

Yousuf v. Samantar : The Long Road to Justice

by Kathy Roberts

On 28 August 2012, U.S. Federal Judge Leonie Brinkema awarded \$21 million in compensatory and punitive damages against former Somali General Mohamed Ali Samantar. In a hearing before Judge Brinkema on 23 February 2012, General Samantar conceded his liability for torture, extrajudicial killing, war crimes and other human rights abuses committed against the civilian population of Somalia during the brutal Siad Barre régime, the military dictatorship that ruled that country from 1969 to 1991. After a remarkable journey that included more than 20 years of searching for justice and nearly 8 years of protracted litigation, plaintiffs Bashe Abdi Yousuf, Aziz Mohamed Deria (along with his sister Nimo Mohamed Dirie), Buralle Salah Mahamoud, and Ahmed Jama Gulaid faced Samantar down in open court – a man who had held great power in their country – and forced him to concede liability for his crimes.

I am a staff attorney at the Center for Justice and Accountability (CJA), an international human rights organisation dedicated to deterring torture and other severe human rights abuses around the world and advancing the rights of survivors to seek truth, justice and redress.

CJA's cases against three members of Siad Barre's régime — former Prime Minister and Minister of Defence Mohamed Ali Samantar, notorious war criminal Colonel Yusuf Abdi Ali (*aka* Tukeh), and former Chief of Investigations of the infamous National Security Service Abdi Aden Magan —

represent the first international effort to gain justice for the victims of this brutal regime and to end impunity for those responsible for a dark chapter of Somalia's history.

CJA and *pro bono* co-counsel Akin Gump Strauss Hauer & Feld LLP represent four Somali survivors in this lawsuit against General Samantar, who has lived in Virginia since 1997. It was my great privilege to stand with the plaintiffs in the case of *Yousuf v. Samantar*, and to present their testimony to the court last February. Our clients, and countless others, waited a long time for that day.



Yousuf v. Samantar: Plaintiffs and family in front of the Eastern District of Virginia court house (from left to right): Nimo Mohamed Dirie, Buralle Salah Mahamoud, Bashe Abdi Yousuf, Ahmed Jama Gulaid, Aziz Mohamed Deria

Background: A Dark Chapter in Somalia's History and in Our Clients' Lives

Throughout the 1980s, the *régime* of president and military dictator Siad Barre used increasingly repressive tactics to suppress dissidents from all clans. Somali armed forces were responsible for mass detentions of political prisoners, torture, and murder.

They were particularly ruthless in the northwestern region of Somalia, known today as Somaliland, and they targeted the majority clan in that region, the Isaaq. Government violence against Isaaq civilians reached its peak in the bloody 1988 siege of the regional capital Hargeisa, which claimed at least 5,000 civilian lives and displaced nearly half a million. When Barre's *régime* finally collapsed in 1991, Somalia was plunged into a chaotic internal conflict from which it has never recovered.

When he was arrested in 1981, Bashe Yousuf was a young businessman living in Hargeisa. He was educated, successful, and he had chosen, along with several friends, to donate money and volunteer time to support local health care and education. Perceived as a threat to the regime, Somali National Army (SNA) soldiers and National Security Service (NSS) agents imprisoned Bashe. They interrogated and brutalised him. They tortured him. After months of abuse and a sham trial, he was transferred to a military prison known as Labataan Jirow, where he spent seven years of solitary confinement in a tiny, vermin and rat-infested, concrete cell. By the time he was released in 1989, Hargeisa had been destroyed.

When he was arrested in 1984, Buralle Mahamoud was a goat-herder, as he had always been, as his family had been for generations. Government soldiers arrested him along with two of his brothers. They were tortured, and his brothers were summarily executed by the SNA in a massacre of Isaaq civilians, reprisals for advances by the Somali National Movement (SNM) in the "War of the Hills." Buralle and his brothers had never seen a member of the SNM before they were arrested.

In 1988, Aziz Deria was living in the United States, having already fled his homeland. Because his sister Nimo had remained in Somalia, she was able to testify that one morning in mid-June 1988, while bombs were falling on Hargeisa, government soldiers took their father at gunpoint. Their brother and cousin were taken soon after. Aziz and Nimo's loved ones were summarily executed along with thousands of other people who had committed no crime other than having been born Isaaq.

In that same month of June 1988, SNA soldiers took Ahmed Gulaid and 62 other Isaaq soldiers to Malko Durduro, beside the seasonal riverbed that runs

through the centre of Hargeisa. There they were tied together in small groups and systematically shot by firing squad. When Ahmed woke up, he thought he was dead, buried under the bodies of men he knew. But he climbed out of that mass grave and, miraculously, he survived.

General Samantar was responsible for what happened to each of these people, as the court's judgment affirms.

Early Litigation: The U.S. Supreme Court Refuses to Shield General Samantar

According to his testimony, General Samantar fled Somalia in 1991 with a suitcase full of money. He lived as a guest of the Italian government until 1997. That year, he made his way to Fairfax, Virginia, where he continues to reside today. When our clients learned that General Samantar was enjoying a comfortable retirement in the United States, they were appalled.

On behalf of our clients and with the support of many other survivors and witnesses, CJA filed a complaint against General Samantar with the U.S. District Court for the Eastern District of Virginia on 10 November 2004. We filed suit under two laws unique to the United States: the Alien Tort Statute and the Torture Victim Protection Act. The complaint alleged that General Samantar had command responsibility for the following violations of international law: extrajudicial killing; arbitrary detention; torture; cruel, inhuman or degrading treatment; crimes against humanity; and war crimes carried out by his subordinates during the 1980s.

General Samantar moved to dismiss the complaint on the ground that he was immune from suit under the Foreign Sovereign Immunities Act (FSIA) and under international law as a head of state. The trial court sided with General Samantar and dismissed the case. After years of litigation on the subject of FSIA immunity, in a 9-0 decision, the U.S. Supreme Court sided with our clients and reinstated their case, ruling that individual foreign government officials do not fall within the scope of that particular statute and therefore are not entitled to immunity based on it. This landmark decision is important not only for the case against General Samantar but for all human rights litigation in U.S. Courts.

Even after the U.S. Supreme Court's decision, General Samantar continued to resist. His attorney filed motion after motion to dismiss or delay confrontation with his accusers. But on 18 May 2011, after the U.S. State Department informed the trial court of its opinion that General Samantar was not entitled to immunity, the trial court certified General Samantar's last immunity appeal as frivolous.



Plaintiffs, family, and CJA attorneys in front of the United States Supreme Court. From left to right: Aziz Deria, Sabah Yousuf, Bashe Yousuf, Pamela Merchant, Beth Stephens, Andrea Evans

Discovery: Developing the Record in Somaliland, Djibouti, and the United States

In July 2011, believing that no serious challenges remained to block our clients' path to the courthouse,



The author, Kathy Roberts, July 2011 in Somaliland

CJA attorneys travelled to Somaliland with *pro bono* co-counsel from Akin Gump to meet clients, witnesses, and human rights partners.

Our primary objective was to prepare witnesses and clients to give testimony in the case against General Samantar, and we took the opportunity to meet with clients and witnesses for our other Somalia-related cases. We had the privilege of interviewing survivors and witnesses from all walks of life: from business people to government officials to soldiers to nomads. We spoke with elderly men and women and with those who had been children at the time of the conflict. A persistent theme with those we met was the simple and unanswerable question: Why doesn't the world care about what happened to us?

It was a moving experience for all involved to visit the sites of mass graves and executions in Berbera, Hargeisa, Gebiley, and in the surrounding areas. We found the graves in a various states of repair. Some were covered by squares of concrete; some were piled with rocks and protected by thorns; some were subject to erosion, leaving remains exposed to the sun; and some had been cut into where others had attempted to bury family members, stumbling onto mass graves that



Malko Durduro, July 2011

had not been previously marked. Representatives of the Somaliland War Crimes Investigations Commission (WICC) accompanied us with victims and witnesses who could tell us the details of what happened at each of the sites.

The WICC was established after flooding in 1997 brought unidentified bones to the surface in Hargeisa, especially around the notorious execution site known as Malko Durduro, reopening old wounds and resulting in cries for redress. We invited Jose Pablo Baraybar, Director of the Peruvian Forensic Anthropology Team (EPAF) to visit Somaliland with us so that he could conduct a preliminary analysis of the mass graves and, we hoped, to support transitional justice efforts in Somaliland.

That same month in Virginia, the parties began taking depositions, that is, taking sworn testimony of the parties and certain other witnesses in the presence of opposing counsel. Arguing that he was in ill health, General Samantar insisted that his deposition be split into several days. Plaintiff Bashe Yousuf attended the last day of General Samantar's deposition, and General Samantar's attorney took Mr. Yousuf's testimony the following day. The deposition of plaintiff Aziz Deria followed later in September.

Experts presented reports

During this phase of the litigation, our designated experts presented reports outlining their anticipated testimony at trial:

Former U.S. Ambassador to Somalia James Bishop submitted an expert report in support of his conclusion that human rights conditions in Somalia during the 1980s were often subject to major violations of international law; that the Barre *régime* was primarily (but not exclusively) responsible for these human rights violations; that the plaintiffs' allegations in the Complaint relating to their treatment by the Barre *régime* in which Samantar

served as Minister of Defence and Prime Minister are entirely consistent with the human rights abuses in Somalia and the conduct of elements of the Somali military and affiliated security agencies, including the National Security Service (NSS), in the 1980s; and that Samantar knew or should have known about the pattern of human rights violations committed by elements of the Somali military and affiliated security agencies in the 1980s.

Former Military Attaché to the U.S. Mission in Somalia Colonel Kenneth Culwell submitted an expert report regarding General Samantar's position in the command structure, and Anglo-Somali Society member and former legal adviser to the Somali government, Martin Ganzglass, submitted an expert report regarding availability of legal remedies in Somalia under Barre, and in the court systems of the Transitional Federal Government, Puntland and the Somaliland Republic since 1991.

Because the U.S. does not recognise any government of Somalia or Somaliland, Somalis and Somalilanders are not typically permitted visas to enter the United States. Therefore, in September 2011, CJA and Akin Gump attorneys travelled to Djibouti to take the trial depositions of four non-party witnesses who reside in Somaliland. At the same time, we worked with the U.S. Department of Homeland Security to secure approval of what is called Significant Public Benefit Parole so that those plaintiffs who resided in Somaliland might be allowed into the United States. As a result, in October 2011, plaintiffs Buralle

Mahamoud and Ahmed Gulaid travelled to the United States to present their deposition testimony in Virginia. They travelled to the United States once again at the end of January 2012 to attend the trial.

Trial: Proving General Samantar's Responsibility for Crimes Against Humanity, and War Crimes

Trial was scheduled to begin 21 February 2012 just after the President's Day holiday. After filing and losing two more motions to stay the proceedings, on the evening of 19 February 2012, General Samantar filed for bankruptcy, which automatically deprived the trial court of jurisdiction and imposed an immediate stay of the proceedings. Attorneys from CJA and Akin Gump flew into action, filing and winning an emergency motion to lift the stay on 21 February 2012 and securing a new trial date of 23 February 2012. On the morning of 23 February, General Samantar personally appeared in court to enter his default, conceding both liability and damages.

Judge Brinkema required General Samantar to enter his default in person and under oath, and she questioned him directly regarding his entry of default on all of the claims against him. He responded by acknowledging that his entry of default was voluntary, but then went on to say that he just wanted the proceedings to stop and that it did not mean he was guilty. The judge told him, "You can't have it both ways." She clarified that if he defaulted she would find him liable for all the claims against him. She added that the case would not stop; the plaintiffs would still have their day in court, after which she would award damages.

After General Samantar entered his default, CJA and Akin Gump attorneys presented the testimony of all our plaintiffs and several other key witnesses, as well as documentary evidence in support of compensatory and punitive damages.

One crucial piece of evidence we presented was a BBC radio interview General Samantar gave in 1989 about the operations in Hargeisa in June 1988. These are his words (you can hear them in his voice at cja.org):

I was there at that time, but I was not the commander of the unit. I was the higher-ranking person in Hargeisa; therefore, it was necessary those commanders to consult with me and to have directions from myself. As you know, the top person in the area of conflict should give the last okay. Yes, I give this okay. How to use tactically, how to employ the units; it was my task to give them directions and the directives.

Needless to say, the atrocities General Samantar's soldiers committed in Hargeisa in 1988, and

throughout the 1980s, were never "okay." At his deposition, General Samantar denied that this was his voice, denied that he made those comments, and even went so far as to suggest the attorney taking his deposition had fabricated the recording. To counter his denials, we presented the court with testimony from the original BBC reporter: She remembered the interview with General Samantar, and she identified his picture. She identified his and all the other voices on the recording. She remembered the hotel where she interviewed him. She could even recall the device with which she made the recording. We also submitted U.S. State Department cables discussing General Samantar's role in commanding the troops in Hargeisa in June 1988.

Further, we submitted the testimony of Colonel Yousuf Sharmarke, who had served as a military judge under General Samantar at the time these events took place, and for years before that time. Colonel Sharmarke was stationed in Garowe when the SNM entered Burao toward the end of May 1988. SNA communications systems went down. Whenever this would happen, the colonel would go to the radar station, which retained limited communications capabilities with an open line, and he would wait for his friend in Hargeisa to come on so he could check on his family. This day, after the SNM advanced to Burao, Colonel Sharmarke overheard a conversation between the dictator Siad Barre, General Samantar, and Colonel Kahia, the field commander in Burao. In this conversation, it was Siad Barre who cautioned against bombing the civilians. His exact words, in translation, as the colonel recalled them were:

"Samantar, Samantar, Samantar, don't be so quick. Don't be so quick in bombarding the town". Samantar said, "It is must that we do that."

We also submitted the testimony of Ibrahim Abdullahi, a civilian who was forced to bury hundreds of bodies in mass graves in Hargeisa, using his Caterpillar bulldozer. Finally, U.S. Colonel Kenneth Culwell testified about his inspection of the city of Hargeisa after it was bombed and how most of the damage was inflicted by SNA forces.

The court relied on these and other key pieces of evidence in its finding that General Samantar was responsible, that he directed his troops to commit these acts, and that punitive damages were appropriate.

After the Judgment: A Journey Far From Over

Our clients did something truly remarkable by following this road for so many years. In accordance with the rule of law, our clients set the record straight, proving General Samantar's responsibility for what he

personally oversaw, ordered, failed to prevent or punish, and what, as a result, our clients and their family members suffered. When he learned about the judgment, one of our clients, Aziz Deria commented:

Holding Samantar formally accountable for atrocities in Somalia's civil war is the best way for Somalia to move forward. Clan retribution can be set aside when people can be assured of justice through the legal system. I hope that this case can highlight to the Somali people that justice is attainable.

One of the convictions of our work is that it is impossible to move forward into normal life from a traumatic past without confronting and understanding that past. And facing the past requires not only holding individuals accountable for their actions but

also discovering and acknowledging the truth about what happened. It is no secret that there are other individuals who are responsible for atrocity crimes in Somalia – during the 1980s or in the years since – who still have not been held to account. Many families still do not know what happened to their loved ones. There are still many, many Somalis whose suffering has never been acknowledged in any formal way, not by a court, not by the international community, and often not even by each other. Many have died without ever seeing justice. So, while the road to this victory has been long, the journey is far from over.

(There have been further recent developments which will be reported in the next Issue of the Journal - Ed.)

Opening the Mass Graves of Somaliland

The photograph below shows Aziz Deria (see article above), crouching above the centre, at the Badkha 2 gravesite near Hargeisa, with relatives, behind, of persons missing from the 1984 massacre. The opening of such graves, in September 2012, was organised by the Peruvian Forensic Anthropology Team/*Equipo Peruano de Antropología Forense* (EPAF) in partnership with the Somaliland Government, as a part of the first phase of an international forensic training programme. The Center for Justice and Accountability (CJA) is a sponsor of this programme, which is helping to determine the fates of people lost during the civil war of the 1980s, through systematic exploration, *ante mortem* data collection and researches of mass and clandestine graves. The second phase of this project should have started on 5 February 2013 but it was postponed in the light of the British Government's travel warning of 27 January 2013 citing a 'specific threat to Westerners' (*See Editorial - Ed.*).





Posted on the EPAF/CJA blog by Wendy Slavica, archaeologist, 27 September 2012.

Participants have been sharing their experiences on the EPAF/CJA *Blog: Unearthing Evidence of War Crimes in Somaliland* (see photographs below and quotation from the blog) informing and reflecting on the search for the missing and the disappeared. This has been giving a glimpse into the process of fact-finding and forensic investigation of human rights violations in Somaliland.

The Peruvian Forensic Anthropology Team (EPAF) is a non-profit organisation that promotes the right to truth, justice, and guarantees of non-repetition in cases of forced disappearance and extrajudicial execution. Its founder and Director is Jose Pablo Baraybar (see photograph above). EPAF seeks to contribute to the consolidation of peace and democracy where serious human rights violations have taken place by working alongside the families of the disappeared to find their loved ones, gain access to justice, and improve the conditions affecting their political and economic development.

In post-conflict situations, EPAF advocates a humanitarian approach which prioritises families' rights to know about the fate of their disappeared loved ones without exclusively having to depend upon judicial processes that may or may not provide them with answers.

The experience of working on the graves can be profound and unsettling. The following account was



The Director of EPAF showing student Hibaaq the reconstruction of vertebrae. Posted by Becky Goodwin.

posted on the blog by participant Melissa Simmill:

This experience has been so far the most wonderful, terrifying, and exciting thing I have ever done. To be able to change someone's fate by retrieving them from a pit of horror and return them to their family and loved ones for a future with a proper burial full of respect and love is the most honourable thing I have ever had the opportunity to partake in. I mean yes, you can say it is spooky or even that we are weird for traveling thousands of kilometres and crossing an ocean to spend time with dead people... But the people who say those things have only a partial view of what we do. We are reuniting families, giving explanations for what has happened to somebody's somebody, and interpreting the past. It is a rush that motivates you from your inner core and moves you to keep going, keep learning, keep pursuing the truth. The people who do this as part of their daily lives are anything but weird and are not scared off by the spooky; they are heroic, and we are lucky to have been given the chance to work beside them.

The first skull we recovered was at first a little unnerving. I wasn't sure if I would be able to sleep without seeing it in my dreams, but then I noticed his teeth were perfectly straight, and I thought to myself, he must have had a nice smile. His shirt has cuffs like mine, and it was the same colour as the one my boyfriend was wearing before I left for this amazing journey. Then I heard Franco say he looks young, like

a teenager, and I thought that if that had been my fate I would hope someone would come find me and give me the respect I deserve by putting me in a proper resting place — one where my family could come visit and talk about my smile, and laugh about how clumsy I am. So I will be resting well tonight and the following nights to

come, knowing that I am part of helping return the boy with the beautifully straight teeth to a place of respect and dignity, and hopefully one day his family will be able to find him again and learn where his resting place is so they can get together and speak of his smile and quirks.



Aziz Deria talking to relatives of missing persons. Posted on the blog by Wendy Slavica.



Mohamed Ali Samantar, Prime Minister of Somalia 1987-1990, with Margaret Thatcher in 1987, Prime Minister of the UK 1979-1990