

HUMAN RIGHTS DEFENDER AT RISK

VERIFICATION REPORT

UNLAWFUL DETENTION OF MAÎTRE GUY HERVÉ KAM, CO-FOUNDER OF BALAI CITOYEN, BURKINA FASO

Arrest and Illegal Detention of Maître Guy Hervé Kam

On the night of January 24, 2024, Maître Guy Hervé Kam, prominent human rights activist and co-founder of WADEMOS Network member, Balai Citoyen was kidnapped at the Ouagadougou airport by men in civilian clothes, in stark contravention of Article 6 of Regulation No. 005/2014/CM/UEMOA on the harmonization of the rules governing the law profession in the West African Economic and Monetary Union, which stipulates that a lawyer cannot be summoned, arrested or detained without an order from the Prosecutor General or the President of the Chamber of Instruction and without the President of the Bar Association having been duly consulted.

He has since been detained in state security buildings. The Bar Association of Burkina Faso observes that his arrest and continued detention is in "deliberate and reckless disregard of the provisions guaranteeing the freedom and independence of the lawyer and the bar." Lawyers in Burkina Faso have staged a strike to protest against the arrest of their colleague.

The Burkinabé Constitution on the Right of Arrested or Detained Persons

According to the Burkinabe criminal procedure code of May 2019, Article 100-1:

"Everyone has the right to be judged within a reasonable time by an independent and impartial tribunal; the right to have the necessary facilities to exercise his defense and, in particular, to be assisted by a lawyer of his choice.

"Anyone charged with a criminal offense is presumed innocent until proven guilty according to law. He has the right to be examined by a doctor of his choice, to contact and see a member of his family.

"Any person accused of a criminal offense has the right to be informed, as soon as possible, of the nature and grounds of the accusation brought against him and of the rights which are guaranteed to him.

"No one can be forced to testify against himself or to confess guilt.

"No one may be arrested or detained except by a decision and under the effective control of the judicial authority.

"Pre-trial detention cannot exceed a reasonable duration, considering the seriousness of the facts alleged against the person indicted, accused, or accused and the complexity of the investigations necessary to uncover the truth.

The judicial authority ensures that victims are informed and guaranteed their rights during any criminal procedure."

According to Article 251-11, any statement obtained because of torture or similar practices cannot be used as evidence in proceedings, except to establish the responsibility of the perpetrator of the offense.

Article 251-22 says:

“If, for the purposes of the investigation, the judicial police officer is required to keep one or more people at his disposal, he cannot detain them for more than 48 hours.

“If there is serious and consistent evidence against a person likely to justify their indictment, the judicial police officer must bring them before the prosecutor without being able to keep them at their disposal for more than 72 hours.

“From the start of the measure, the judicial police officer informs the prosecutor, by any means, of the placement of the person in police custody and informs him of the reasons justifying this placement.

“The time limit (48 hours) may be extended by a further period of 48 hours upon authorization of the Faso prosecutor or the investigating judge.

“Police custody must take place in conditions which ensure respect for the dignity of the person.”

In spite of all these, , Maître Guy Hervé Kam continues to be detained without charge. Unfortunately, his arrest, only adds to a long string of unlawful arrests and detentions without legal recourse that have marked leadership in Burkina Faso under Captain Ibrahim Traoré.

This state of affairs is in direct violation not just of Article 3 of the Treaty on the West African Economic and Monetary Union but also of the African Charter on Human and Peoples Rights' of 1981 and the United Nations Universal Declaration of Human Rights of 1948.

Recommended Course of Action

WADEMOS Network Members in Burkina Faso recommend protests and statements calling for the civil rights of Maître Guy Hervé Kam be respected and for the Burkinabé government to effect his immediate and unconditional release.

References

LeMonde (2024) [Au Burkina Faso, les avocats en grève pour exiger la libération de leur confrère Guy Hervé Kam](#)

WeAfrica24 (2024) [Burkina Faso Lawyers Strike Against Arbitrary Arrest of Colleague Guy-Hervé Kam](#)

This report was compiled by David Asante-Darko for the WADEMOS Knowledge Hub in consultation with Prof Augustin Loada, Executive Director for the Centre for the Democratic Governance of Burkina Faso, a Member of the WADEMOS Network.