

# Keynote Speaker: Hon. Hilario Davide Jr., Former Supreme Court Chief Justice

*\*Speech of Chief Justice (ret.) Hilario Davide, Jr. at the Opening Session of the ENVIRONMENTAL LAW TALKS 3*

## The Urgency of Mainstreaming Environmental Justice

Dean Estenzo, Director Spitzkatz, Prof. Golly Ramos, Participants to this *Environmental Law Talks 3*, Guests, Ladies and Gentlemen,

A good evening of environmental justice to all of you.

At the outset I wish to express my gratitude to compañera Professor Gloria Estenzo-Ramos - **Golly** - for inviting me, on behalf of the organizers of this conference - the University of Cebu College of Law and the Konrad Adenauer Stiftung Rule of Law Programme Asia - to be the keynote speaker at the Welcome Dinner for this event - the **ENVIRONMENTAL**

**LAW TALKS 3** with the them, *Mainstreaming Environmental Justice Through Science-Based Participatory Governance and Effective Law Enforcement and Adjudication*.

**Golly** has a given me a very difficult assignment. Traditionally, a Welcome Dinner that precedes a convention is nothing more than a socialization or a “getting-to-

know-you” event. Nothing serious should be allowed to pollute the happy atmosphere. But **Golly** wants me to be a “polluter” of that atmosphere directing me to talk on the topic “**Greening the Judicial System**”. She believes, perhaps, that a



“polluter” of a happy and joyful welcome dinner can also be an effective advocate to a “green” Judicial System. She and Tony Oposa know very well that, indeed, I am such an advocate. As I will mention later, it was Tony who initially provoked the Supreme Court to be a “green” court by giving it the historic opportunity to enshrine in our jurisprudence the doctrine of intergenerational responsibility and intergenerational justice as twin concepts embraced in the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of Nature as mandated by the 1987 Constitution, and to allow 43 children from all over the Philippines – acting on their own behalf, on behalf of children of their generation and of generations yet unborn the legal personality or standing to bring and initiate the unprecedented action to cancel all logging concessions granted by the Government because at the rate the virgin tropical rainforests were being logged and deforested, nothing would be left for them and for the future generations. This was the case of *Minors Oposa et al. vs. Factoran et al.* decided in 1993. I happened to be the *ponente* who wrote the decision for the Court en banc. Thereafter, Tony and his dedicated group of environmentalists filed more cases to protect the environment and safeguard the right of the people of this generation and of generations yet unborn to a balanced and healthful ecology. That decision made the Philippine Supreme Court very popular in other jurisdictions, especially among its serious and genuine advocates of environmental law and justice. Unfortunately, this decision did not get media attention in the Philippines not until two years later when the Philippine Daily Inquirer put it as an editorial item in one of its issues. The rest is history. The Philippine Judiciary became a frontliner in environmental law protection and promotion. By giving preferential option for the environment the “greening” revolution, so to speak, of the Philippine judicial system was begun, and subsequent judicial pronouncements and decisions nurtured and further enhanced it. I shall show later the extent of this “greening”. May I just state that it is not only the Philippine Judicial System that must give preferential option for the environment. All judicial systems of the world must; hence the call of the hour is the “greening” of all judicial systems in the world and I hope that they will be. How should such “greening” be accomplished? At the **Experts Meeting on Environmental Liability** sponsored by the United Nations Environment Programme held in Geneva in 2002, I mentioned of a three-fold duty in this regard. First, the creative application of environmental law. Second, the timely disposition of environmental cases. Third, a commitment to continuing judicial education for courts to be able to keep themselves abreast with developments in environmental laws, a field that grows at an incredible rate. In connection with the third, the judiciaries must not only keep pace with legal developments in environmental law. They must also be aware of scientific

achievements and advancements which could result in either the protection or the destruction of the environment.

This “**Greening of the Judicial System**” topic for the Welcome Dinner is a brilliant invention by the organizers, inspired again by **Golly**, I suppose. They know that without a “green” judiciary, without courts that give preferential option for the environment, every effort of promoting and safeguarding environmental justice would hardly succeed. Hamilton once said: “Laws are dead letters without courts to expound and define their true meaning”. Therefore, in environmental laws, the pronouncements of courts become all the more important for it is up to the courts to achieve a comprehensive system, a net if you will, of environmental protection from amongst the great body of environmental laws. Hence, this will be a very apt and timely introduction to and discussions on the topics assigned to six panels for this **ENVIRONMENTAL LAW TALKS 3**.

I must, therefore, congratulate the organizers for choosing the theme for this event: **Mainstreaming Environmental Justice Through Science-Based Participatory Governance and Effective Law Enforcement and Adjudication**.

Again, I am sure **Golly Ramos** contributed much to the formulation of the theme. I wish to repeat the brief description I made of her at one of the segments of a lecture series conducted by the UC College of Law during the celebration of the 10<sup>th</sup> anniversary of the founding of the College: a brilliant, dynamic, pro-active, courageous and dedicated environmentalist whose passion as such has earned for her national and international recognition. Her latest article entitled, “*Innovative Procedural Rules on Environmental Cases in the Philippines: Ushering in the Golden Ear of Environmental Rights Protection*” is now known throughout the world by its publication in the 2011 issue of the **eJournal** of the IUNC Academy of Environmental Law. One of the topics taken up during that lecture series was “Revisiting the Trust Doctrine of the Inter-Generational Responsibility: Impact of the Oposa Ruling”. Now, in this **ENVIRONMENTAL LAW TALKS 3**, the UC College of Law has moved further by stressing on the mainstreaming of Environmental Justice at another complex, yet more necessary and more effective, level. Environmental justice covers the concepts of inter-generational responsibility and intergenerational justice. As I said earlier, these twin concepts spring from the right of people to a balanced and healthful ecology in accord with the rhythm and harmony of nature or to the right to the environment which is nothing less than the right to life itself.

We Filipinos must always stand proud to claim that the Philippines is the first country in the world to enshrine in its fundamental law, the 1987 Constitution, the right to a balanced and healthful ecology or the right to the environment. Its Section 16 Article II (Declaration of Principles and State Policies) expressly provides: "The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."

In its landmark 1993 decision in the case of *Minors Oposa et al. vs. Factoran et al.* (G.R. No. 101083, 30 July 1993, 224 SCRA 792) I mentioned earlier, the Supreme Court declared that this Constitutional provision enshrines the doctrine of inter-generational responsibility and inter-generational justice. This decision declares:

"Such a right belongs to a different category of rights altogether for it concerns nothing less than the right to self-preservation and self-perpetuation...the advancement of which may even be said to predate all governments and constitutions...these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because...unless it is written in the Constitution itself, the day would not be too far when all else would be lost not only for the present generation, but also for those to come - generations which stand to inherit nothing but a parched earth incapable of sustaining life."

This is the famous **Oposa** doctrine, that perpetuates the struggle and victory of the first Filipino who spent the best of his talents, treasures and time, and put the best of his energy, enthusiasm and endurance for the protection, preservation, and promotion of this sacred right to our environment, and for giving us what the environment actually means. It means **Life-Sources or Sources of Life on our Mother Earth**. I refer to Atty. Tony Oposa, who was conferred the Ramon Magsaysay Award in 2009 in recognition of his advocacy on environmental protection which to me is God-inspired and motivated. What are these Life-Sources per Tony Oposa? These are Land, Air, Water, whose acronym happens to be **LAW**. This is the Law that gives and sustains life. This is the same Law that makes the right to the environment as the right to life itself. This the Law that gives birth to environmental justice. I may hasten to add that this **LAW** could have been the inspiration in the original crafting of the word Law - **LAW** to generally refer to that which is laid down, ordained or established, and which must be followed and subject them to sanctions or legal consequences (Black's Law Dictionary, 6<sup>th</sup> ed., 884).

This, I suppose, is the environmental justice that is the heart of this **ENVIRONMENTAL LAW TALKS 3**. I also suppose that the justice in environmental justice is to be understood in its general sense or as commonly understood by all to mean the quality of being right or correct; or reward or penalty as deserved (Webster's New World College Dictionary, 4<sup>th</sup> ed., 777). Or, on the spiritual side, justice is the Order that God seeks to reestablish in His creation where all receive the benefits of life with Him. It has two major aspects. First, it is the standard by which penalties are assigned for breaking the obligation of the society. Second, it is the standard by which the advantages of social life are handed out, including material goods, rights of participation, opportunities, and liberties; the standard for both punishment and benefits and thus can be spoken of as a plumb line (Holman Illustrated Bible Dictionary, 968). In this context then and in light of our thesis that the right to the environment is the right to life itself, it follows that environmental justice has the biggest coverage among all other rights. For, on one side, we have humanity itself; and on the other, Mother Earth, our planet. At no other time than now do both demand immediate justice. Any delay would cause irreparable and irreversible damage and injury.

Humankind is in great peril, and the world is groaning in travail and torment because of the crises we face today, crises perhaps unparalleled in terms of gravity, duration and rapid succession of occurrence that indicate something more than just accidental convergence but a retaliation in series, as an act of self-defense by an aggrieved Mother Earth which has been manipulated, abused, plundered and defiled by man. We recently suffered the strongest typhoon – Yolanda – and the 7.2 magnitude earthquake that hit Bohol; we had floods and typhoons in Mindanao in provinces which were not flooded or hit by typhoons before. Much earlier we had Ondoy, Pepeng, Sendong, Pablo and many more.

Many other parts of the world, the Balkans at the latest, were hit by calamities such as typhoons, tornadoes, floods, earthquakes, etc. Deaths, sufferings and devastations they caused were catastrophic. All of these calamities which contributed in unquantifiable measures to the flood, energy, and water crises, and diseases were primarily caused by what we euphemistically call Climate Change. But the principal culprit of Climate Change is man.

In his quest for “progress”, in his madness to amass power, fame and fortune, and with avarice, greed, selfishness, man has forgotten that the Creator of the universe has so designed the Earth to have a perfect balance in everything – a balance that assures an independent web of life that is wonderfully self-sustaining and productive

(**World Scripture: A Comparison of Anthology and Sacred text** [1995 ed., 221]). God, in the creation event, intended man to be trustworthy and faithful steward of the Earth and everything on earth God created which were all good.

Yes, Humanity and Mother Earth are crying for justice. The greatest urgent call of the hour then is giving environmental justice utmost priority attention. How? By mainstreaming it. By putting it in the middle of stream, so to speak. The middle of the stream where the current is strongest. And talking about our justice system, by putting environmental justice at that part of our justice system which is most active, productive, lively, busy, etc. part. This, by the way, is the simple definition of “mainstreaming” (Webster’s New World College Dictionary, 866). Specifically, where will it be in our justice system? These are, of course, in the enforcement of our laws designed to protect the people’s right to a balanced and healthful ecology; the prosecution of violations of this right; and the adjudication aspect which refers to the deciding of actions and proceedings relative to the enforcement and/or prosecution aspects. This is where a “green” judicial system manifests its power and authority to be the protector and promoter of environmental justice. In this regard, we need more people like Tony and Oposa and Golly and their committed groups of environmentalists to storm the judiciary with cases for the sake of environmental justice.

As to the laws on the protection and enforcement of environmental justice, we have, hyperbolically speaking, truckloads of them (although smaller trucks than the PDAF scam papers and documents the NBI initially delivered to the Ombudsman). In the Philippines, for instance, we have a book-bound collection of such laws enacted prior to 2002 which our dear Tony Oposa has painstakingly put together in the book, **A Legal Arsenal for the Philippine Environment**. With Tony’s permission, the Supreme Court of the Philippines reprinted several hundred copies of the book for distribution to the Justices and judges and others. In the global arena, the United Nations has passed various conventions and resolutions on Climate Change, foremost of which is the UN Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol. Every year, the General Assembly tackles the issue of Climate Change. Perhaps of interest of you on the aspect of science, the scientific pieces of evidence contained in the report of the 4<sup>th</sup> Intergovernmental Panel on Climate Change may be very valuable and helpful.

During my three-year term as the Philippine Permanent Representative to the UN in New York (2007-2010), I had participated in various debates, dialogues, conferences on Climate Change and related issues such as energy and security, world financial and economic crises and disasters in the Asia Pacific Region.

I will go back to our backyard, and this time on the initiative of the Supreme Court to “green” the Judiciary. During my stewardship as Chief Justice, the first initiative undertaken was the hosting of the Southeast Asian Justices’ Symposium on the Law on Sustainable Development held in March 1999, whose final topic was on “Measures for Continuing Judicial Cooperation on Environmental Law in Southeast Asia”. During the tenure of Secretary Gozum of the DENR, the Court entered into a Memorandum of Agreement for a joint effort to maximize cooperation to achieve effective adjudication of environmental cases. We also established special courts for environmental cases.

After my retirement, the Supreme Court continued its proactive rule in the dispensation of environmental justice, thereby “greening” further the judicial system. It crafted and promulgated the Rules and Procedure for Environmental Cases (A.M. No. 09-6-8-SC) which took effect on 29 April 2010. Especially notable about this new Rules of Procedure are the two special civil actions that the Court adds to the Rules of Court, namely: 1) The Writ of Kaliksan or the Writ of Nature, and 2) The Writ of Continuing Mandamus. The writ of continuing mandamus is an adoption of doctrine laid down by the Court in its decision of 18 December 2008 in Manila Bay case (Metropolitan Manila Development Authority, et al. vs. Concerned Citizens of Manila Bay, et al., G.R. No. 171947-48, 18 December 2008). The “continuing mandamus” is an extensive, persistent and continuing order of the Court to implement the action plan to remedy the environmental degradation and restore the Manila Bay to the once productive state of its marine resources.

The theme of this **Environmental Law Talks 3** puts more emphasis on the use of science-based participatory governance and effective law enforcement and adjudication. This is a complex matter for it involves inquiry into the value of science and technology in environmental justice. It demands clear definition of participatory governance, which, in the first place, requires a separate understanding of the concept “participatory” and the concept of “governance”. Such understanding includes the



inquiry into the nature and extent of governance as well as the nature and scope of the element of participation in the enforcement and adjudication aspect of environmental justice. This is quite a tall order for it demands a thorough and

painstaking analysis and synthesis of the various components that go into these issues. We know that science and technology has a tremendous role in mitigating Climate Change. Any new science-based invention or policy to address Climate Change and the benefits of their transfers to areas most effective would go a long way in promoting environmental rights and safeguarding environmental justice. Participatory governance, which would involve all relevant agencies or instrumentalities of the government and the people themselves through their empowerment must be laid forth and pursued with focused courage and determination. The people must be involved for they themselves are the victims of any denial of justice to the environment.

I would expect, therefore, that at the end of the day, the bright minds here gathered - the experts on environmental law, the intellectual giants on environmental justice, the students of environmental law and justice, and those moved by a passion to save humanity and the world, would be able to formulate doable plans, programs and activities, and recommend effective policies that will significantly mainstream environmental justice through science-based participatory governance and effective law enforcement and adjudication. If you can accomplish this during this **ENVIRONMENTAL LAW TALKS 3**, and inspired by a "green" Philippine Judiciary you would be the first to do it, and you can re-proclaim what Chapter 19 verse 6 of the Book of Wisdom of the Bible proclaims: For all the creation, in its several kinds, were being made over anew, serving its natural laws, that your children might be preserved unharmed.

More power to the UC College of Law - the only "green" university; the only "green" College of Law. More power to the Konrad Adenauer Stiftung Rule of Law Programme Asia. May your tribe increase. I thank you. Continue to enjoy your "green" dinner. God bless all with a new face of the Earth.

## Photos of the Day

