines shall be responsible for significant archival materials; (c) The National Library shall be responsible for rare and significant contemporary Philippine books, manuscripts such as, but not limited to, presidential papers, periodicals, newspapers, singly or in collection, and libraries and electronic records; (d) The National Historical Institute shall be responsible for significant movable and immovable cultural property that pertains to Philippine history, heroes and the conservation of historical artifacts; (e) The National Museum shall be responsible for significant movable and immovable cultural and natural property pertaining to collections of fine arts, archaeology, anthropology, botany, geology, zoology and astronomy, including its conservation aspect; and (f) The Komisyon sa Wikang Filipino shall be responsible for the dissemination development, and the promotion of the Filipino national language and the conservation of ethnic languages.

[26] Section 12(b)(3), RA 7356.

[27] Section 23(b), RA 7356.

[28] Espina, et al. v. Zamora, et al., G.R. No. 143855, 21 September 2010.

[29] Uy Kiao Eng v. Lee, G.R. No. 176831, January 15, 2010.

[30] ABAKADA Guro Party List Officers/Members Samson. S. Alcantara, et al. v. Purisima, et al., G.R. No. 166715, August 14, 2008; Equi-Asia Placement, Inc. v. Department of Foreign Affairs, et al., G.R. No. 152214,

September 19, 2006.

[31] *Carolina v. Senga, et al.*, G.R. No. 189649, April 20, 2015.

[32] *Bases Conversion and Development Authority v. Commission on Audit*, G.R. No. 178160, February 26, 2009.

[33] *Canet v. Mayor Decena*, G.R. No. 155344, January 20, 2004.

[34] *Supra*, note 32.

[35] *Star Special Watchman and Detective Agency, Inc., et al. v. Puerto Princesa City, et al.*, *supra*, citing *Uy Kiao Eng v. Nixon Lee*, *supra*, note 28.

[36] *Uy Kiao Eng v. Lee*, *supra*, note 28.

[37] *Ongsuco v. Malones*, *supra* note 3.

[38] *Ibid.*

[39] Under Section 60 of Ordinance No. 8119, variances by reason of non-conformity with the Percentage of Land Occupancy and Floor Area Ratio provisions (which determine the height restriction) may be allowed by the City Council upon recommendation of the Manila Zoning Board of Adjustment and Appeals, subject to the following qualifications: (1) conformity will cause undue hardship due to the physical conditions of the property (topography, shape, etc.) which are not self-created; (2) the proposed variance is the minimum deviation necessary to permit reasonable use of the property; (3) the variance will not alter the physical character of the district/zone where the property is located, and will not substantially or permanently injure the use of other properties therein; (4) the variance will not weaken the general purpose of the Ordinance and will not adversely affect public health, safety and welfare; and (5) the variance will be in harmony with the spirit of the Ordinance.

[40] *Hipolito v. Cinco*, G.R. No. 174143, November 28, 2011.

[41] *Planters Products, Inc. v. Fertiphil Corporation*, G.R. No. 166006, March 14, 2008, *Ongsuco v. Malones*, *supra* note 3.

[42] *Anillo v. Commission on the Settlement of Land Problems, et al.*, G.R. No. 157856, September 27, 2007; Section 4, Rule 65, Rules of Court.

[43] *Special People, inc. v. Canda, et al.*, G.R. No. 160932, January 14, 2013.

[44] *In Re Supreme Court Judicial Independence v. Judiciary Development Fund*, UDK-15143, January 21, 2015; *Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010.

[45] *In Re Supreme Court Judicial Independence v. Judiciary Development Fund*, UDK-15143 (Resolution), *supra*, note 43, citing *David, et al. v. Macapagal-Arroyo, et al.*, G.R. No. 171396, May 3, 2006.

[46] *Galicto v. Aquino, et al.*, G.R. No. 193978, February 28, 2012.

[47] *Ibid.*

[48] *Southern Hemisphere Engagement Network, Inc., et al. v. Anti-Terrorism Council, et al.*, G.R. No. 178552, October 5, 2010.

[49] *Ibid.*

[50] *Lozano v. Nograles*, G.R. No. 187883, June 16, 2009.

[51] G.R. No. 187883, June 16, 2009, citing the Dissent of then Associate Justice Reynato S. Puno in *Kilosbayan, Incorporated v. Guingona, Jr.*, G.R. No. 113375, 5 May 1994.

[52] G.R. No. 193978, February 28, 2012, citing *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004.

[53] *Ibid.*

[54] Article VIII of the Constitution provides:

Sec. 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.

(2) xxx

[55] *Lozano v. Nograles*, *supra*, note 49.

[56] G.R. No. 207246, November 22, 2016.

[57] *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain, et al.*, G.R. No. 183591, October 14, 2008.

[58] *Ibid.*

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