

MEMORANDUM

To: Ronald Dauphin Case File

From: Mario Joseph, Av., Bureau des Avocats Internationaux
Brian Concannon Jr., Esq. Institute for Justice & Democracy in Haiti

Date: August 7, 2009

Re: Legal Analysis of Ronald Dauphin Case

I. Background

Ronald Dauphin is a Haitian grassroots activist, customs worker and political prisoner. He is a member of the *Fanmi Lavalas* party, and was active in politics in the city of St. Marc. He has been imprisoned since March 2004¹, without trial, and his case has not progressed at all in the justice system since April 2007. Mr. Dauphin is represented by Attorney Mario Joseph of the Bureau des Avocats Internationaux (BAI), a public-interest law office in Haiti that handles political prisoner cases.

Mr. Dauphin is the last detainee held in the “La Scierie massacre” case. *Lavalas* opponents claimed that *Lavalas* officials and supporters killed over 50 people in the city of St. Marc, Haiti in February, 2004. Other La Scierie defendants include former Haitian Prime Minister Yvon Neptune and former Minister of the Interior Jocelerme Privert. No one has ever been convicted, or even tried in connection with the La Scierie incident. Louis Joinet, then the United Nations Commission on Human Rights' Independent Expert on Haiti, concluded after his investigation that there was no "massacre" at La Scierie as charged in court, but instead a clash between two armed groups with casualties on both sides.

II. Arrest

Mr. Dauphin was arrested by armed paramilitary troops on March 1, 2004 at the Delmas 33 police station, soon after the forced departure of Haiti's constitutional government on February 29. Mr. Dauphin was handed over to the police, and imprisoned at the Delmas 33 facility. There was no warrant for his arrest or initial detention, which makes both illegal.

III. Legal Proceedings

Mr. Dauphin's case, and all the La Scierie cases, were given to *Juge d'Instruction* Cluny Pierre-Jules of the St. Marc Trial Court on March 24, 2004. Under the Haitian system, the *Juge*

¹ Mr. Dauphin escaped from prison along with hundreds of other prisoners during a mass jailbreak on February 19, 2005. Under Haitian law, leaving through an open prison door is not a crime. He was re-arrested on July 22, 2006. Although there are reports that the 2006 arrest was connected to car theft and/or kidnapping, there was no warrant and there have been no additional charges filed against Mr. Dauphin.

d'Instruction carries out the principle pre-trial investigation. This investigation is required to be completed within three months. Judge Pierre-Jules, however, did not complete hers until September 14, 2005, almost 18 months later. On that day, Judge Pierre-Jules issued her *ordonnance* (analogous to an indictment in the U.S. system), ordering Mr. Dauphin and others to stand trial on charges of murder, arson and "massacre." Massacre is not recognized by Haiti's penal code as a crime.

Judge Pierre-Jules' *ordonnance* was immediately criticized, by the Chief of Human Rights for MINUSTAH, the United Nations Peacekeeping mission in Haiti, and by Haitian human rights groups. The accused appealed, and although their case should have been heard within one month, it was not heard until May 2006, almost eight months later. The Appeals Court then took over eleven months more to file its decision, which was issued on April 13, 2007.

The Appeals Court decision sharply criticized Judge Pierre-Jules' work on the La Scierie case. It cited "grave procedural errors," "violations of the right to defense," and "unjustified haste and deplorable thoughtlessness." The Appeals Court dismissed the charges against some defendants, but remanded the cases of Ronald Dauphin and others back to the St. Marc Trial Court "to repair the above-mentioned omissions and abuses of power."

In the two years since the Appeals Court's decision was delivered, the Haitian courts have not taken a single step to advance the case. The Chief Judge of the St. Marc court has not even assigned the case to a *Juge d'Instruction*, because the case file has not been returned to him from the Appeals Court.

Mr. Dauphin's attorneys have filed three requests for pre-trial release, on April 24, 2007, September 14, 2007 and January 22, 2008. None of these requests have been granted. The courts have never even issued a response to the first two of these requests. The third, filed on January 22, 2008, was not decided until May 29, 2008. After considering the case for five months, the judge hearing the release request refused to even consider it because the case file had not been returned to the Appeals Court.

IV. International Criticism of Case

In August 2006, Amnesty International called on Haiti's government to promptly bring to trial or release all political prisoners, condemning the prolonged detention of *Lavalas* activists as politically-motivated. In October 2006, the National Lawyers Guild urged the Haitian government to release the remaining political prisoners, with particular emphasis on the defendants held in the La Scierie case. On December 14, 2008, the International Association of Democratic Lawyers (IADL) unanimously passed a Resolution calling for an end to Mr. Dauphin's persecution. Later that month, the National Lawyers Guild and the American Association of Jurists wrote to Haiti's Minister of Justice, urging an end to Mr. Dauphin's mistreatment.

In May 2008, the Inter-American Court of Human Rights (IACHR) ruled that the State of Haiti had violated the human rights of former Prime Minister Yvon Neptune, another *La Scierie*

defendant, by holding him without trial for over two years with no proof he committed a crime. Mr. Dauphin has been held over twice as long as Mr. Neptune -- over five years now.

In late 2008, over 51 U.S.-based organizations signed a letter to President Preval urging him to ensure justice for Mr. Dauphin. The city council's of Berkeley California and

On June 11, U.S. Rep. Maxine Waters wrote to Haitian Prime Minister Michele Pierre-Louis and Secretary of State Hillary Clinton, urging them to ensure justice for Mr. Dauphin.

On August 7, 2009, Amnesty International issued an "Appeal Case" for Ronald Dauphin, which stated that: "the delay in bringing Ronald Dauphin to trial is unjustifiable and is politically motivated. The organization opposes Ronald Dauphin's continued detention without trial, which is in violation of his rights and urges the Haitian authorities to release him pending trial."

V. Prison Conditions

Mr. Dauphin is currently held in Haiti's National Penitentiary. Haiti's prisons are among the worst detention facilities in the Americas. The Inter-American Court on Human Rights called the prison conditions "inhuman," while a U.S. Court of Appeals likened them to conditions on slave ships. On March 29, 2009, Michel Forst, the UN Human Rights Council's Independent Expert on Haiti denounced the prison conditions as "cruel, inhuman or degrading treatment." Infectious and malnutrition-related diseases thrive because prisoners do not have adequate access to potable water, food, healthcare, shelter, or exercise. Cells are so overcrowded that many prisoners must take turns to sleep on the floor (the Red Cross recommends providing prisoners, in the *absolute worst situations*, a minimum of 2 square meters. The average in Haiti's National Penitentiary is .41 meters, less than a quarter of the minimum).

One of Mr. Dauphin's La Scierie co-defendants, Wantales Lormejuste, died of tuberculosis in prison in April 2007, while awaiting the Appeal Court's decision (that granted his pre-trial release, posthumously).