

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA

2004 DEC -1 P 4: 19

ALEXANDRIA DIVISION

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

BASHE ABDI YOUSUF, ET AL.

\*

Plaintiffs,

\*

Civil Action No. 1:04W1360

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v.

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MOHAMED ALI SAMANTAR

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Defendant

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**MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND FOR  
FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

Pursuant to Rule 12 (b)(1) of the Federal Rules of Civil Procedure, Defendant Mohamed Ali Samantar ("Defendant"), by and through undersigned counsel, Spirer and Goldberg, P.C. and Shaughnessy, Volzer, & Gagner, hereby moves this court to dismiss the Complaint of Plaintiffs Bashe Abdi Yousuf, John Doe I, Jane Doe I, John Doe II, John Doe III, and John Doe IV ("collectively, "Plaintiffs") for lack of personal jurisdiction over the Defendant pursuant to the common law head-of-state doctrine.

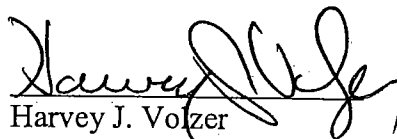
Pursuant to Federal Rule 12 (b)(6), Defendant further moves this Court to dismiss Plaintiffs' claims for failure to state a claim upon which relief can be granted, as Plaintiffs failed to comply with the requirement of exhaustion of remedies in the Torture Victims Protection Act ("TVPA"), 28 U.S.C. § 1350 note, § 2 (b), and failed to bring this action within the TVPA's ten-year statute of limitations provided in 28 U.S.C. § 1350 note, § 2 (c).

A Memorandum of Law in Support of Defendant's Motion to Dismiss and a form of Order accompany this Motion.

WHEREFORE, Defendant respectfully requests that this Court enter an ORDER  
DISMISSING Plaintiff's Complaint pursuant to Federal Rules of Civil Procedure 12  
(b)(1) and 12(b)(6).

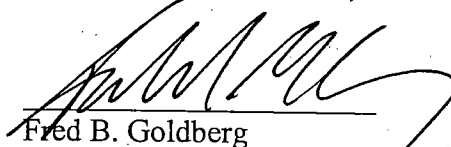
Respectfully submitted,

SHAUGHNESSY, VOLZER, & GAGNER



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IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

BASHE ABDI YOUSUF, ET AL.

Plaintiffs,

v.

MOHAMED ALI SAMANTAR<sup>1</sup>

Defendant

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Civil Action No. 1:04W1360

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO  
DISMISS FOR LACK OF PERSONAL JURISDICTION AND FOR  
FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

ARGUMENT

INTRODUCTION

Defendant Mohamed Ali Samantar ("Defendant") is immune from suit in the United States courts. At the time that Plaintiffs allege that they were victimized by members of the Somali Armed Forces and others, from approximately 1981 through 1989, Defendant was serving the Somali government in various senior capacities within the executive branch of government, as Minister of Defense, First Vice President, Acting President, and Prime Minister. The head-of-state doctrine and the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330, 1332, 1391, and 1602-1611 (2004), bar the courts of the United States from exercising personal jurisdiction over the leaders and

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<sup>1</sup> The court will please note the corrected spelling of Mr. Samantar's last name.

high-ranking officials of foreign countries and require dismissal pursuant to Federal Rule of Civil Procedure 12 (b)(1).

Plaintiffs also have failed to state a claim upon which relief can be granted this action and should be dismissed pursuant to Federal Rule of Civil Procedure 12 (b)(6). Plaintiffs' claims are time-barred, as the events alleged took place no later than 1989, and the Torture Victims Protection Act ("TVPA"), 28 U.S.C. § 1350 note, requires that actions be brought within a ten-year limitations period, 28 U.S.C. § 1350 note, § 2 (c). The same limitations period applies to Alien Tort Claims Act ("ATCA"), 28 U.S.C. § 1350.

Finally, because Plaintiffs could have brought an action in the functioning court system of Northern Somalia (Somaliland), this Court should dismiss the Complaint for failure to exhaust judicial remedies, as required by the TVPA, 28 U.S.C. § 1350 note, § 2 (b), and on the basis of forum nonconveniens.

## **BACKGROUND**

Defendant served as First Vice President and, in the President's absence, as Acting President of Somalia from January 1976 to December 1986. Affidavit of Defendant, Mohammad Ali Samantar ("Samanatar Affidavit") at paras. 3, 6 (Exhibit 1 hereto). He also served concurrently as Minister of Defense, from 1971 to 1980 and from 1982 to 1986. Samantar Affidavit at para. 2. During his tenure as Vice President and Defense Minister, Defendant performed various duties as a member of Somalia's executive authority, including conducting an official state visit to the United States during which he met with then Vice President George Bush, among other high-ranking

officials. Samanatar Affidavit at para. 8. In January 1987, Defendant was appointed Prime Minister and served in that position until approximately September 1990.

Samanatar Affidavit at para. 4. Again, he traveled to the United States in his official capacity, meeting in 1989 with Vice President Dan Quayle and Secretary of State James Baker. Samanatar Affidavit at para. 8.

During the period that Defendant held these positions within the Somali government, the United States maintained diplomatic relations with Somalia. Samanatar Affidavit at para. 7. Defendant served Somalia in an official capacity and as a representative of Somalia's executive throughout the years during which Plaintiffs allegedly were victimized. In addition, Somalia has never been designated a state-sponsor of terrorism under 50 U.S.C. App. § 2405 (j) or 22 U.S.C. § 2371 or otherwise been placed on a U.S. enemies list.

In 1990, Defendant stepped down as Prime Minister. The following year, after the collapse of the regime of President Muhammad Siad Barre, Defendant sought temporary asylum in Kenya and then emigrated to Italy. In June 1997, Defendant moved to the United States and took up his current residence in Fairfax, Virginia. Samanatar Affidavit at paras. 9-10.

## **THE COURT LACKS PERSONAL JURISDICTION OVER DEFENDANT**

### **The Head-of-State Doctrine Provides the Defendant**

#### **With Absolute Immunity from Suit ~**

The head-of-state doctrine has long been recognized at common law as providing foreign leaders absolute immunity from actions in the United States courts. See, In re

Grand Jury Proceedings, 817 F.2d 1108 (4<sup>th</sup> Cir. 1987), cert. denied, 484 U.S. 890 (1987); In re Doe, 860 F.2d 40, 45 (2d Cir. 1988); We Ye v. Jiang Zemin, 383 F.3d 620 (7<sup>th</sup> Cir. 2004); Lafontant v. Aristide, 844 F. Supp. 128 (E.D.N.Y. 1994); Abiola v. Abubakar, 267 F. Supp. 2d 907 (N.D. Ill. 2003); Kilroy v. Windsor, Civ. No. C-78-291 (N.D. Ohio 1978). Such immunity extends not only to sitting heads of state but also to past heads of state. We Ye at 881-83; Lafontante at 133-34; cf. In re Grand Jury Proceedings at 1111 (denying head-of-state immunity to former Philippine President Marcos because new government waived his immunity).

There can be no doubt that Defendant is entitled to head-of-state immunity for the period during which he served as Prime Minister (1987 to September 1990). See, Saltany v. Reagan, 702 F. Supp. 319 (D.D.C. 1988), order aff'd in part, rev'd in part on other grounds, 886 F.2d 438 (D.C. Cir. 1989), cert. denied, 495 U.S. 932 (1990) (granting head of state immunity to English Prime Minister Margaret Thatcher against claims by Libyan residents); see also, Restatement (Third) of Foreign Relations § 464 note 14. As Prime Minister of Somalia, Defendant acted as the head of a government recognized by the United States and is entitled to the protections accorded to one in his position. Thus, the Court must dismiss the claims made by John Doe II, John Doe III, and John Doe IV, all of which are based on alleged events that took place during 1988 and 1989.

Similarly, while there are few case authorities addressing Defendant's status during his tenure as Defense Minister and First Vice President, the authority that does exist suggests that cabinet members (and similar high-ranking officials) are entitled to head-of-state treatment. See, Schooner Exchange v. Mcfaddon, 11 U.S. 116, 138 (1812) (under international law, "all civilized nations allow to foreign ministers" the same

immunities as provided to the sovereign); Kim v. Kim Young Shik, Civ. No. 125656 (Cir. Ct. 1<sup>st</sup> Cir., Hawaii 1963) (recognizing immunity of foreign minister). Also, scholars considering the scope of head-of-state immunity for high-ranking officials similarly consider cabinet-level positions within the doctrine's penumbra. For example, at the Eighty-Fifth Annual Meeting of the American Society of International Law, Foreign Governments in United States Courts Proceedings, April 19, 1991 ("Foreign Governments") (reported in 85 Am. Soc'y Int'l L. 251, 276 (1991)), the following remarks were made:

The foreign minister - someone who is a *cabinet* member, perhaps, and enjoys top status in the government - generally seems to be accorded the same status as the head of state. Problems arise when you get down to the next level of government officials, though, because they are not really heads of state in any traditional sense.

Foreign Governments, note 71, at 275 (remarks of David A. Jones, Jr. (emphasis in original)). It follows that the head-of-state doctrine also provides Defendant with immunity for the period during which he served as First Vice President, Acting President, and Minister of Defense (1980-1986). Thus, this Court must dismiss the claims of John Doe I, Jane Doe I, and Bashe Abde Yousuf, all of which are based on alleged events that took place between 1981 and 1986.

Notably, head-of-state immunity is separate from, but also consistent with, the strictures of the FSIA. See, Abiola, 267 F. Supp. 2d at 913-14 (FSIA does not alter head-of-state immunity, noting that "[t]he FSIA's definition of 'foreign state' noticeably omits heads of state"); Lafontant, 844 F. Supp. at 137 ("that the FSIA is inapplicable to a head-of-state comports with both the history of the FSIA and the underlying policy of comity"); see also, In re Grand Jury Proceedings, 817 F.2d 1108, 1111 (4<sup>th</sup> Cir. 1987)

(holding the former Philippine President and his wife liable for failing to comply with grand jury subpoenas, but also that their head-of state-immunity had been waived by the new Philippine government).<sup>2</sup>

**PLAINTIFFS FAIL TO STATE A CLAIM  
UPON WHICH RELIEF CAN BE GRANTED**

**Plaintiff's Claims Are Time-Barred**

Plaintiffs have brought suit pursuant to the TVPA, 28 U.S.C. § 1350, note and the ATCA, 28 U.S.C. § 1350. For suits brought upon either basis, the federal courts have uniformly held the TVPA's ten-year statute of limitations governs questions of timeliness. See, Hoang Van Tu v. Koster, 364 F.3d 1196, 1199 (10<sup>th</sup> Cir. 2004); Deutsch v. Turner, 317 F.3d 1005 (9<sup>th</sup> Cir. 2003); Hilao v. Marcos, 103 F.3d 767, 773 (9<sup>th</sup> Cir. 1996).

Plaintiffs allege that they suffered injuries and death at the hands of the Somali Armed Forces and others between 1981 and 1989. According to the TVPA and cases interpreting the ATCA, these actions should have been brought no later than 1999.

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<sup>2</sup> Even if the Court were to restrict the Defendant's head-of-state immunity in some way (e.g., to the period during which the Defendant served as Prime Minister), the FSIA nevertheless prohibits this Court from exercising personal jurisdiction over him during the entire period of his official service to Somalia. Although the FSIA does not address directly its relationship to individuals holding official posts, the majority of federal courts have held that the FSIA applies not only to countries, but also to their officials, so long as the individuals involved are acting within the scope of their positions. Cabiri v. Assasie-Gyimah, 921 F. Supp. 1189, 1197-98 (S.D.N.Y. 1996) ("It is well-established that the FSIA provides immunity to individuals who are officials of a foreign government").

One of the few exceptions to FSIA immunity was created when Congress promulgated 28 U.S.C. § 1605 (a)(7)(A) (2004) (permitting jurisdiction over states and officials from states that sponsor terrorism) and the 1996 Flatow Amendment, P.L. 104-208, Div A, Title I, § 101(c) [Title V], 110 Stat. 3009-172 (creating a cause of action for victims of torture, extrajudicial killing, and terrorism). In enacting these Congress intended to "expand[] the scope of monetary damage awards available to American victims of international terrorism." H.R. Conf. Rep. No. 104-863, 987 (1996). In other words, by allowing victims of state-sponsored terrorism to bring actions against the responsible states or officials, Congress sought to increase the breadth of available remedies for acts such as torture and extrajudicial killing. Conversely, it follows that by specifically delimiting the reach of these provisions to state sponsors of terrorism, states not sponsoring terrorism (and their officials) should be accorded FSIA immunity.



Plaintiffs maintain, however, that equitable tolling should extend the limitations period for an additional 8 years. The facts pleaded do not satisfy the requirements for equitable tolling.

The Fourth Circuit determines whether to apply equitable tolling according to the "extraordinary circumstances" test, which requires the petitioner to present (1) extraordinary circumstances, (2) beyond his control or external to his own conduct, (3) that prevented him from filing on time. Rouse v. Lee, 339 F.3d 238 (4<sup>th</sup> Cir. 2003), citing Harris v. Hutchinson, 209 F.3d 325, 330 (4<sup>th</sup> Cir. 2000).

Where, as here, a plaintiff asserts fear of reprisal and inadequacy of the available court system as justification a delay in filing, equitable tolling may be permitted only when:

extraordinary circumstances outside of a person's control prevent him from timely asserting a claim. Hilao v. Estate of Marcos, 103 F.3d 767, 773 (9<sup>th</sup> Cir. 1996). Intimidation and fear of reprisal are extraordinary circumstances that warrant equitable tolling. Id. The effective unavailability of the courts system also constitute the type of extraordinary circumstances that would toll the statute of limitations.

Alexander v. Oklahoma, Case No. 03-C-133-E (N.D. Okl. 2004), aff'd, 382 F.3d 1206 (10<sup>th</sup> Cir. 2004). Further, as a general matter, the factual standard under the TVPA for application of equitable tolling is quite high. See, e.g., Hoang Van Tu v. Koster, 364 F.3d 1196, 1199-1200 (10<sup>th</sup> Cir. 2004) (In spite of "plaintiffs' poverty, their status as subjects of a Communist government, the Vietnam War, and their inability to travel, plaintiffs have made no showing sufficient to justify tolling . . ."). Moreover, the Eastern District of Virginia recently underscored that Plaintiffs bear the burden of adducing facts that warrant application of equitable tolling. Hall v. Johnson, 332 F. Supp. 2d 904 (E.D. Va

2004). Although Plaintiffs in the present action attempt to offer proof of extraordinary circumstances warranting tolling, they fail to justify application of the doctrine.

First, Plaintiffs contend that the limitations period should not begin to run until 1997, because they feared that, although the Barre government ceased to exist in 1991, bringing suit nonetheless would trigger reprisals. Complaint at paras. 81-84. The case cited by the Alexander court, Hilao v. Marcos, illustrates why Plaintiffs' circumstances could only have tolled the statute of limitations until 1990, when Defendant left office, or at best, 1991, when the Barre administration ended. In Hilao, the Plaintiffs brought an action for torture, disappearances, and summary execution. The court ruled that "[a]ny action against Marcos . . . was tolled during the time Marcos was president" because of fear of intimidation and reprisals, but no longer. Hilao at 773. See also, Deutsch v. Turner Corp., 317 F.3d 1005, 1028-29 (9<sup>th</sup> Cir. 2003) (affirming use of TVPA's ten-year statute of limitations for actions involving abuses committed by German and Japanese corporate interests during World War II and denying application of equitable tolling). Thus, to trigger equitable tolling, fear of reprisal by a political leader is limited to the period of the leader's power.

In addition, the Complaint fails to support the contention that bringing a legal action against Defendant while Plaintiffs were living in or had family in post-Barre Somalia represented a danger sufficient to warrant equitable tolling. The Complaint states that on or after 1991, Jane Doe I, John Doe II, and John Doe IV all returned to Somalia from their chosen countries of exile and claim residency there to date. Complaint at paras. 9-11, 13, 54, 58. John Doe I appears never to have left Somalia and currently resides there. Complaint at para. 45. Plaintiffs' decisions to return and remain

in Somalia suggest that they considered the area to be relatively safe, particularly after the departure of Barre. Indeed, although it is understandable that the Plaintiffs might return to Somalia in order to reconnect with family members, it is hardly conceivable that they would voluntarily remain in a country where they feared a recurrence of the type of victimization described in the Complaint. Also, the families of two of the Plaintiffs (John Doe I and Jane Doe I) fled to Ethiopia, and again, presumably would not have returned to Somalia unless the situation were reasonably safe. Complaint at paras. 45, 54. Finally, John Doe III lives in Kuwait (Complaint at para. 12) and Bashe Abdi Yousuf has been living in the United States since 1991. Complaint at para. 8. For Plaintiffs who have been living outside of Somalia, or whose families have been living outside of Somalia, the claim of fear of reprisal is particularly untenable.

In addition, Plaintiffs admit that they could have brought the action in Somaliland as early as 1993 (“a rudimentary civil administration was established there in 1993” Complaint at para. 85). Plaintiffs also could have filed suit in a jurisdiction far from Somalia, where Defendant would have had no power to exact revenge. If a suit were initiated in another country, the impact in Somalia would have been minimal: From February 1991 to June 1997, Defendant lived openly in Italy. Samantar Affidavit at para. 9 (“I lived in Italy and was readily known to living there. I was not in hiding. In Italy, my telephone number and home address were listed, and I never used a pseudonym.”). Defendant similarly has resided in the U.S. since June 1997, and this action could have been initiated since that date and within the appropriate limitations period. Samantar Affidavit at para. 10. Accordingly, Plaintiffs have had ample opportunity to bring an action against Defendant without fear of reprisal and, moreover, also have failed to

satisfy the second requirement for application of the doctrine – effective unavailability of a court system. For over ten years, Somaliland, Italy, and the United States all have been available to serve as a forum for this action.

Finally, Plaintiffs maintain that, until 1997, it would have been impossible to collect information to mount an action without fear of reprisal. Complaint at paras. 83-87. Again, this argument lacks support. Any chaos and tribal warring that characterized Somalia in 1991 continues to describe current conditions. Affidavit of Alessandro Campo (“Campo Affidavit”) (Exhibit 2 hereto) at paras. 13; Affidavit of Mohammed Haji Nur (“Nur Affidavit”) (Exhibit 3 hereto) at paras. 12-13; Affidavit of Mohamed Abdirizak (“Abdirizak Affidavit”) (Exhibit 4 hereto) at 9-11. Why the Plaintiffs point to 1997 as the first possible date after which they could bring suit and, presumably, conduct discovery is inexplicable, as the situation in Somalia did not change dramatically between 1991 and 1997. Campo Affidavit at paras. 12-13; Nur Affidavit at paras. 12-13; Abdirizak Affidavit at paras. 9,11. At a minimum, 1997 did not mark any particular turning point after which discovery would have been more feasible. Furthermore, Plaintiffs’ delay only makes discovery more difficult; with the passage of time, paperwork is lost or destroyed and witnesses’ memories fade.

In sum, the Plaintiffs victimization allegedly took place between 1981 and 1989. The ten-year statute of limitations expired in 1999 or, at the latest, assuming the availability of equitable tolling, in 2001, ten years after the Barre administration collapsed and the Plaintiffs could not reasonably have feared reprisal from the

Defendant.<sup>3</sup> Plaintiffs' claims now are time-barred and must be dismissed pursuant to Federal Rule of Civil Procedure 12 (b)(6).

**Plaintiffs Claims Should be Dismissed For  
Failure to Comply with TVPA's Requirement to Exhaust Their Legal Remedies and  
on the Basis of Forum Non-Conveniens**

The TVPA requires that “[a] court shall decline to hear a claim under this section if the clamant has not exhausted adequate and available remedies in the place in which the conduct giving rise to acclaim occurred.” 28 U.S.C. § 1350 note, § 2(c). Although “not intended to create a prohibitively stringent condition precedent to recovery under the statute” (Xuncax v. Granajo, 886 F. Supp. 162, 178 (D. Mass. 1995)), before bringing suit in the United States, the Plaintiffs first must have exhausted their legal remedies in Somalia or Somaliland.<sup>4</sup>

Once a defendant raises failure to exhaust local remedies as an affirmative defense and “makes a showing of remedies abroad which have not been exhausted, the burden shifts to the plaintiff to rebut by showing that the local remedies were ineffective, unobtainable, unduly prolonged, inadequate, or obviously futile.” Sinaltrainal v. Coca-Cola Co., 256 F. Supp. 2d 1345 (S.D. Fla. 2003); Barrueto v. Larios, 291 F. Supp. 2d 1360 (S.D. Fla. 2003) (failure to exhaust remedies is an affirmative defense under TVPA).

In the case at bar, as the Plaintiffs admit in their Complaint, Somaliland has a functioning government with a court system, where Plaintiffs' claims should have been

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<sup>3</sup> This date would be earlier for some of the Plaintiffs.

<sup>4</sup> While the exhaustion requirement is by its terms applicable to the allegations under the TVPA, claims based on a violation of international norms under the ATCA also may be subject to the same exhaustion requirement. Sosa v. Alvarez-Machain, 124 S. Ct. 2739, 2766 (2004).

brought. Complaint at paras. 85-87. The Somaliland judicial system is adequate and functions well free of political influence for claims of this nature. Campo Affidavit at paras. 6-7. Nur Affidavit at paras. 8-10. According to the U.S. State Department, a functioning judicial system has existed since at least 1988: "Somaliland's Government included . . . a functioning civil court system." Department of State 2003 Country Report on Human Rights Practices in Somalia (February 25, 2004); Department of State 2002 Country Report on Human Rights Practices in Somalia (March 31, 2003); Department of State 2001 Country Report on Human Rights Practices in Somalia (March 4, 2002); Department of State 2000 Country Report on Human Rights Practices in Somalia (February 23, 2001); Department of State 1999 Country Report on Human Rights Practices in Somalia (February 23, 2000); Department of State 1998 Country Report on Human Rights Practices in Somalia (February 26, 1999). Furthermore, Somaliland would permit a lawsuit to be brought there for events that took place in part in Mogadishu, which remains part of Somalia. Indeed, the laws of Somaliland provide a cause of action for victims of torture and killing. Campo Affidavit at paras. 6-9.

In determining whether a plaintiff has exhausted his remedies for purposes of the TVPA, the inquiry is whether a remedy is available and adequate. 28 U.S.C. § 1350 note, § 2(c). Given the availability of an adequate remedy in Somaliland, Plaintiffs' claims must be dismissed.

In addition to having failed to comply with the TVPA's exhaustion requirement, Plaintiffs' action also should be adjudicated in Somaliland because of the inconvenience of this forum to the witnesses and the difficulty associated with conducting discovery from the United States. Dismissal on the basis of forum nonconveniens is appropriate if a

defendant can demonstrate: “(1) that there exists an adequate alternative forum . . . and (2) that the ordinarily strong presumption favoring a plaintiff’s chosen forum is overcome by a balance of the relevant factors of private and public interest weighing heavily in favor of the alternative forum.” Aguida v. Texaco, Inc., 142 F. Supp. 2d 534, 538-39 (S.D.N.Y. 2001). As discussed above, Somaliland provides an adequate alternative forum and, as will be explained below, the private interests of the parties and witnesses, as well as the public interest of Somaliland, favor dismissal of this action.

As described in the Complaint, there are several reasons why Somaliland’s courts would be more appropriate to hear this action. First, the events complained of allegedly took place in Somalia. Second, four of the Plaintiffs currently reside in Somalia. Complaint at paras. 9-11, 13. Only one of the Plaintiffs, Mr. Yousuf, resides in the United States. Complaint at para. 8. Third, many of Defendant’s witnesses reside in Somalia or Somaliland. Samantar Affidavit at para. 11. Presumably, the same is true for the Plaintiffs’ witnesses. Fourth, most if not all of the documents relevant to Plaintiffs’ allegations and Defendant’s defense are in Somaliland or elsewhere in Somalia. Id. Finally, as the country that evolved in the aftermath of the Barre government, Somaliland and its citizens have a stronger interest in adjudicating Plaintiffs’ claims than the United States. Accordingly, Plaintiffs’ action should be dismissed on the basis of forum nonconveniens.

For the reasons stated above, Plaintiffs have failed to state a claim upon which relief can be granted and their action should be dismissed pursuant to Federal Rule of Civil Procedure Rule 12 (b)(6).

## CONCLUSION

The claims of Plaintiffs John Doe II, John Doe III, and John Doe IV must be dismissed because head-of-state immunity bars this Court from exercising jurisdiction over Defendant, as the events complained of allegedly took place while Defendant was Somalia's Prime Minister. Similarly, the claims of Plaintiffs John Doe I, Jane Doe I, and Bashe Abdi Yousuf also require dismissal pursuant to head-of-state immunity for the period during which Defendant served as First Vice President and Minister of Defense. Alternatively, Defendant is entitled to FSIA immunity.

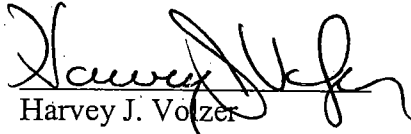
In addition to this Court's lack of personal jurisdiction over Defendant, Plaintiff's claims must be dismissed as untimely within the TVPA's ten-year statute of limitations, 28 U.S.C. § 1350 note, § 2(c), even if the Court grants some measure of equitable tolling (*i.e.*, through the end of the Barre era). Moreover, Plaintiffs have failed to exhaust appropriate local remedies in Somaliland, as required by section 1350 note, section 2(b) of the TVPA. Finally, because Somaliland is a more convenient forum to the parties, witnesses, and conduct of discovery, *forum nonconveniens* also warrants dismissal.

WHEREFORE, Defendant respectfully requests that this Court enter an ORDER DISMISSING Plaintiff's Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).



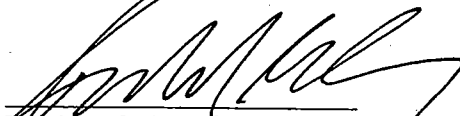
Respectfully submitted,

SHAUGHNESSY, VOLZER, & GAGNER



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IN THE UNITED STATES DISTRICT COURT FOR  
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Plaintiffs,

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Civil Action No. 1:04W1360

ORDER

Upon consideration of Defendant's Motion to Dismiss and the accompanying Memorandum of Law, and any opposition thereto, it is this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, hereby :

ORDERED Defendant's Motion to Dismiss is GRANTED and that

pursuant to Federal Rules of Civil Procedure 12(b)(1)

pursuant to Federal Rules of Civil Procedure 12(b)(6)

the claims of Plaintiffs, Bashe Abdi Yousuf, John Doe I, Jane Doe I, John Doe II, John Doe III, and John Doe IV are DISMISSED.

IT IS SO ORDERED

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

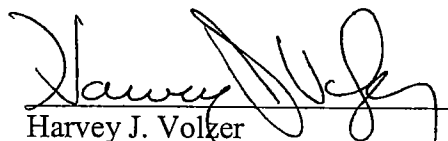
At Alexandria

Certificate of Service

I hereby certify that on this 1<sup>st</sup> day of December, 2004, the foregoing Motion Dismiss, Memorandum of Law, and Order were sent by U.S. mail, postage pre-paid to the following persons:

Robert R. Vieth  
Daniel J. Wadley  
Tara M. Lee  
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Harvey J. Volzer



IN THE EASTERN DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

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AFFIDAVIT OF MOHAMED ALI SAMANTAR

I, Mohamed Ali Samantar, under oath, do hereby state as follows:

1. I am over eighteen years of age and am otherwise qualified to testify to the facts and opinions set forth below. All of the facts and opinions rendered herein are based on my personal knowledge.
2. From 1971 to 1980, and again from 1982 to 1986, I served as Minister of Defense for Somalia.
3. From 1976 to 1986, I served as First Vice-President of Somalia.
4. From 1987 to September 1990, I served as Prime Minister of Somalia.
5. During my tenure as Prime Minister, the position also required that I act as the Co-Chairman of the Council of Ministers. In this position, I supervised the activities of several ministries, including, but not limited to, agriculture, transportation, health, and communication.
6. As First Vice President, I also was required to serve as Acting President in the event that the President was absent from the country while performing official visits or because of

health-related incapacity. I served as Acting President on several occasions.

7. At all times during my official service to Somalia, the government of the United States recognized the government of Somalia and maintained diplomatic relations. In fact, I was received by high-ranking officials during my state visits to the United States.
8. My first official visit was in 1983, during which I met with Secretary of Defense Caspar Weinberger and with Vice-President George Bush and, during that same visit, also was received by the Undersecretary of Foreign Affairs, the Director of the Central Intelligence Agency, and the Chairman of the Joint Chiefs of Staff. Again, in 1989, as Somalia's Prime Minister, I was received by Vice-President Dan Quayle and Secretary of State James Baker.
9. From February 20, 1991 to June 25, 1997, I lived in Italy and was readily known to be living there. I was not in hiding. In Italy, my telephone number and home address were listed, and I never used a pseudonym. There also were articles published about me that disclosed my residence in Italy, and I was in frequent correspondence with the United States and Italian consulates.
10. From June 26, 1997 to the present I have been living in Fairfax, Virginia. Again, my contact information is readily obtainable, as my telephone number and address are listed, and the Immigration and Naturalization Service documented my entry into the United States.
11. Many of the witnesses and documents relevant to the preparation of my defense are located in Somaliland or historic Somalia.

I declare under penalty of perjury that the foregoing is true and correct.

Mohamed Ali Samantar  
Mohamed Ali Samantar

State of VA  
County of Fairfax

Sworn to and subscribed before me on  
the 1<sup>st</sup> day of December, 2004

[Signature]  
Notary Public's Signature  
My Commission Expires 05/31/08





IN THE EASTERN DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

BASHI ABDI YOUSUF, et al.

Plaintiffs,

V.

MOHAMED ALI SAMANTAR

Defendant.

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Civil Action No. 1:04W1360

AFFIDAVIT OF ALESSANDRO CAMPO

I, Alessandro Campo, under oath, do hereby state as follows:

1. I am over eighteen years of age and am otherwise qualified to testify to the facts and opinions set forth below. All of the facts and opinions rendered herein are based upon my personal knowledge.
2. I am a graduate of the University of Rome 'La Sapienza' and hold a M.A. degree in law.
3. From March 1999 to December 2001, I served as the Legal Expert for the United Nations and the Italian Embassy to Somalia. I currently am employed as short-term expert (justice and home affairs sector) with an EC project in Albania.
4. Between September 23 to October 9, 1999, I participated in a mission of the United Nations Development Office for Somalia ("UNDOS") to assess the courts and judicial authorities in Somaliland. My trip resulted in the publication of "Assessment of the Judiciary System of Somaliland" for UNDOS.
5. I also am the co-author of a paper entitled "The Evolution and Integration of Different Legal Systems in the Horn of Africa: The Case of Somaliland" published in Global Jurist

Topics.

6. From my assessment of Somaliland's judiciary, and based upon information generated by the Somaliland Government that I deem to be reliable, there has been a relatively independent and functioning judiciary within Somaliland since 1991. This judiciary also receives international support, as do other of Somaliland's institutions.
7. Somaliland's judiciary is competent to hear claims such as these, for torture and crimes against humanity, and could do so relatively independent of political influence.
8. A Somali bringing a claim for victimization against a former member of the Barre administration could bring such a claim in Somaliland for events that took place in Somaliland, in 'Puntland' for the events that took place in North East Somalia, and in Mogadishu for the events that took place in Benadir Region that is the district around Mogadishu. Somalia is to be considered as a de facto federal State with three national authorities (including their own judicial systems and law enforcement agencies) that control different areas of the country, i.e. Somaliland for NW Somalia, Puntland for NE Somalia and the Transitional National Government for Benadir Region.
9. Somaliland's law provides causes of action for damages to victims of torture, prisoner abuse, and crimes against humanity.
10. In the event of a judgment, Somaliland's judicial system provides adequate mechanisms for enforcement.
11. After the fall of the Barre administration in 1991, a Somali bringing a claim for victimization against a former official of the Barre administration would have had little or no fear of reprisal for himself or family members still residing in Somaliland, the rest of Somalia, or outside of the area. The remnants of the Barre Administration do not exist in

Somalia, or outside of the area. The remnants of the Barre Administration do not exist in an organized fashion and would be incapable of taking retaliatory action against Plaintiffs or their families.

12. A Somali bringing a claim for victimization in the U.S. or elsewhere against a former member of the Barre administration would have no appreciably greater difficulty collecting information for that claim in 1991 than today.
13. The year 1997 marks no particular change in the situation outside of Somaliland (as chaotic conditions continue to exist to date) or in Somaliland (where relatively stable conditions have existed since 1991).

I declare under penalty of perjury that the foregoing is true and correct.

  
Alessandro Campo



IN THE EASTERN DISTRICT COURT FOR  
THE EASTER DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

BASHI ABDI YOUSUF, et al

Plaintiffs,

MOHAMED ALI SAMANTAR

Defendant.

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Civil Action No. 1:04W1360

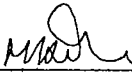
AFFIDAVIT OF MAHMOUD HAJI NUR

I, Mahmoud Haji Nur under oath, do hereby state as follows:

1. I am over eighteen years of age and am otherwise qualified to testify to the facts and opinions set forth below. All of the opinions rendered herein are based on my personal knowledge, information, or belief.
2. From 1973-1978, and again in 1980, I represented Somalia as the Somali Ambassador to the Sudan.
3. From 1978-1980, I represented Somalia as the Somali Ambassador to Kenya.
4. From 1981-1986, I represented Somalia as the Somali Ambassador to the United States.
5. From 1987-1990, I served as the Chairman of the Somali Ports Authority.
6. From 1991 through the present I have resided in the United States.
7. I am originally from an area now forming part of Somaliland, which was formed from the northern part of Somalia after the fall of the Barre administration in 1991.

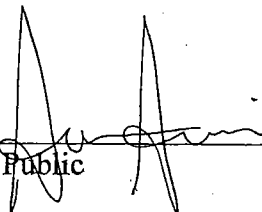
8. I closely follow the developments in Somaliland and the rest of Somalia, and I am knowledgeable about Somaliland's government and judiciary and the general state of affairs in the rest of Somalia.
9. A Somali bringing a claim for victimization against a former member of the Barre administration could have brought such a claim in Somaliland for events that took place in Somaliland or the rest of Somalia.
10. Somaliland's law provides cause of action for damages to victims of torture, prisoner abuse, and crimes against humanity.
11. After the fall of the Barre administration in 1991, a Somali bringing a claim for victimization against a former official of the Barre administration would have had no fear of reprisal for himself or family members still residing in Somaliland, the rest of Somalia, or outside of Somalia.
12. Conditions in Somalia, outside of Somaliland, since 1991 have been chaotic and characterized by tribal warfare. However, this situation should have no impact on the Plaintiff's ability to bring a claim against former Barre officials. The remnants of the Barre Administration do not exist in an organized fashion and would be incapable of taking retaliatory action against Plaintiffs or their families.
13. The year 1997 marks no particular change in Somalia's situation outside of Somaliland, as chaotic conditions continue to exist to date.
14. A Somali bringing a claim for victimization in the U.S. or elsewhere against a former member of the administration would have been able to collect information about his case since 1991.

I solemnly affirm under the penalties of perjury that the contents of the foregoing Affidavit are true to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Mahmoud Haji Nur

I, Anise Anni, a Notary Public in and for the State of VA, do hereby certify that Mahmoud Haji Nur subscribed his name to the foregoing document and made oath that the statements contained therein are true and correct to the best of his knowledge, before me on this 1st day December, 2004.

My commission expires:  
05/31/08

  
\_\_\_\_\_  
Notary Public





IN THE EASTERN DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

BASHI ABDI YOUSUF, et al.

Plaintiffs,

v.

MOHAMED ALI SAMANTAR

Defendant.

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Civil Action No. 1:04W1360

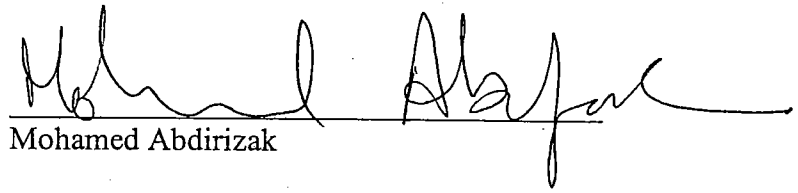
AFFIDAVIT OF MOHAMED ABDIRIZAK

I, Mohamed Abdirizak, under oath, do hereby state as follows:

1. I am over eighteen years of age and am otherwise qualified to testify to the facts and opinions set forth below. All of the facts and opinions rendered herein are based on my personal knowledge.
2. I was born and raised in Mogadishu, Somalia.
3. I left Somalia in 1986 to pursue higher education in the Pakistan, but I returned to Somalia in the summers of 1987 and 1988.
4. In 2000, I obtained a Masters Degree from the Johns Hopkins School of Advanced International Studies in Washington, DC.
5. In 2001-2002 I served with the United Nations Development Program for Somalia, operating out of Nairobi, Kenya.
6. During my tenure with the United Nations Development Program for Somalia, I made several missions into the Northwest region of Somalia, referred to as Somaliland.

7. Following the collapse of the Somali government in 1991, Somaliland unilaterally proclaimed its secession from the rest of Somalia and formed its own government and judiciary system over the following years. Somaliland has enjoyed stability from 1991 until the present, except for a brief period in 1994.
8. From my tenure with the United Nations Development Program's Somalia Country Office, I am aware that the United Nations funded and implemented a Rule of Law program with several components, including strengthening the Somaliland judiciary system and law enforcement.
9. Since 1991, Somaliland has been the only consistently stable region in Somalia. There have been brief periods of stability in other parts of Somalia since 1991, except perhaps Mogadishu, which experienced clan warfare. However, for over ten years, a Somali living in Somaliland, or another stable area of Somalia, would have been able to gather the necessary information to bring a claim against a former government official no differently than today.
10. I do not believe that a Somali would have a reasonable fear of reprisal for bringing claims against a former government official because the former members of the government did not have a unified political interest. The government was comprised of individuals from various clans with different political beliefs. Today, the remaining members of the government do not exist in an organized fashion and would be incapable of taking retaliatory action against Plaintiffs or their families.
11. The year 1997 marks no particular change in Somalia's situation.

I declare under penalty of perjury that the foregoing is true and correct.

  
Mohamed Abdirizak