

**Fighting for Justice, the Rule of Law, and Democracy in Africa:  
Lessons from Uganda**

**Address To The New York City Bar Association**

**By**

**Colonel (Rtr) Dr. KizzaBesigye**

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### *Opening Remarks*

Thank you for the very kind introduction and warm welcome, Elchi Nowrojee.

I would like to start by thanking the Cyrus R. Vance Center for International Justice for hosting this historic event.

I would in particular like to thank Mr. Alexander Papachristou for his unwavering dedication to the cause of freedom and democracy in Africa. It's hard to overstate how important it is to have reliable friends when you are in the trenches fighting for freedom.

Alex has been a source of great inspiration to many of us in Africa. I am particularly grateful to him for his wise counsel and support, always reminding us why democracy and the rule of law matters.

Thank you Alex for your support and friendship to the people of Uganda and Africa.

I would also like to thank the staff of the Cyrus R. Vance Center who have worked tirelessly to make this event possible. In particular, I would like to single out Dr. Brenda Kombo for her leadership in organizing this event.

I would also like to extend a special thank you to the African Affairs Committee of the New York City Bar for co-sponsoring this event. I understand from reliable sources that you have been a bulwark supporting the rule of law in Africa. I salute you for your dedication and contributions to a better Africa and a better world.

I see in this audience many friends and familiar faces. Thank you for welcoming me and for making me feel at home. It's good to be amongst friends. And it's especially inspiring to be amongst those who labor to promote justice and democracy around the world.

Distinguished guests, Ladies and Gentlemen.

### ***Introduction***

It's a unique and singular honor to stand here today to address this august institution which represents, in its finest form, the ideals and the pillars of an open, democratic society—the rule of law.

In a democratic society—and in a diverse and pluralistic society—it is to the Temple of Justice that we go for the peaceful and just adjudication of disputes.

It is at The New York State Supreme Court Building that it is written, with good measure, that:

***“The True Administration of Justice is the Firmest Pillar of Good Government.”***

It is also in the founding document of the modern constitutional government, The Magna Carta of 1215, that is written:

***“To no one will we sell, to no one will we refuse or delay right or justice.”***

These statements go to the very foundation of the rule of law—Justice.

*I am an African*

And it is justice, at its core, that is the foundation of democratic government, and without which there can be no open society.

It is with this firm understanding of the rule law that I stand before you today to talk about

*“Fighting for Justice, the Rule of law, and Democracy in Africa”*

I take my lessons from Uganda—that favored land from which I hail.

Despite our many problems, we still like to call it “The Pearl of Africa.”

Whenever I hear “Nkosi Sikelel’ iAfrika”—God Bless Africa—the anthem of Africa

I think of those rolling hills and the rugged ridges of Rukungiri, where I was born

I think of the verdant valleys of Northern Uganda

The green pastures of the West Nile

Mount Elgon and The Mountain of the Moon

I think of the Nile and Bwindi impenetrable forest

I think of the ancient heritage of Buganda and Bunyoro and the Lwo

Then I remember, with no small measure of pride—

That it was my ancestors—our people from all across Africa—

That erected the pyramids and invented the hieroglyphics.

That the first footsteps of man are found in the heart of Africa

When I remember all these, and the rich culture of our people, and the great civilizations they forged and will continue to forge until the end of time—then I find courage to stand here before you.

I find courage in my past and I am buoyed by hope for the future. As Thabo Mbeki would say, I am, after all, an African!

A Ugandan, yes! But above all an African!

*Personal Confessions*

Let me begin with a personal confession.

I stand before you as a man who has been living under the shadow of the law—not in its brilliant and luminous radiance.

I stand before you as a man charged with treason in his land of birth.

I am here today, outside Uganda, by the permission and grace of the Uganda High court, to which I am very grateful.

***What treason means***

I will begin by explaining the nature of the treason charges against me. There are, specifically, two charges against me.

During the last presidential campaign in Uganda, which culminated in the February 2016 presidential elections, which I contested and which I believe I won convincingly, I campaigned on one radical and threatening idea:

That all Ugandans—all my compatriots—must be citizens and not subjects.

That was the core of my campaign: *citizens versus subjects*.

To understand the force of my argument and the power of our campaign, we must briefly revisit the political history of Africa.

***The Colonial State in Africa.***

Colonialism in Africa stood for one radical idea: that no African could be a citizen.

And that by the edict of nature and some inscrutable faith, an African was forever consigned to be a subject.

Under apartheid, Africans were “*drawers of water and the hewers of woods.*”

The colonial state—and the entire edifice of the colonial system—were based on the belief and the simple premise that Africans were inferior human beings—beings destined to be governed by a stern state or a stern master.

This is the colonial idea of tutelage.

Africans were projected as naturally backwards and in need of tutoring in the art of modernity and civilized existence.

Upon this ideology was erected the concept of people as subjects. In fact, people as chattels.

In colonial Africa, Africans were simply subjects—people to be governed from a distant metropolis by unaccountable but “enlightened” despots.

Colonialism meant total domination: No power to decide how and by who people would be governed and no power over their resources (including their labor).

***The Neo-Colonial State in Africa***

After independence, the African elites inherited the colonial state and hardly buried or interred the colonial ideology that Africans are merely subjects. The African elites have used the same coercive tools to perpetuate monopolization of decision making, state institutions and resources.

The neo-colonial state—and most states across Africa are neo-colonial state—continue to treat Africans as subjects.

The colonial states turned Africans into subjects and the neo-colonial African states have perpetuated that colonial ideology.

Kwame Nkrumah

Patrice Lumumba

Steve Biko

Nelson Mandela—all the heroes of the pan-African liberation struggles—revolted and waged pitch campaigns of defiance against this racist ideology.

They refused—and defiantly did so—to accept Africans as mere subjects and not citizens.

They refused to accept that we, as Africans, are children of a lesser God.

***Pan-Africanism Redefined***

Thus, at the core of the pan-African liberation ideology is the radical belief that every African is a citizen.

That we are children of a benevolent God just as any other race on this earth.

That, my friends, is our campaign in Uganda.

That is our campaign of defiance.

The campaign that every woman and man and child in Africa is a citizen.

That every African—by birthright—is a citizen of our beloved continent.

That we, as citizens, determine how and who governs; that we control state institutions and our national resources.

***Masters, not Servants—My Act of Treason***

Where there are citizens, the people are the masters and the state is the servant.

Where there are subjects, the state is the master and the people are the servants.

This distinction—between citizens and subjects—is at the heart of our campaign in Uganda. We are simply seeking to democratize Uganda—to have free and fair elections, and to have basic human rights, including the right to free speech and assembly. That is the profound nature of our struggle.

That is the act of treason I have been charged with—that I dare, in the face of corrupt power, to say that Africans are citizens.

That is my act of treason.

And to that I plead guilty.

It's an honor to plead guilty. And I carry that charge, as an African and as a human being, as a badge of honor.

In the face of oppression and injustice, one must bear witness.

Today in Uganda I am a witness.

The second treason charge leveled against me is about the outcome of the February 2016 presidential elections.

With almost no exception, all election observers declared that the elections were deeply flawed and comprehensively rigged. For example, the Commonwealth Observer Group, the European Union Election Observer Mission, and United States Government declared the elections as “deeply inconsistent with international standards and expectations for any democratic process.”

The election returns received by my own party, the Forum for Democratic Change (FDC), show that I won the elections convincingly.

But a thoroughly compromised National Electoral Commission (NEC) declared the loser to be the winner.

So I did something entirely radical.

I asked for an independent international audit of the elections.

I said let's determine the winner of these disputed elections through an impeachable empirical audit.

For that I was charged with treason.

I was charged with treason for questioning the outcome of the rigged elections and for proposing that an objective audit should resolve the dispute.

## **Free and Fair Elections and the Rule of Law**

You might ask, rightfully, what do free and fair elections got to do with the rule of law?

### ***The Rule of Law v. Rule by Law***

You can have oppressive laws and you can have undemocratic laws.

Nazi Germany and apartheid South Africa illustrate why the phrase “the rule of law” can be meaningless, even dangerous, without the constraints or the requirements of justice.

The rule of law alone, in itself, is not sufficient in a democratic society.

The rule of law, to be beneficial and enlightened, must be undergirded by justice.

That is, the rule of law must be morally defensible.

In modern terms, it must be democratic; it must satisfy certain core requirements of an open and democratic society.

The two—the rule of law and democracy—are inextricably linked.

You cannot, in an enlightened society, have the rule of law without democracy; and you cannot have democracy without the rule of law.

### ***Democracy and Citizenship***

But what is democracy in the modern context?

Simply defined, democracy is rule by the people.

It means that the people are the masters. It means that a community of citizens and not a community of subjects.

It means, at its core, universal suffrage and the accountability of the government to the electorate.

But the people cannot govern as a mob. Democracy is not an exercise in mob rule. It must be structured through free and fair elections.

### ***Free and Fair Elections***

It means, therefore, that the will of the people must be expressed through regularly scheduled free and fair elections.

So democracy means, in brief, rule by the electorate through universal suffrage expressed through regularly scheduled free and fair elections.

That is also the definition of citizenship: the people as the electorates.

For elections are the instruments through which the people—not acting as a mob—exercise their power and will.

Where there are no free and fair elections—the process by which the government is held accountable—there can be no citizenship, and there can be no democracy.

In Uganda, we have not had genuinely free and fair elections since 1963.

Democracy and citizenship are inextricably linked.

We can therefore redefine and restate what democracy means.

It means government by citizens who exercise their rights of citizenship to hold their government accountable through regularly scheduled free and fair elections based on universal suffrage.

### ***The Rule of Law Restated***

Allow me, then, to redefine the rule of law as I understand it. As a civilian.

The rule of law must be based on rules made in a democratic society by citizens who exercise their rights of citizenship through governments that are elected through free and fair election based on universal suffrage.

That is the basic requirement and the foundation of the rule of law: free and fair elections based on universal suffrage.

But our restatement is still incomplete. It is still not sufficient.

The modern rule of law must, at a minimum, have protections of minorities, and must enshrine and respect the freedom of speech and assembly and the free exercise of religious beliefs.

For without these freedoms—freedom of speech, of assembly, and religion—you cannot have free and fair elections or a free society. Without these freedoms you cannot have a government that is accountable to the electorate.

And there is one other requirement: that good laws must be impartially enforced. In our case, we have on several occasions challenged presidential election rigging. Unfortunately, the courts have failed to enforce the law so that the candidate that rigs does not benefit from rigging.

### ***Citizenship and the Rule of Law***

We have defined citizenship as the right to hold the government accountable through regularly scheduled free and fair elections based on universal suffrage.

And you cannot have free and fair elections without the basic freedoms that I have just enumerated.

The rule of law, therefore, must be firmly based on the freedom of speech, freedom of assembly, freedom of religion—the pillars and foundations of a free, democratic society. They are also the foundations of citizenship.

Without citizenship you cannot have the rule of law—understood as laws based on substantive justice.

These, then, are the theoretical and ideological foundations of our struggle in Uganda and Africa:

the rule of law as the quest for justice and democracy.

The rule of law as the product of citizenship, and as the product of free and fair elections.

***The problem of democracy in Africa***

As I have stated earlier, the problem of democracy in Africa is the problem of elite politics divorced from the masses.

Effectively, in Africa, it often is the rule by minority—family, ethnic, racial, religious, Or a criminal syndicate, that has monopoly of coercive forces.

In Africa, the state has been the master, and the people have been the servants.

Instead of citizens, we have subjects. Instead of accountability of government, we have a predatory and parasitic government.

We have had a society of subjects and not citizens. This is the colonial legacy in Africa—a legacy our political elites have heartily embraced.

The people of Africa have, for the most part, remained supplicants to their governments. The strong man owns the country. The resources of the country are his own. “My army”;” my oil.”

***Legitimacy and the Rule of Law***

In a society of subjects, the concept of legitimacy is reversed. Instead of the government being accountable to the people, it’s the people who are now accountable to the government.

It is no longer government of law but government by law. More appropriately, government by fiat and dicta.

The government makes the law as it pleases. It holds the people accountable to its edicts, however grievous, bizarre or oppressive or predatory. Even the constitutions are merely indicative.

In a non-democratic society, there is no government of law.

For without citizenship, defined as participation in governance through free and fair elections based on universal suffrage, undergirded by the freedom of speech, assembly, and religion, there can be no rule of law.

***Africa, Pan-Africanism, and the Rule of Law***

The struggle in Africa is the struggle to reclaim citizenship and, therefore, to develop and enshrine the rule of law.

The colonial powers saw Africans merely as subjects. The African elites have continued that racist ideology of treating Africans as subjects and not citizens.

Let there be no doubt that no one can credibly claim to be a pan-Africanist or a defender of the African people who does not defend the right of every African to citizenship.

Please allow me to redefine pan-Africanism.

Pan-Africanism is an ideology which insists that every African is a citizen with inalienable rights, which must include the rights to free and fair elections through universal suffrage, and the freedom of speech, assembly and religion which make possible the rights to free and fair elections.

Let no African dictator claim, therefore, to be a Pan-Africanist.

### *Lessons from Uganda*

Our struggle in Uganda has been singular. How to restore the citizenship of our people.

That is my only commitment in politics: to finish the struggle for the African liberation. To allow every African to be a citizen.

And freedom begins with reclaiming one's citizenship.

Kwame Nkrumah was right: "seek ye first the political kingdom."

*I say, seek ye first to be a citizen before other blessings can be bestowed upon you. Seek ye first to be free.*

That is our campaign of defiance in Uganda—to complete the vision of Kwame Nkrumah and Patrice Lumumba and Steve Biko.

Just as during the struggle against colonialism and apartheid, we do not beg to be free.

You must walk for your freedom; you must march for freedom, and you must fight, with every sinew, for freedom if you are to be free.

Freedom is not given. Freedom is earned.

You go to jail for it, as did Mahatma Gandhi; as did Dr. Martin Luther King, Jr; as did Rosa Park; as did Vaclav Havel; as did Nelson Mandela; as did Wangari Maathai; as did Aung San Suu Kyi, among the great heroes of the universal struggle for freedom.

### ***Totalitarianism and Oppression Require Silence***

Totalitarianism and oppression succeed by enforcing silence.

- They want to silence the victims
- They want to silence the people of conscience
- They want to silence the witnesses
- They want no testimony or evidence against their evils

That is why totalitarian regimes and dictators rule by fear. They want to force the victims to police his or her conscience and remain silent.

They oppose freedom of speech and freedom of assembly because they want silence.

They muffle the press and the voices of freedom because oppression can only thrive where there is silence.

They jail their opponents because they want silence.

So I refuse to be silent.

Because there is only one moral response to oppression and injustice: you must stand up and bear witness.

The path to serfdom is paved by silence.

We must refuse to remain silent in the face of injustice and oppression.

- Mahatma Gandhi refused to be silent
- Kwame Nkrumah refused to be silent
- Dr. Martin Luther King, Jr refused to be silent
- Jomo Kenyatta refused to be silent
- Julius Nyerere refused to be silent
- Jaramogi Oginga Odinga refused to be silent
- Patrice Lumumba refused to be silent
- Leopold Senghor refused to be silent
- Steve Biko refused to be silent
- Rosa Park refused to be silent
- Vaclav Havel refused to be silent
- Nelson Mandela refused to be silent
- Elie Wiessel refused to be silent
- Aung San Suu Kyi refused to be silent

Please stand up and bear witness. Please refuse to be silent in the face of oppression.

Refusing to silent is our campaign of defiance in Uganda.

### ***DEFIANCE***

This means that our people's minds must be freed for them to take on the new status of citizens; they must acquire organizational tools that allow them to speak and act together in challenging domination; and lastly, they must together deny the dictators their cooperation until they concede that people are supreme.

In Uganda, we could have chosen force of arms to bring about regime change. That would require only a "few" guns because the regime lacks legitimacy. However, removing the regime by force of arms would only further militarize our national politics and lead to a new dictatorship.

Once you use force of arms, you are simply replacing the current guns with other guns. That has been the trend in Uganda since independence. But the new guns will not be controlled by the population, so they will start doing exactly what the old guns were doing.

Our campaign of defiance is intended to change the mind-set of Ugandans and to empower them so that they demystify the power of the gun and eventually overwhelm the gun through peaceful defiance.

And once that happens, it will be change forever. The people will know that they cannot be dominated and subjugated by the guns. That is our campaign.

That is our campaign of defiance—a campaign intended to silence the guns and to turn subjects into empowered citizens.

It is an ambitious pan-African project aimed at completing the task of decolonization by decolonizing the mind and setting free the people of Africa.

### *Conclusion*

Let me end by quoting a great African hero:

"It's the **little things** citizens do. That's what will make the difference. **My little thing** is planting trees."

That was the late Professor Wangari Maathai.

Please do your little thing.

In Uganda, I am doing my little thing by refusing to be silent.

And that is how we defend the rule of law and freedom and justice and democracy.

Please do your little thing! Thank you!

-END-