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They live in fear as he walks free

Women seek justice in suit against Haitian commander who has lived in NY since '95

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Even now, 11 1/2 years after she was gang-raped and beaten by masked men in military uniforms, the woman known as Jane Doe II recoils at giving any hint to her identity or whereabouts.

She won't say when she came to the United States from her native Haiti, except to confirm it was sometime last year. She won't say what state she calls home, what time zone she is in, how old she is, how old her four children are, or give the names of relatives.

One thing Jane Doe II will reveal is her indignation at knowing that the man she says was her chief tormenter, a convicted mass murderer and former Haitian military commander named Emmanuel Toto Constant, has lived in New York since 1995, virtually harbored by the U.S. government under murky circumstances despite a deportation order and a litany of atrocities linked to him.

Over time, that indignation has become too much to bear for Jane Doe II and for two other women, known as Jane Doe I and Jane Doe III, all of whom have been forced, by fear of Constant, to live in the shadows while he walks free. Using a law that permits victims of abuses committed overseas to pursue damages in American courts, they have filed suit in federal court in New York in hopes of punishing Constant.

"I don't see that I have a choice in the matter," Jane Doe II said in a telephone interview as she explained her pursuit of Constant, a reputed killer and torturer with a talent for dodging the law. "I have to stand up and demand justice and demand attention to what happened, because if I don't, it's going to keep happening."

Fueling the urgency of the lawsuit is the political chaos in Haiti, where Constant's critics fear he could go back to his old ways if he returns.

Since a February 2004 coup, the very thugs blamed for enforcing Constant's brutality in the 1990s have taken advantage of the power vacuum to regroup. Chief among them is Louis Jodel Chamblain, Constant's deputy when he commanded the notorious Revolutionary Front for Advancement and Progress in Haiti, or FRAPH, in 1993-94.

"Chamblain is just one step away from Emmanuel Constant, and he has political ambitions and he is in Haiti and he is free," said attorney Moira Feeney of the San Francisco-based Center for Justice and Accountability, which is representing the plaintiffs.

Both men fled Haiti in 1995 after the elected president, Jean-Bertrand Aristide, took power. Five years later, they were among dozens of ex-soldiers and paramilitary officers convicted in absentia for a 1994 massacre of Aristide supporters.

Chamblain slipped back into Haiti last year to help lead the coup that ousted Aristide. Three months later, a court overturned the massacre convictions.

Human rights activists said the ruling, along with other court decisions freeing accused human rights abusers, has set the stage for criminals to maneuver themselves into power after presidential elections next month.

Limited options for accusers

The situation has left Constant's accusers few outlets for pursuing justice.

For years, they demanded Constant be returned to Haiti, and in 1995 a U.S. immigration judge ordered Constant deported. Constant repeatedly appealed it on grounds he would face death or persecution under Aristide, and he was allowed to remain in the United States.

With Aristide now out of power and the massacre case overturned, human rights activists acknowledge that deporting Constant might not be the best thing after all.

"Right now there isn't a real rule of law, so it's possible he [Constant] could go back to doing some of the same things," said Brian Concannon, a lawyer who prosecuted the massacre case and who heads the Institute for Justice and Democracy in Haiti.

U.S. criminal courts have no jurisdiction over Constant's alleged crimes in Haiti. That leaves civil action, such as the lawsuit filed by the Jane Does, the only option.

Neither Constant nor an attorney has responded to the suit. Feeney said the next step is to request a default judgment against Constant, which would be followed by a hearing to determine damages.

Laying out the evidence

According to evidence presented in the 23-page lawsuit, Constant led his followers in a bloody campaign against opponents of military rule. Working alongside Haitian soldiers, Constant's FRAPH soldiers would attack known or suspected supporters of Aristide, abducting men from their homes and raping the girls and women, the suit says.

Sons were forced to rape their mothers, and victims were as young as 10 and as old as 80, it alleges.

One night in July 1994, several masked men came for Jane Doe II, a pro-Aristide activist. According to the suit, they beat and repeatedly raped Jane Doe II and her sister-in-law, causing injuries that led to her sister-in-law's death.

Jane Doe II remained in Haiti and continued to fight for democracy but fled after Aristide's overthrow.

Jane Doe I and Jane Doe III tell similar stories. Jane Doe I bore a child as a result of rape.

"If what had happened to me had happened to you, would you be able to sit quietly?" Jane Doe II said, speaking in the rich, throaty Creole of her homeland through an interpreter.

Constant remains a phantom-like figure, his presence felt by those who have known him but his physical being impossible to nail down.

From 1995 until 2001, he spent much of his time in Laurelton, Queens, at a home on a quiet avenue of Tudor-style houses with sweeping lawns and colorful flower beds.

In an interview with Newsday in September 2000, Constant, then 43, denied committing atrocities and called accusations against him "purely propaganda."

Last year, as turmoil in Haiti peaked, Haitian activists began anti-Constant protests in front of the house. Constant went underground.

On a recent afternoon, the barking of a small dog behind the door was the only sign of life at the house, a bit of an eyesore on the idyllic street of well-tended homes. The white paint was faded to gray, and the porch was laden with a tattered sofa, sacks of cast-off clothing and assorted junk, as if someone were moving out.

Constant did not reply to a written note left in the mailbox, and a woman who answered the phone insisted he did not live there and that she did not know his whereabouts.

Evading prosecution

The one place that should know about Constant - the Department of Homeland Security - won't discuss it, a reflection, the plaintiffs' attorneys say, of the role the U.S. government has played in Constant's ability to evade prosecution.

Constant, in several interviews after coming to the United States, said he was on the CIA payroll as it investigated what it viewed as the dangerously leftist Aristide regime. When, in 1995, the United States announced plans to deport Constant, he threatened to dish out more details of CIA involvement in Haiti, and he was allowed to remain in the country.

Since then, his case has bounced through several appeals. In September 2003, an immigration judge rejected his latest appeal, but there is no indication he was deported. He was in New York as late as January, when he was served with the lawsuit, and Feeney said he had been seen in the area since then.

An official with U.S. Immigration and Customs Enforcement in New York said it was not ICE policy to comment on individuals' files and he could not say where Constant was.

At a hearing last May on the Patriot Act, Rep. William Delahunt of Massachusetts described FRAPH as "a foreign terrorist organization, if there ever should be one," and asked the counterterrorism chief at the Department of Justice, Barry Sabin, to say where Constant was.

Sabin said he didn't know and promised to find out. A spokesman from the congressman's office said Sabin never followed up.

In the meantime, the U.S. government has trumpeted arrests of other alleged Haitian human rights abusers picked up as part of the No Safe Haven Initiative. It was launched by the federal government in 2000 to catch human rights violators in the United States and has resulted in several of Constant's co-defendants in the massacre trial being returned to Haiti.

Jane Doe II acknowledged the challenges of forcing Constant into court but said she hoped the lawsuit was a step in that direction.

"I think if it were just one voice crying out against him, maybe not, but we're not just one voice," she said of the lawsuit. "We're many voices joined together demanding justice, and with many together, the people will prevail."