

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

ALEXANDRIA DIVISION

BASHE ABDI YOUSUF, ET AL.

Plaintiffs,

v.

MOHAMED ALI SAMANTAR

Defendant

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Civil Action No. 1:04 CV 1360

REPLY 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

As a high-ranking member of Somalia's government from 1976 through 1990, Defendant Mohamed Ali Samantar ("Defendant") is immune from suit in the United States courts pursuant to the head-of-state doctrine. Despite Plaintiffs arguments to the contrary, the doctrine generally has not been applied as Plaintiffs would suggest – exclusively to sitting heads of state. Rather, courts and scholars have found that heads of government as well as cabinet members and other members of the executive fall within the doctrine's purview. Likewise shielded from suit are former officials, so long as any new government in the defendant's country has waived the former leader's immunity. There is no evidence here of any such waiver.

With regard to whether the situation in Somalia warrants equitable tolling of the statute of limitations, the Plaintiffs maintain that “stable conditions for victims of human rights abuses to consider bringing such claims did not exist even in Somaliland until 1997.” Plaintiffs’ Opposition to Defendant’s Motion to Dismiss and for Failure to State a Claim Upon Which Relief Can Be Granted (“Plaintiffs’ Opposition”) at 2. Even if true, and Defendant has presented evidence that an independent judiciary has existed in Somaliland at least since 1991, Plaintiffs entirely ignore that another available venue for bringing this suit also has existed since 1991, the year that Defendant moved to Italy. As will be discussed in greater detail below, Italy’s ratification in 1989 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Apr. 18, 1988, 1465 U.N.T.S. 85, G.A. Res. 39/46, 39th Sess., U.N. GAOR Supp. No 51, at 197, U.N. Doc. A/39/51 (1988) required the availability of a cause of action comparable to that available in the United States, which Plaintiffs elected not to pursue.

Similarly, Plaintiffs’ contention that until 1997 they could not have brought suit in any jurisdiction for fear of reprisal is without merit. First, after the collapse the Siad Barre government in 1990, an exiled former leader would have no power to exact revenge in Somalia against Plaintiffs for bringing a lawsuit outside of Somalia. As explained in several affidavits attached to Defendant’s Motion to Dismiss and for Failure to State a Claim Upon Which Relief Can Be Granted (“Defendant’s Motion”), the tribal conflict that has existed since the early 1990s has not involved any organized group of former government officials. See Affidavits of Alessandro Campo (“Campo Affidavit 1”) (Exhibit 2 to Defendant’s Motion); Affidavit of Mohammed Haji Nur (“Nur

Affidavit”) (Exhibit 3 to Defendant’s Motion); and Affidavit of Mohamed Abdirizak (“Abdirizak Affidavit”) (Exhibit 4 to Defendant’s Motion).¹ Indeed, many former officials were forced to leave the country, as was Defendant.

In addition, Plaintiffs state that “[e]ach of the Plaintiffs either resides in Somalia or has immediate family members there, dictating equitable tolling.” Plaintiffs’ Opposition at 19. According to the Complaint, however, many Plaintiffs and their families either have been living outside of Somalia altogether or may live in Somaliland (Complaint at ¶¶ 8-13, 36, 45, 54, 58, 64), which the Plaintiffs describe as having “obtained a minimum level [of] peace and security” and as “dominated by the Isaaq clan” (Plaintiffs’ Opposition at 6), the clan to which all of the Plaintiffs belong (Complaint at ¶¶ 8-13).

Further, Plaintiffs erroneously maintain that the requirement of the Torture Victims Protection Act (“TVPA”), 28 U.S.C. § 1350 note, for exhaustion of local remedies (a) has been satisfied because Somaliland’s courts do not provide available and adequate remedies, and (b) is inapplicable to the claims under the Alien Tort Claims Act (“ATCA”), 28 U.S.C. § 1350. As to the availability of an adequate remedy in Somaliland, as testified by Dr. Campo and verified by the United States Department of State, Somaliland has had a functioning judiciary for many years. Campo Affidavit 1 (Exhibit 2 to Defendant’s Motion) at ¶ 6; see, e.g., Dep’t of State 2003 Country Rep. on Human Rights Practices in Somalia (Feb. 25, 2004); Dep’t of State 2002 Country Rep. on

¹ If, as Plaintiffs maintain, the factual questions surrounding the issue of equitable tolling render it inappropriate for resolution in a motion to dismiss (Plaintiffs’ Opposition at 18, n. 14), the Court may and is request to convert Defendant’s Motion into a motion for summary judgment under Federal Rule of Civil Procedure 56. See Brown v. Zavaras, 63 F.3d 967, 969 (10th Cir. 1995). Defendant joins in Plaintiffs’ request that, in the event that the Court elects to consider Defendant’s Motion as one for summary judgment, discovery on this issue be had and evidence taken before the issuance of a ruling (Plaintiffs’ Opposition at 18, n. 14).

Human Rights Practices in Somalia (Mar. 31, 2003); Dep't of State 2001 Country Rep. on Human Rights Practices in Somalia (Mar. 4, 2002); Dep't of State 2000 Country Rep. on Human Rights Practices in Somalia (Feb. 23, 2001); Dep't of State 1999 Country Rep. on Human Rights Practices in Somalia (Feb. 23, 2000); Dep't of State 1998 Country Rep. on Human Rights Practices in Somalia (Feb. 26, 1999). Moreover, specific causes of action addressing torture and extrajudicial killing are available in Somaliland. Campo Affidavit 1 (Exhibit 2 to Defendant's Motion) at ¶ 9. As to the inapplicability of an exhaustion requirement to the ACTA (Plaintiffs Opposition at 22), the case law is hardly as uniform as Plaintiffs suggest. See, e.g., Sosa v. Alvarez-Manchain, 124 S. Ct. 2739, 2766 at n. 21 (2004).

Finally, Defendant's request that the action be dismissed on the basis of forum non conveniens is entirely appropriate. First, there is an adequate and available alternative forum – Somaliland. Second, both the private and public interests favor adjudication in Somaliland. Virtually all of the witnesses and relevant documents are located in Somalia or Somaliland. This point now is underscored by Plaintiffs' discovery requests (attached hereto as Exhibit 1); responding fully to many of the interrogatories and document requests would require access to persons and materials located in Somalia.

The public interest of Somaliland similarly should incline this Court to defer to its jurisdiction. Somaliland is governed largely by members of the Isaaq clan, who “established the Somali National Movement (“SNM”) to oppose the [Barre] government . . . [and] . . . [i]n response, the military government launched a brutal counterinsurgency campaign intended to eliminate the SNM and all other Isaaq clan opposition.” (Plaintiffs’

Opposition at 4). No other jurisdiction could possibly have a stronger interest in redressing Plaintiffs' alleged harms.

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") (Exhibit 1 to Defendant's Motion) at ¶¶ 3, 6. He also served concurrently as Minister of Defense, from 1971 to 1980 and from 1982 to 1986. *Id.* at ¶ 2. In January 1987, Defendant was appointed Prime Minister and served in that position until about September 1990. *Id.* at ¶ 4.

During the period that Defendant held these positions within the Somali government, the United States maintained diplomatic relations with Somalia. *Id.* at ¶ 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 1990, Defendant stepped down as Prime Minister. The following year, after the collapse of the regime of President Muhammad Siad Barre, Defendant was forced to flee Somalia and sought temporary asylum in Kenya. In 1991, he emigrated to Italy, where he lived until 1997. In June 1997, Defendant moved to the United States and took up his current residence in Fairfax, Virginia. *Id.* at ¶¶ 9-10.

**THE HEAD-OF-STATE DOCTRINE PROVIDES THE DEFENDANT
WITH ABSOLUTE IMMUNITY FROM SUIT**

**Head-of-State Immunity Encompasses Defendant's Positions as
Prime Minister, First Vice President, and Defense Minister**

The Defendant is entitled to head-of-state immunity. There is no dispute that Defendant served as a high-ranking official of the Barre government beginning in 1971 and that he assumed the position of Prime Minister in 1987. He worked in this capacity until the government's collapse in 1990. Samantar Affidavit (Exhibit 1 to Defendant's Motion) at ¶ 2-6; Plaintiffs' Opposition at 3. At common law foreign leaders are accorded immunity from actions in the United States courts. See, e.g., We Ye v. Jiang Zemin, 383 F.3d 620 (7th Cir. 2004) (granting head-of-state immunity to former President of the People's Republic of China) ; 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 Prime Minister of the United Kingdom).²

The cases cited by Plaintiffs against this proposition are easily distinguishable. First, in First American Corp. v. Al-Nahyan, 948 F. Supp. 1107, 1121 (D.D.C. 1996), the defendants had asserted head-of-state status, and were denied such, on the basis of their membership in the ruling family of Dubai, not their governmental positions. Id. at 1121. Similarly, in Republic of the Philippines v. Marcos, 665 F. Supp. 793 (N.D. Cal. 1987), the court declined to apply head-of-state immunity to the Philippine Solicitor General

² See also Kilroy v. Windsor, Civ. No. C-78-291 (N.D. Ohio 1978), excerpted in 1978 Dig. U.S. Prac. Int'l L. 641-43. Plaintiffs describe the case as being decided on diplomatic immunity grounds (Plaintiff's Opposition at 10), but the United States' suggestion of immunity in that case states "Under customary rules of international law, recognized and applied in the United States, the head of a foreign government, its foreign ministers and other diplomatic representatives, including senior officials on special diplomatic missions, are immune from the jurisdiction of the United States, Federal and State courts." 1978 Dig. U.S. Prac. Int'l L. at 642.

(clearly a position of lesser rank than those held by Defendant). However, the court also recognized that the head-of-state doctrine traditionally extends beyond the actual head of state to at least the foreign minister (citing The Schooner Exchange v. M'Faddon, 11 U.S. (7 Cranch 116) 74, 86-88 (1812)). Moreover, the Marcos court concluded that “there is no need for such a step [granting head-of-state immunity] in this case” because “if Ordonez is found to qualify as a diplomatic agent, he is entitled to all the privileges and immunities accorded any other such agent under the Vienna Convention.” 665 F. Supp. at 798. Finally, Plaintiffs themselves admit that, in El-Hadad v. Embassy of the United Arab Emirates, 69 F. Supp. 2d 69, 82 at n. 10 (D.D.C. 1999), the court did not rule on the question of head-of-state immunity. Plaintiffs’ Opposition at 9-10. Rather, they point to dicta that the Ministers of Higher Education and Scientific Education (again, inferior posts to that of Prime Minister, First Vice President, and Defense Minister) would not have been granted such immunity, had the court ruled on the issue.

None of the cases that Plaintiffs cite directly denied head-of-state immunity to an official with a rank of Prime Minister or Vice President, and Plaintiffs themselves recognize that significant contrary authority exists. Plaintiffs’ Opposition at 9-10. Neither this Court nor the Fourth Circuit has ruled on immunity for the most senior members of the executive branch of a foreign sovereign, and this Court is free to rule in this action based on the existing precedent, which largely supports head-of-state immunity for officials of the Defendant’s stature.

Residual Head-of-State Immunity Applies to Former Leaders

Plaintiffs similarly ask the court to take the narrowest of approaches with regard to whether the Defendant’s past service to Somalia qualifies him for immunity. Arguing

generally that former heads of state are not protected by the doctrine, Plaintiffs again attempt to support their position primarily through dicta. See Plaintiffs' Opposition at 10, citing "dicta" in El Hadad, 69 F. Supp. 2d 69, and referencing language in In re Mr. and Mrs. Doe v. United States, 860 F.2d 40, 45 (2d Cir. 1988) where the court failed "to reach the merits of the case." Similarly, Plaintiffs cite to First American Corporation for the proposition that head-of-state immunity applies only to a current leader – "a sitting head of state" (Plaintiffs' Opposition at 10, quoting First American Corp., 948 F. Supp. at 130). However, both defendants in that case were then present employees of the government of Dubai, one in a cabinet-level position. 948 F. Supp. at 1113. The quoted language was mere dicta explaining that neither defendant was a "sitting head of state." Id. at 1121.

Even less persuasive is Plaintiffs' reference to the court's grant of immunity to former President Jean-Bertrand Aristide as Haiti's "current" head-of-state in Lafontant v. Aristide, 844 F. Supp. 128 (1994). Rather than limiting head-of-state immunity to current leaders, as the quotation suggests, the court was distinguishing the ousted Aristide's position from that of the former Philippine dictator, Ferdinand Marcos. Both were exiled, but the United States no longer recognized the Marcos government, as President Corazon Aquino already had assumed leadership and disavowed immunity for Marcos. In contrast to Marcos' situation, the court reasoned, Haiti had not waived Aristide's "residual" head-of-state immunity and, as such, he was protected from suit. Id. at 133-34. Much like Aristide's circumstances, Somalia has no new government to disavow Defendant's immunity. Plaintiffs' Opposition at 6. Moreover, at all relevant times, the United States recognized the Barre government and maintained diplomatic

relations with Somalia, an important factor in the Lafontant court's holding. See 844 F. Supp. at 132-33.

In sum, while the case law on head-of-state immunity is not entirely settled, the weight of the authorities favors bestowing its protections on a former Prime Minister and First Vice President of a nation enjoying United States recognition, so long as the country involved, as here, has not waived the immunity to which the official may be entitled. See Schooner Exchange v. M'Faddon, 11 U.S. at 138 (foreign ministers are immune); Chong Boon Kim v. Kim Young Shik, Civ. No. 125656 (Cir. Ct. 1st Cir., Haw. 1963), excerpted in 58 Am. J. Int'l L. 186 (1964) (Foreign Minister immune); Lafontant v. Aristide, 844 F. Supp. 128 (E.D.N.Y. 1994) (former President immune); Saltany v. Reagan, 702 F. Supp. 319 (D.D.C. 1988) (Prime Minister immune); Abiola v. Abukar, 267 F. Supp. 2d 907 (N.D. Ill. 2003).³ In the case at bar, Defendant is entitled to immunity and the dismissal of Plaintiffs' claims.

**PLAINTIFFS' CLAIMS ARE TIME-BARRED
AND EQUITABLE TOLLING, IF APPLICABLE,
WOULD NOT RENDER SUCH CLAIMS TIMELY**

Plaintiffs contend that equitable tolling extends the ten-year statutory tolling period, 28 U.S.C. § 1350 note, § 2(c), until 2007 for events that allegedly took place between 1981 and 1989. While Defendant agrees that some degree of leniency in the filing deadline is appropriate in this case, the approximately two-decade extension that Plaintiffs seek is not.

³ Plaintiffs correctly point out that in several of the cases discussed above, the Department of State ("DOS") had intervened and arranged for the filing of a suggestion of immunity on behalf of the defendant asserting head-of-state immunity. In all of those cases, the DOS's request for immunity was honored and almost uniformly held to be dispositive in granting immunity. See, e.g., Wei Ye v. Jiang Zemin, 383 F.3d 620 (7th Cir. 2004); Lafontant, 844 F. Supp. at 134. However, the absence of a suggestion of immunity does not bar a recognition of immunity. See, e.g., Abiola v. Abubakar, 267 F. Supp. 907, 915, 917 (N.D. Ill. 2003).

Plaintiffs acknowledge that equitable tolling is appropriate only where “extraordinary circumstances” beyond a plaintiff’s control prevented timely filing. Plaintiffs’ Opposition at 14, quoting Rouse v. Lee, 339 F.3d 238, 246 (4th Cir. 2003). However, they ask this Court to extend the tolling period well beyond the time during which such circumstances may have existed. Plaintiffs’ Opposition asserts two circumstances which they purport to warrant tolling until 1997: (a) Defendant’s establishment of residence in the United States in 1997; and (b) the “chaos and anarchy that pervaded Somalia until at least 1997,” which prevented “investigation necessary to bring a case under these statutes.” Plaintiffs’ Opposition at 13. Plaintiffs’ first argument is simply misplaced and the second unpersuasive on the basis of the facts set forth in the Complaint.

The Plaintiffs cite the legislative history of the limitations provision in the TVPA to demonstrate that the ten-year limitation is subject to “all equitable tolling principles.” Plaintiffs’ Opposition at 15, quoting S. Rep. No. 249, 102d Cong., 1st Sess. (1991), at 10-11. Defendant has no quarrel with this analysis. However, he disagrees with Plaintiffs’ assertion that, under the TVPA and ACTA, which share the limitation provision expressed in Section 1350, note, § 2(c), “the statute of limitations is tolled until the defendant enters the United States and is subject to the jurisdiction of the federal courts.” Plaintiffs’ Opposition at 16. This simply is not the case, if outside of the United States there exists:

any jurisdiction in which the same or a similar action arising from the same facts may be maintained by the plaintiff, provided that the remedy in that jurisdiction is adequate and available It should also be tolled where the defendant has concealed his or her whereabouts or the plaintiff has been unable to discover the identity of the offender.

Plaintiffs' Opposition at 15-16, quoting S. Rep. No. 249, 102d Cong., 1st Sess., at 11.

Plaintiffs wrongly describe Defendant's proposition of the availability of an Italian remedy as "ha[ving] no bearing on the statute of limitations issue" and suggest that the question of bringing suit in Italy "confuses the doctrines of statute of limitations and exhaustion of remedies." Plaintiffs' Opposition at 20. The Congressional language quoted above makes clear that the statute of limitations will begin to run whenever the complainants have an adequate remedy in any jurisdiction, be it Italy or Somaliland, in which to bring the same or a similar action.

Defendant lived openly in Italy from 1991 to 1997. Samantar Affidavit (Exhibit 1 to Defendant's Motion) at ¶ 9. According to Alessandro Campo, a licensed Italian lawyer, who has been employed as the Legal Expert for the United Nations and the Italian Embassy to Somalia, Plaintiffs could have brought an action similar to that before this Court in Italy during this entire period. Campo Affidavit 2 (attached as Exhibit 2 hereto). In his recent affidavit, Mr. Campo confirms that:

according to Art. 5 of the UN Convention against torture, cruel or inhuman punishment or treatment (which Italy has ratified), a Somali could have brought an action against Mr. Samantar in an Italian court at a time during the period from February 20, 1991 (when Mr. Samantar moved to Italy) to November 9, 1997 (when Mr. Samantar left Italy).

Campo Affidavit 2 at ¶ 7.

In light of the above, it is undeniable that Plaintiffs could have initiated an action in Italy that would have been "adequate and available," as Congress envisaged. See S. Rep. No. 249, 102d Cong., 1st Sess., at 11. Moreover, as will be discussed in greater detail in the section on forum non conveniens, Mr. Campo, who also is an expert on Somali law and served as a participant in a United Nations Development Office mission

to assess Somaliland's courts and judicial authorities, is of the opinion that "adequate and available" remedies also have been available in Somaliland at least since 1991.

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 Somaliland's judiciary is competent to hear claims such as these, for torture and crimes against humanity.

Campo Affidavit 1 (Exhibit 1 to Defendant's Motion) at ¶¶ 6-7.

Mr. Campo also disputes Plaintiffs' second basis for equitable tolling – that "fear of reprisal from the military by both plaintiffs and potential witnesses justifies tolling the limitations period in ACTA and TVPA cases." Plaintiffs' Opposition at 17. As stated in the affidavit attached to Defendant's Motion, Mr. Campo believes that conditions in Somalia since the fall of the Barre administration do not preclude investigation and do not present a risk of reprisal.

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 an organized fashion and would be incapable of taking retaliatory action against Plaintiffs or their families.

Campo Affidavit (Exhibit 1 to Defendant's Motion) at ¶ 11.⁴

⁴ Hilao v. Marcos, 103 F.3d 767, 773 (9th Cir. 1996), referenced in Defendant's Motion, further buttresses Defendant's view that 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 and Plaintiffs were free to bring suit in Italy or Somaliland. In Hilao, the court ruled that "[a]ny action against Marcos . . . [for torture, summary execution, and disappearances] . . . was tolled during the time Marcos was president" because of fear of intimidation and reprisals, but no longer. Hilao at 773. Plaintiffs attempt to circumvent this ruling by referencing the lower court's findings (910 F. Supp. 1460, 1463 (D. Haw. 1995) that Marcos had fled to the United States after his ouster. Plaintiffs' Opposition at 17, n. 10. According to Plaintiffs, this represents proof that the unspoken reasoning behind the Hilao ruling was that Marcos' entry into the jurisdiction of the U.S. courts corresponded to the end of the tolling period. This view is consistent with Plaintiffs' erroneous reading of the TVPA's legislative history, but inconsistent with the court's opinions in both Hilao cases. Plaintiffs' Opposition at 17, n. 10.

Moreover, contrary to what Plaintiffs state in their Opposition, it appears that few Plaintiffs or their family members live (or have lived) in the part of Somalia that they describe as suffering from “chaos and clan-based warfare” (Plaintiffs’ Opposition at 18). According to the Complaint, many Plaintiffs and their family live outside of Somalia altogether or may be living in Somaliland (Complaint at ¶¶ 8-13, 36, 45, 54, 58, 64). For several family members, the Complaint provides no information. A brief summary of the Plaintiffs’ allegations in the Complaint with respect to their whereabouts and those of their families illustrates the point.

Plaintiff	Allegation dates	Where plaintiff resides	Where family resides
Bashe Abdi Yousuf	1981-1982; 1982-1989 (Complaint at ¶¶ 26-45)	Fled Somalia in or around May 1989; resides in US (Complaint at ¶ 36, ¶ 8)	No information
John Doe I	1984 (Complaint at ¶ 37)	Remained in N. Somalia (Complaint at ¶ 45, ¶ 9)	Extended family fled for safety to refugee camp in Ethiopia (Complaint at ¶ 45)
Jane Doe I	1985-89 (Complaint at ¶¶ 46-53)	Fled Somalia in 1989; returned to Somalia in 1991 (unclear where) (Complaint at ¶ 54, ¶ 10)	Family was in refugee camp in Ethiopia (Complaint at ¶ 54)
John Doe II	1988 (Complaint at ¶¶ 55-58)	Fled Hargeisa and returned to Somalia in 1991 (unclear where) (Complaint at ¶ 58, ¶ 11)	No information
John Doe III	1989 (Complaint at ¶¶ 59-60)	Hid in Hargeisa and subsequently fled Somalia; lives in Kuwait (Complaint at ¶ 64, ¶ 12)	No information
John Doe IV	1989 (Complaint at ¶¶ 65-66)	Somalia (unclear where) (Complaint at ¶ 13)	No information

From the above, it is clear that Plaintiffs Bashe Abdi Yousuf and John Doe III have alleged no facts supporting their position that fear of reprisal warrants equitable tolling, as neither of them resides in Somalia and neither has alleged that family members reside (or resided) in Somalia after Barre was overthrown. Indeed, none of the Plaintiffs state where in Somalia they and their families reside and under what circumstances (e.g., in hiding in Northern Somalia or living openly in Somaliland, an area dominated by Plaintiffs' own Isaaq clan). Accordingly, they have failed to allege facts sufficient to raise the issue of equitable tolling on the basis of fear of reprisal.⁵

As noted in Defendant's Motion, 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). Plaintiffs in the present action have failed to justify application of the doctrine of equitable tolling, and their claims now are time-barred and must be dismissed.

**PLAINTIFFS CLAIMS SHOULD BE DISMISSED FOR
FAILURE TO COMPLY WITH TVPA'S REQUIREMENT TO
EXHAUST LOCAL REMEDIES AND ON
THE BASIS OF FORUM NON CONVENIENS**

Plaintiffs Have Not Exhausted Their Remedies in Somaliland

The TVPA requires that, before bringing suit in the United States the Plaintiffs first must have exhausted their legal remedies in Somalia or Somaliland. See 28 U.S.C. § 1350 note, § 2(b). As Plaintiffs correctly note, the exhaustion requirement generally has been held to apply only to Plaintiffs' TVPA claims. Plaintiffs' Opposition at 22.

⁵ Plaintiffs' decisions to return and remain in Somalia also suggest that they considered the area they chose to settle in to be relatively safe after the departure of Barre.

However, in discussing exhaustion within the context of ACTA, the U.S. Supreme Court in Sosa v. Alvarez-Manchain, 124 S. Ct. 2739 (2004), noted:

[T]he European Commission argues as amicus curiae that basic principles of international law require that before asserting a claim in a foreign forum, the claimant must have exhausted any remedies available in the domestic legal system, and perhaps in other fora such as international claims tribunals. See Brief for European Commission as Amicus Curiae 24, n. 54 (citing I. Brownlie, Principles of Public International Law 472-481 (6th ed. 2003)); cf. Torture Victim Protection Act of 1991, § 2(b), 106 Stat 73 (exhaustion requirement). We would certainly consider this requirement in an appropriate case.

124 S. Ct. at 2766 n. 21 (emphasis added). The Supreme Court's dicta in Sosa suggests that this Court would be free to apply an exhaustion requirement if the Court deems such a measure "appropriate" in the instant action.

In any event, once a defendant "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, 1357-58 (S.D. Fla. 2003) (quoting S. Rep. No. 249 , 102d Cong., 1st Sess. (1991)).⁶

Plaintiffs have failed to make an adequate showing of exhaustion for those claims, thus requiring dismissal or, at best, they have presented some evidence for a different view of Somaliland's courts than that described by Defendant's legal expert, Mr. Campo. Plaintiffs' Opposition at 24-25. If the court determines that Plaintiffs have made a sufficient showing to withstand a motion to dismiss on the pleadings, Defendant respectfully requests that the Court, in its discretion, convert this portion of Defendant's

⁶ Plaintiffs cite to the portion of Sinaltrainal that discusses the showing that a defendant must make in order to raise exhaustion as an affirmative defense, but they ignore the burden placed on the plaintiff once such a showing has been made. Plaintiffs' Opposition at 23, citing Sinaltrainal v. Coca-Cola Co., 256 F. Supp. 2d 1345, 1358 (S.D. Fla. 2003).

Motion into one for Summary Judgment and permit both sides to conduct discovery on the question of exhaustion. See Brown v. Zavaras, 63 F.3d 967, 969 (10th Cir. 1995).

**Adequate Discovery Can Not Be Conducted In the United States
And Plaintiffs' Claims Should Be Dismissed
On the Basis of Forum Non Conveniens**

Dismissal on the basis of forum non conveniens 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 Plaintiffs note, Defendant bears the “threshold burden . . . to demonstrate that an adequate alternative forum exists.” Plaintiffs’ Opposition at 26, quoting Abiola v. Abubakar, 267 F. Supp. 2d 907 (N.D. Ill. 2003). Defendant has met that burden. As described by Mr. Campo in Affidavit 1, Somaliland’s courts function sufficiently to offer an adequate hearing to Plaintiffs’ claims.

From my assessment of Somaliland’s judiciary, and based upon information generated by the Somaliland Government that I deem to be reliable

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.

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.

Somaliland's law provides causes of action for damages to victims of torture, prisoner abuse, and crimes against humanity.

In the event of a judgment, Somaliland's judicial system provides adequate mechanisms for enforcement.

Campo Affidavit 1 (Exhibit 2 to Defendant's Motion) at ¶¶ 6-10.

Plaintiffs' arguments to the contrary largely are based upon the bald allegations in the Complaint. See Plaintiff's Opposition at 23-24. Plaintiffs attempt to bolster their position by citing to several inapposite and outdated⁷ portions of the Department of State ("DOS") reports on Somalia previously referenced by Defendant, yet they overlook the most salient conclusion of the most recent Report that "Somaliland's Government included . . . a functioning civil court system." Dep't of State 2003 Country Rep. on Human Rights Practices in Somalia (Feb. 25, 2004).

Defendant has shown not only that Somaliland provides an adequate and available forum for Plaintiffs' action, but also that the public and private interests weigh in favor of dismissal. Plaintiffs describe the relevant private interest factors as:

(1) relative ease of access to sources of proof; (2) availability of compulsory process for attendance of witnesses; (3) costs of bringing willing witnesses and parties to the place of trial; (4) access to physical evidence and other sources of proof; (5) enforceability of judgments; and (6) "all other practical problems that make trial of a case easy, expeditious and inexpensive."

Plaintiffs' Opposition at 27, n. 19, citing Piper Aircraft Co. v. Reyno, 454 U.S. 235, 241 n. 6 (1981). Defendant's Motion addresses the difficulty that Defendant faces in

⁷ Plaintiffs quote from the Department of State 1988 Country Report for the proposition that "[t]here is no national judiciary system" in Somalia. Plaintiff's Opposition at 25. As the Barre regime was still in power and Somaliland had not come into existence, the DOS's conclusion is irrelevant to issues before this Court.

mounting an adequate defense without access to the witnesses and materials that are located in Somalia. Defendant's Motion at 13. Plaintiffs' discovery requests further highlight the problem. See generally Plaintiff's Interrogatories and Requests for Production of Documents (Exhibit 1).

Plaintiffs argue, however, that while, Defendant's Motion makes "arguments relating to the availability of witnesses and documents in Somalia (factors 1-4)," it does not address the enforceability of a Somaliland judgment in the United States. Plaintiffs' Opposition at 27. Since the United States and Somaliland do not have a treaty governing mutual recognition of judgments, enforceability will depend on "principles of comity and reciprocity." Glaverbel Societe Anonyme v. Northlake Mktg. & Supply, Inc., 48 U.S.P.Q.2d (BNA) 1344, 1998 U.S. Dist. Lexis 18820 at 79, n.1 (N.D. Ind. 1998), citing Hilton v. Guyot, 159 U.S. 113 (1895).

In deciding whether to enforce a judgment, the Supreme Court in Hilton considered whether the foreign judgment was rendered under circumstances where the parties were provided: (1) an opportunity for a full and fair trial; (2) trial before a court of competent jurisdiction; (3) citation and voluntary appearance of adversary parties; (4) adjudication upon regular proceedings; (5) a system of jurisprudence likely to secure an impartial trial; and (6) there existed no evidence of fraud in procuring the judgment, prejudice in the system of laws or the court, or any other special reason why comity should not be allowed. Hilton, 159 U.S. at 202. Mr. Campo's affidavits explain that Somaliland's system more than amply meets the requirements of Hilton. Campo Affidavits 1 and 2.

It is obvious that the parties to this action would enjoy far greater access to witnesses (factor 3) in Somaliland than in the United States. Furthermore, Mr. Campo's most recent affidavit addresses many of the factors involved in assessing both enforceability of a foreign judgment and the propriety of forum non conveniens dismissal generally. In addition to affirming that "it is clear that Somaliland presents an available and adequate forum for Plaintiffs' claims" (Campo Affidavit 2 at ¶ 6(j)), he provides additional support for Defendant's position that "Somaliland's judiciary is competent to hear claims . . . for torture and crimes against humanity, and could do so relatively independent of political influence" (*Id.* at ¶ 6(c)) (factors 2, 5, and 6), as well as the remaining factors (1 and 4). Mr. Campo explains:

Numerous human rights abuse cases have been brought in Somaliland's courts [T]he UNOHCHR for Somalia and the UN independent expert of the UN Office of the High Commissioner for Human Rights closely monitored a case with which I am familiar and which illustrates the competency and independence of Somaliland's courts to hear human rights abuse cases.

The case involves three 'Somalilanders' (plaintiffs) and the Total Oil Plant in Barbera The plaintiffs were recognized to be victims of inhuman treatment because they were forced to work in oil containers, painting them with toxic colors without having any protection (gloves, masks, uniforms, etc). The Somaliland Supreme Court found the Total Oil Plant responsible for the illnesses that the plaintiffs suffered and for the violation of their civil and human rights and awarded about US\$ 500,000 to the three Somalilanders.

Id. at ¶¶ 6 (d)-(e). Mr. Campo's testimony demonstrates that Somaliland's judiciary has the capability of fairly and fully adjudicating a human rights claim. Thus, although the United States has no current recognition of judgments treaty with Somaliland, the relevant consideration in Hilton favor enforceability of a judgment rendered in that jurisdiction.

As Plaintiffs seem to recognize (Plaintiffs' Opposition at 27), the remainder of the factors relating generally to forum non conveniens incline toward Defendant's position.⁸ The public interest factors are: (1) burden on the local courts and juries; (2) local interest in having the matter decided locally; and (3) familiarity with governing law and avoidance of conflicts of law or foreign law issues. Plaintiffs' Opposition at 28, n. 21, citing Gulf Oil Corp v. Gilbert, 330 U.S. 501, 508-09 (1947). Plaintiffs have raised no concerns about burdening the local judiciary, and there can be no doubt that issues involving Somali law can best be determined by the Somaliland courts. Therefore, the only relevant question is whether the United States or Somaliland holds a greater interest in the outcome of this case.

The only United States interest in adjudicating this action is "not being a haven to human rights abusers." Plaintiffs' Opposition at 28. This interest pales in comparison to that of Somaliland where, as Plaintiffs explain, the Isaaq clan "established the Somali National Movement ("SNM") to oppose the [Barre] government . . . , declared [Somaliland's] independence, reclaimed its previous name, and seceded from Somalia." Plaintiffs' Opposition at 4, 6. Somaliland's inhabitants were, according to Plaintiffs, persecuted by the Barre administration and now have established a civil government with its own judiciary. *Id.* Certainly, no other jurisdiction can compete with Somaliland's interest in presiding over the trials of those persons accused of victimizing its residents.

For the foregoing reasons, Plaintiffs' action should be dismissed on the basis of forum non conveniens.

⁸ Plaintiffs maintain that, without the submission of a witness list, dismissal on the basis of forum non conveniens would be inappropriate. Plaintiffs' Opposition at 27. The U.S. Court of Appeals for the Fourth Circuit has articulated no such requirement.

CONCLUSION

Plaintiffs' claims 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, First Vice President, or Minister of Defense.


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 or Defendant's assumption of residence in Italy).

Moreover, Plaintiffs should have brought this action in Somaliland. They failed to exhaust appropriate local remedies in Somaliland, as required by the TVPA, 28 U.S.C. § 1350, note, § 2(b), and Somaliland presents a more convenient and appropriate forum for this action.

WHEREFORE, Defendant respectfully requests that this Court grant Defendant's motion DISMISSING Plaintiff's Complaint pursuant to Federal Rules of Civil Procedure 12 (b)(1) and 12(b)(6). In the alternative, Defendant asks the Court to convert any portions of Defendant's Motion to Dismiss that it deems inappropriate for a judgment on the pleadings into a Motion for Summary Judgment.

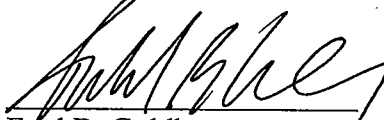
Respectfully submitted,

SHAUGHNESSY, VOLZER, & GAGNER

Handwritten signature of Harvey J. Volzer in cursive, with a circled initial 'HJ' at the end.

Harvey J. Volzer
VSB No. 24445
1101 15th Street, NW
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(202) 828-0900

SPIRER & GOLDBERG, P.C.

Handwritten signature of Fred B. Goldberg in cursive.

Fred B. Goldberg
7101 Wisconsin Avenue
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(301) 657-3300
Attorney for Plaintiff

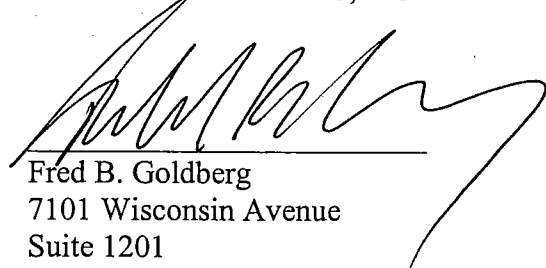
CERTIFICATE OF SERVICE

I, Fred B. Goldberg, hereby certify that on this 22nd day of December, 2004, I caused to be served a true and correct copy of the foregoing Reply to Plaintiffs' Opposition to Defendant's Motion to Dismiss For Lack of Subject Matter Jurisdiction and For Failure to State a Claim Upon Which Relief Can Br Granted by first-class U.S. Mail, postage pre-paid, as indicated below on the following:

Robert R. Vieth, Esq.
Daniel J. Wadley, Esq.
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(301) 657-3300
Attorney for Plaintiff

EXHIBIT 1

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

ALEXANDRIA DIVISION

BASHE ABDI YOUSUF, *et al.*)
)
 Plaintiffs,)
)
 v.) Civil Action No. 1:04 CV 1360 (LMB/BRP)
)
 MOHAMED ALI SAMANTAR)
)
 Defendant.)

PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT MOHAMED ALI SAMANTAR

Pursuant to Federal Rule of Civil Procedure 33, plaintiffs Bashe Abdi Yousuf, John Doe I, Jane Doe I, John Doe II, John Doe III and John Doe IV (collectively, "Plaintiffs") hereby request that defendant Mohamed Ali Samantar ("Defendant") answer separately and truthfully in writing under oath within 30 days of service hereof, each of the Interrogatories set forth below in accordance with the Definitions and Instructions as they appear below.

DEFINITIONS

A. "You" and "your" shall mean defendant, his representatives, subordinates, agents, employees, attorneys, companies or any other person or entities acting or purporting to act on his behalf.

B. "Somali" or "Somalia" shall refer to the Democratic Republic of Somalia, as it existed during the period 1980 through 1990.

C. "Somali Armed Forces" shall refer to any unit or member of the following: (a) the Somali military forces: army, navy, air force, or special forces; (b) the National Security Service ("NSS"); (c) the Red Berets; (d) any police organization including the Defense Intelligence Security Agency (also known as "Hangash"); (e) anyone acting or purporting to act under the

authority (whether actual or apparent) of the Somali Armed Forces; and (f) any other military force, unit, organization, department or agency of Somalia and any of the aforementioned predecessor or successor organizations or groups (whether or not formally instituted) and shall be construed so as to mean any of these organizations individually, severally, or collectively.

D. "Person" shall mean a natural person and any other cognizable entity, including without limitation, firms, partnerships, corporations, divisions, proprietorships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies, orders, or any other organization or entity.

E. "Communicate" and "Communication" shall mean any transmission or exchange of information by any manner including telephonic "statements", voicemail, inquiries, negotiations, discussions, agreements, understandings, meetings, notes, mail, facsimile, letters, electronic mail (e-mail), telegrams, teletypes, telexes, telecopies, computer linkups, written memoranda, face-to-face conversations and any verbal or non-verbal assertion (or "statement") by one or more persons or among two or more persons.

F. "Document" and/or "thing" shall be synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure and the term "Writing" as defined in the Rule 1001 of the Federal Rules of Evidence. Electronic correspondence is also included within the meaning of this term. A draft or non-identical copy is a separate document within the meaning of this term.

G. "Refer," "Relate" and "Concern" (and their forms), shall mean to refer to, relate to, pertaining to, having a relationship to, evidencing or constituting evidence of in whole or in part, to concern, involve, be connected with, reflect, indicate, disclose, summarize, explain, support, refute, exhibit, entail, illustrate, record, memorialize, discuss, include, implicate, name,

reveal, expose, denote, imply, suggest, show, mention, demonstrate, embody, comprise, constitute, contain, identify, state, pertain directly or indirectly to, show signs of, or is in any way relevant to the particular subject matter identified.

H. To the extent necessary to bring within the scope of the Interrogatories contained herein any information that might otherwise be construed to be outside their scope, (a) the words “and” and “or” shall be read in the conjunctive and in the disjunctive wherever they appear; (b) the word “all” means “any and all”; (c) the word “including” means “including but not limited to”; (d) the word “any” means and includes both “any” and “every”; (e) “each” shall mean both “each” and “every,” and the word “every” shall mean “each” and “every,” as appropriate; (e) the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa; (f) the neuter form of a pronoun shall be considered to include within its meaning the masculine and feminine forms of the pronoun, and vice versa; and (f) the use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb.

I. The phrase “this Action” means *Yousuf v. Samantar*, Civil Action No. 1:04CV1360 LMB (BRP), currently pending in the United States District Court for the Eastern District of Virginia, Alexandria Division.

J. “Somali Government” shall mean the Government of Somalia, including any ministries, Somali Armed Forces, missions, services, departments, agencies, commissions, legislatures, parliaments, assemblies, and cabinets, and shall be construed so as to mean any of these entities individually, severally or collectively.

K. The term "Identify" (and its forms), when used with respect to documents or things, means to provide, to the extent known, a description of each document or thing sufficient to obtain production thereof by subpoena, discovery request, or court order, including:

- (a) the type of document or thing (letter, photograph, etc.);
- (b) the name and current business or residential address of the author(s) or originator(s), including each person or persons who (a) prepared or participated in the preparation or creation of the document or thing, (b) signed it, initialed it or over whose signature or initials it was issued, and (c) to whom it was addressed or distributed;
- (c) the title and nature of the document's or thing's contents;
- (d) the date appearing on the document or thing and the date or dates when it was prepared;
- (e) a brief summary of the substance of each document or thing;
- (f) the current physical location of the document or thing; and
- (g) if the document or thing is no longer in existence or in defendant's control, the disposition that was made of it and the location of any copies of the document or thing known to the defendant.

ALTERNATIVELY, you may identify any document or thing by instead attaching a full, clear, legible copy thereof to your response hereto, provided that each such copy contains a reference to each Interrogatory to which it is responsive.

L. The term "Identify" (and its forms), when used with respect to persons, means to provide, to the extent known, such person's full name (or if not known, provide sufficient description so that such person will be identifiable to the plaintiffs), present or last known business or residential address, and previous or last known telephone number(s). If the person is

a natural person, also provide that person's present or last known job title, place of employment or business affiliation and business telephone number. If the person is a governmental or business entity, also provide the address of its principle place of business, the address of the particular office and the identity of the person or persons having knowledge of the matter with respect to which the business or governmental entity is named.

M. The term "Identify" (and its forms), when used with respect to communications, means, to the extent known:

- (1) state the date and place of each communication;
- (2) state the medium through which such communication was made (*e.g.*, in person, by telephone, etc.);
- (3) Identify each person who participated in the Communication;
- (4) Identify each person (other than a participant) who heard or had access to the communication;
- (5) state the substance of the communication, including any discussion constituting or relating to the communication, the order in which such discussion was had, and any decisions or conclusions reached in the course of or as a result of the communication; and
- (6) Identify each document or thing relating to the substance of the communication.

INSTRUCTIONS

1. Plaintiffs incorporate herein by reference Rules 26 and 33 of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Eastern District of Virginia. These Interrogatories seek responses to the full extent of the Federal and Local Rules.

2. In answering these Interrogatories, you are required to furnish truthfully, fully and in good faith, all information that is presently available to you, regardless of whether such information was obtained directly by you, by your former or present attorneys, agents, consultants, employees, investigators, accountants, experts, or anyone acting or purporting to act on their behalf or your behalf. If, after having consulted all the aforementioned persons, you are unable to provide the information being sought by any Interrogatory or any portion thereof, describe in details your efforts to obtain such information.

3. If any of the following Interrogatories cannot be answered in full, answer to the extent possible, specifying the reasons for your inability to answer the remainder of the Interrogatory and stating whatever information, knowledge or belief you do have relating to the unanswered portion thereof.

4. A request to "state the entire factual basis" for an allegation or contention means to:

(a) State all facts in your knowledge, possession or control regarding any allegation or contention, including all facts that you may use to support the allegation or contention, as well as all facts that tend to contradict or undermine the allegation or contention;

(b) Identify each person having knowledge relating to the subject matter of the allegation or contention, regardless of whether such person's knowledge tends to support or contradict or undermine the allegation or contention; and

(c) Identify each document or thing relating to the subject matter of the claim or defense, regardless of whether such document or thing tends to support or contradict or undermine the allegation or contention.

5. If and to the extent to which you claim a privilege as a ground for refusing to answer an Interrogatory in whole or in part, describe the bases for such claim of privilege and provide such other information as is required by Federal Rule of Civil Procedure 26(b)(5) and other applicable rules of court or law.

6. If you object to or refuse to answer any part of an Interrogatory on grounds other than privilege, describe the ground(s) separately, fully and with particularity.

7. These interrogatories shall be deemed continuing, and you shall be obligated to change, supplement, and correct your answers to conform to all available information, including such information as first becomes available to you after your answers hereto are served.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify each person having knowledge of the facts relating to any of the claims and defenses stated in the "pleadings" (as that term is defined pursuant to Rule 7(a) of the Federal Rules of Civil Procedure) and, for each such person, state the entire factual basis of that person's knowledge and indicate whether such person will be called to testify at trial.

INTERROGATORY NO. 2:

Provide a timeline of your service in the Somali Government, including your military and civilian positions, for the period 1980 through 1991. For each position you held:

- (a) provide your job title or rank at the time;
- (b) provide the dates of service in that position;
- (c) describe in detail all aspects of your role and responsibilities in that position, including the extent of your command authority relating to any aspect of the operations of the Somali Armed Forces or to any group or persons working in conjunction with, or with the

acquiescence of, the Somali Armed Forces, or any of their predecessor or successor organizations or groups, whether or not formally constituted;

(d) Identify each member or unit of the Somali Armed Forces over which you had command authority;

(e) Identify your immediate superiors; and

(f) Identify your immediate subordinates.

INTERROGATORY NO. 3:

Identify each meeting that you attended in your capacity as Minister of Defense or Prime Minister of Somalia, including meetings with representatives of the U.S. government, the United Nations, or human rights organizations, in which the issue of human rights was discussed. For each such meeting, state the date and location of the meeting, identify the persons in attendance, and provide a summary of the discussion at the meeting that relates to human rights.

INTERROGATORY NO. 4:

Identify each person with knowledge of facts relating to the arrest, abduction, detention, disappearance, killing, or execution of civilians at Jezira Beach in or around July 1989.

INTERROGATORY NO. 5:

Identify each person with knowledge of facts relating to the detention, torture, mistreatment, cruel, inhuman or degrading treatment, or imprisonment of any members of a group sometimes known as UFFO as described in the complaint.

Dated: December 17, 2004

BASHE ABDI YOUSUF
JOHN DOE I
JANE DOE I
JOHN DOE II
JOHN DOE III and
JOHN DOE IV
By Counsel

By: 

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Matthew Eisenbrandt
Helene Silverberg
Center for Justice & Accountability
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(415) 544-0444

CERTIFICATE OF SERVICE

I hereby certify, this 17th day of December, 2004, that a true copy of the foregoing was hand delivered to the following counsel of record:

Harvey J. Volzer, Esq.
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1101 15th Street, N.W., Suite 202
Washington, D.C. 20005

Julian Henry Spirer
Fred B. Goldberg, Esq.
Spirer & Goldberg, P.C.
7101 Wisconsin Avenue, Suite 1201
Bethesda, MD 20814



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

ALEXANDRIA DIVISION

BASHE ABDI YOUSUF, *et al.*,)
)
 Plaintiffs,)
)
 v.) Civil Action No. 1:04 CV 1360 (LMB/BRP)
)
 MOHAMED ALI SAMATAR)
)
 Defendant.)

PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS

Plaintiffs request that the defendant produce all documents identified by the Document Requests below, pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and in accordance with the General Instructions and definitions set forth herein, within thirty (30) days of the date of service hereof, or on such date as may be agreed by the parties. All documents called for by the following shall be produced at the offices of Cooley Godward LLP, One Freedom Square, Reston Tower Center, 11951 Freedom Drive, Reston, Virginia 20190-5656.

GENERAL INSTRUCTIONS

A. This request relates to all documents in your possession, custody or control, including documents in the possession, custody or control of any present and/or former attorneys, employees, accountants, financial advisors, representative or agents, or other persons acting or purporting to act on your behalf.

B. You are required to produce the original, and all non-identical copies which differ from the original or from any other copy for any reason, including but not limited to the making of notes thereon, of each document described below. If the original is not in your possession, custody or control, a duplicate may be produced.

C. Each document shall be produced in such a fashion as to indicate clearly the identity of the file in which it was located. All documents are to be produced as they are kept in the usual course of business so that plaintiffs can ascertain the file in which they were located, their relative order in the files and how the files were maintained.

D. If you know of the existence, past or present, of any document described in the following requests, but are unable to produce such document because it is not presently in your possession, custody or control, please identify each and every such document, including the contents, date, sender(s), addressee(s), and any recipient of any copies, state that it is not presently in your possession, custody, or control and state what disposition was made, why such disposition was made, and the identity of the person who now has or may have possession, custody or control of the document.

E. If any document described in the following request has been modified, altered or destroyed any way, in whole or in part, please identify each such document, state how the document was modified or altered, the person who modified, altered, or destroyed the document, and when and why the document was modified, altered, or destroyed.

F. With respect to each document identified by these requests as to which you assert the claim of privilege, separately state the following: (1) the date the document was prepared; (2) the length of the document; (3) the type of the document (*e.g.*, letter, memorandum, note); (4) a general description of the subject of the document; (5) the name and title of its author(s); (6) the name and title of any addressee; (7) the name and title of any other person to whom the document or any copies thereof were sent; and (8) the basis of the claim of privilege.

G. If any of the Document Requests cannot be answered in full, please answer to the extent possible and state with particularity the reasons why a more complete answer cannot be provided.

H. When an objection is made to any Document Request, or subpart thereof, the objection shall state with specificity all grounds on which the objection is based.

I. No part of a Document Request shall be left unproduced on the basis that an objection is interposed to another part of the Document Request.

J. Where documents with attachments are produced, they shall be attached in the same manner as included in the original file. Where documents are produced and all attachments thereto are not attached, please identify the missing attachments and explain the reason(s) for their non-production.

K. Unless otherwise specified, these Document Requests are to be deemed continuing in nature, and require that you promptly produce any additional document of theory that may become known to you or anyone on your behalf after your answers have been prepared or served.

DEFINITIONS

A. "You" and "your" shall mean defendant Yusuf Abdi Ali his representatives, subordinates, agents, employees, attorneys, companies or any other person or entities acting or purporting to act on his behalf.

B. "Somali" or "Somalia" shall refer to the Democratic Republic of Somalia, as it existed during the period 1980 through 1990.

C. "Somali Armed Forces" shall refer to any unit or member of the following: (a) the Somali military forces: army, navy, air force, or special forces; (b) the National Security Service

("NSS"); (c) the Red Berets; (d) any police organization including the Defense Intelligence Security Agency (also known as "Hangash"); (e) anyone acting or purporting to act under the authority (whether actual or apparent) of the Somali Armed Forces; and (f) any other military force, unit, organization, department or agency of Somalia and any of the aforementioned predecessor or successor organizations or groups (whether or not formally instituted) and shall be construed so as to mean any of these organizations individually, severally, or collectively.

D. "United States Armed Forces" shall refer to Office of the Secretary of Defense and his subordinates, including the Offices of the Department of the Army, Navy, and Air Force, and shall include the United States Army, Navy, Air Force, and Marines.

E. "Person" shall mean a natural person and any other cognizable entity, including without limitation, firms, partnerships, corporations, divisions, proprietorships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies, orders, or any other organization or entity.

F. "Communicate" and "Communication" shall mean any transmission or exchange of information by any manner including telephonic "statements", voicemail, inquiries, negotiations, discussions, agreements, understandings, meetings, notes, mail, facsimile, letters, electronic mail (e-mail), telegrams, teletypes, telexes, telecopies, computer linkups, written memoranda, face-to-face conversations and any verbal or non-verbal assertion (or "statement") by one or more persons or among two or more persons.

G. "Document" and/or "thing" shall be synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure and the term "Writing" as defined in the Rule 1001 of the Federal Rules of Evidence. Electronic

correspondence is also included within the meaning of this term. A draft or non-identical copy is a separate document within the meaning of this term.

H. "Refer," "Relate" and "Concern" (and their forms), shall mean to refer to, relate to, pertaining to, having a relationship to, evidencing or constituting evidence of in whole or in part, to concern, involve, be connected with, reflect, indicate, disclose, summarize, explain, support, refute, exhibit, entail, illustrate, record, memorialize, discuss, include, implicate, name, reveal, expose, denote, imply, suggest, show, mention, demonstrate, embody, comprise, constitute, contain, identify, state, pertain directly or indirectly to, show signs of, or is in any way relevant to the particular subject matter identified.

I. To the extent necessary to bring within the scope of the Interrogatories contained herein any information that might otherwise be construed to be outside their scope, (a) the words "and" and "or" shall be read in the conjunctive and in the disjunctive wherever they appear; (b) the word "all" means "any and all"; (c) the word "including" means "including but not limited to"; (d) the word "any" means and includes both "any" and "every"; (e) "each" shall mean both "each" and "every," and the word "every" shall mean "each" and "every," as appropriate; (e) the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa; (f) the neuter form of a pronoun shall be considered to include within its meaning the masculine and feminine forms of the pronoun, and vice versa; and (f) the use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb.

J. The phrase "this Action" means *Yousuf v. Samatar*, Civil Action No. 1:04CV1360 LMB (BRP), currently pending in the United States District Court for the Eastern District of Virginia, Alexandria Division.

K. The term "UFFO" as used herein shall mean the civic group formed in or around 1981 in or around Hargeisa, Somalia and sentenced by the National Security Court on February 28, 1982. The group was also known as "The Hargeisa Self-Help Group" and also (in Somali) "Ragga u Dhashay Magaalada."

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1.

All documents and communications relating to any fact alleged in the complaint filed in this Action.

DOCUMENT REQUEST NO. 2.

All documents and communications that you may use to support any claim or defense you may assert in this Action.

DOCUMENT REQUEST NO. 3.

All documents and communications relating to your roles and responsibilities as the Minister of Defense of Somalia.

DOCUMENT REQUEST NO. 4.

All documents and communications relating to the organization or structure of the Ministry of Defense of Somalia during your tenure as Minister of Defense of Somalia.

DOCUMENT REQUEST NO. 5.

All documents and communications relating to the chain of command, reporting structure, or operational structure or hierarchy of the Somali Armed Forces during your tenure as Minister of Defense of Somalia.

DOCUMENT REQUEST NO. 6.

All documents and communications relating to the chain of command, reporting structure, or operational structure or hierarchy of the Somali Armed Forces during your tenure as Prime Minister of Somalia.

DOCUMENT REQUEST NO. 7.

All documents and communications relating to the High Command or General Staff of the Somali Armed Forces, including documents sufficient to show the names and rank of the officers who were in positions of senior command of the Somali Armed Forces, during your tenure as Minister of Defense of Somalia.

DOCUMENT REQUEST NO. 8.

All documents and communications relating to your roles and responsibilities as the Prime Minister of Somalia.

DOCUMENT REQUEST NO. 9.

All documents and communications relating to the organization or structure of the Office of the Prime Minister during your tenure as Prime Minister of Somalia.

DOCUMENT REQUEST NO. 10.

All documents and communications relating to the names and positions of individuals holding positions in your Cabinet or on your Staff during your tenure as Prime Minister of Somalia.

DOCUMENT REQUEST NO. 11.

All documents and communications relating to your attendance and training in any United States Armed Forces training program including the International Military Education Training Program.

DOCUMENT REQUEST NO. 12.

All documents and communications relating to any effort by the Somali government or the Somali Armed Forces to prevent, investigate or punish violations of Somali or international law, including torture, extrajudicial killings, war crimes, crimes against humanity, arbitrary detention, or cruel, inhuman, or degrading treatment, allegedly committed by the Somali Armed Forces.

DOCUMENT REQUEST NO. 13.

All documents and communications relating to the Somali National Movement ("SNM") from 1980 through 1991.

DOCUMENT REQUEST NO. 14.

All documents and communications relating to attacks by the Somali Armed Forces on northwest Somalia, including in the city of Hargeisa, in or around June or July 1988.

DOCUMENT REQUEST NO. 15.

All documents and communications relating to the torture and/or execution of prisoners in or near Hargeisa prisons during your tenure as Minister of Defense of Somalia.

DOCUMENT REQUEST NO. 16.

All documents and communications relating to the torture and/or execution of prisoners in or near Labaatan Jirow prisons during your tenure as Minister of Defense of Somalia.

DOCUMENT REQUEST NO. 17.

All documents relating to the massacre of civilians at Jezira Beach in July 1989.

DOCUMENT REQUEST NO. 18.

All documents relating to your application for asylum, residency, or citizenship in, or acceptance of entry into, the United States, Italy or elsewhere.

DOCUMENT REQUEST NO. 19.

All documents relating to any travel you have made since 1991 involving the crossing of any national border other than the United States border, including copies of all passports and travel visas, whether in your name or under another name or alias.

DOCUMENT REQUEST NO. 20.

All documents filed by you or your representative, and any documents filed by prosecutors or parties or their representatives, in any country, in any judicial or administrative proceeding in which you are or have been a party, or you are or were otherwise asked or ordered to participate.

DOCUMENT REQUEST NO. 21.

All documents and communications between you and any representative of the United States government, including the Central Intelligence Agency, the State Department, the Defense Department or any other department, agency, office, embassy or military branch of the United States government.

DOCUMENT REQUEST NO. 22.

All documents relating to communications between yourself and any journalist, including journalists from both print and broadcast media.

DOCUMENT REQUEST NO. 23.

All documents and communications relating to any funds, monies or credits supplied or provided to you for your benefit by the United States government or any of its departments or agencies, or by any organization or entity affiliated in any manner with the United States government.

DOCUMENT REQUEST NO. 24.

Your resume or any other document(s) reflecting your full work history.

DOCUMENT REQUEST NO. 25.

All documents and communications relating to your income since 1990.

DOCUMENT REQUEST NO. 26.

All documents and communications relating to your income during the periods you served as Minister of Defense and Prime Minister of Somalia.

DOCUMENT REQUEST NO. 27.

All documents and communications relating to any real property, bank account, trust, or other monetary asset, investment, stock or bond, corporation partnership or other business venture, in or over which you have or have had a legal or beneficial interest, or over which you have created or transferred (by sale, gift, or otherwise) a legal or beneficial interest to or from any other person, at any time since 1980, including all documents relating to any transfer of any property, interest, or asset identified above to any person.

DOCUMENT REQUEST NO. 28.

All documents and communications reflecting your residency in the United States including social security identifications and drivers licenses.

DOCUMENT REQUEST NO. 29.

Any diary, journal, or calendar you maintained or have maintained since 1980 or are currently maintaining.

DOCUMENT REQUEST NO. 30.

All documents, such as field manuals or other documents, sufficient to show the operational practices of the Somali Armed Forces.

DOCUMENT REQUEST NO. 31.

All documents, such as codes of military justice or other documents, sufficient to show the rules and procedures regulating the conduct and discipline of the Somali Armed Forces.

DOCUMENT REQUEST NO. 32.

All documents and communications distributed to or by personnel in the Somali Armed Forces pertaining to the standards for treatment of the civilian population in Somalia, including all documents and communications pertaining to the protection of combatants and noncombatants during military operations; the prevention of violations of international and Somali law by the Armed Forces; and the obligation that all Armed Forces personnel comply with international and Somali law, including prohibitions against torture, extrajudicial killings, war crimes, crimes against humanity, arbitrary detention and cruel, inhuman or degrading treatment or punishment.

DOCUMENT REQUEST NO. 33.

All documents and communications relating to Amnesty International's (or any other organization's) letter writing campaigns and/or entreaties and/or pleas to the Siad Barre regime on behalf of individuals imprisoned in Somalia.

DOCUMENT REQUEST NO. 34.

All documents and communications relating to the visit by representatives of Amnesty International to Somalia in 1989, including documents and communications relating to your meeting with them.

DOCUMENT REQUEST NO. 35.

All documents and communications relating to your visits to the United States during the 1980's.

DOCUMENT REQUEST NO. 36.

All documents and communications relating to efforts by The National Academy of Sciences to obtain the release of imprisoned Somali scientists, including all documents and communications relating to the visit of the National Academy of Sciences' representatives to Somalia in October 1987.

DOCUMENT REQUEST NO. 37.

All documents and communications prepared by or provided to you during your tenure as Minister of Defense of Somalia.

DOCUMENT REQUEST NO. 38.

All documents and communications prepared by or provided to you during your tenure as Prime Minister of Somalia.

DOCUMENT REQUEST NO. 39.

All documents and communications relating to any human rights abuses committed by the Somali Armed Forces during your tenure as Minister of Defense of Somalia.

DOCUMENT REQUEST NO. 40.

All documents and communications relating to any human rights abuses committed by the Somali Armed Forces during your tenure as Prime Minister of Somalia.

DOCUMENT REQUEST NO. 41.

All documents sufficient to demonstrate the units of the Armed Forces with responsibility for specific regions of Somalia, including central and regional headquarters and barracks during your tenure as Minister of Defense of Somalia.

DOCUMENT REQUEST NO. 42.

All documents and communications relating to the gathering or dissemination of information and the issuing of orders within and among the Somali Armed Forces during your tenure as Minister of Defense of Somalia.

DOCUMENT REQUEST NO. 43.

All documents and communications relating to your ability to maintain effective control over your subordinates during your tenure as Minister of Defense of Somalia.

DOCUMENT REQUEST NO. 44.

All documents and communications relating to your allegation that Plaintiffs' claims are barred by the statute of limitations.

DOCUMENT REQUEST NO. 45.

All documents and communications relating to any investigation of causes of conflict in the northern regions of Somalia.

Dated: December 16, 2004

BASHE ABDI YOUSUF
JOHN DOE I
JANE DOE I
JOHN DOE II
JOHN DOE III and
JOHN DOE IV
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CERTIFICATE OF SERVICE

I hereby certify, this 16th day of December, 2004, that a true copy of the foregoing was sent by facsimile and first class mail, postage prepaid, to the following counsel of record:

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Bethesda, MD 20814



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EXHIBIT 2

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 1:04 CV 1360

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 ("UN") and the Italian Embassy to Somalia. I also served as program officer for the UN 'Oil-for-Food' Program for Iraq from March to November 2003. I am currently working as short-term expert (justice and home affairs sector) with several European Community projects in the Balkans.
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. In addition to my previous affidavit dated December 1, 2004 concerning the case Bashi Abdi Yousuf v. Mohamed Ali Samantar, I wish to outline the following issues relating to Somaliland’s legal system and supplement my previous testimony:

(a) Somaliland’s Charter (Constitution) recognizes all UN Conventions, Treaties and international human rights instruments (including the UN Convention against torture, cruel or inhuman punishment or treatment) and Somaliland law provides causes of action for damages to victims of torture, prisoner abuse, and crimes against humanity.

(b) Since 1991, in Somaliland there is a relatively stable, independent and functioning judiciary that receives international support from several donors including USAID, EC, UN, and UN Office of the High Commissioner for Human Rights (UNOHCHR).

(c) 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. In this regard, the UNOHCHR has been established in Somaliland to monitor the human rights situation in the country and to support the judicial authorities to be compliant with their human rights obligations.

(d) Numerous human rights abuse cases have been brought in Somaliland’s courts. Although I do not have access to Somali case law at the moment (as I am currently stationed elsewhere), the UNOHCHR for Somalia and the UN independent expert of the UN Office of the High Commissioner for Human Rights closely monitored a case

with which I am familiar and which illustrates the competency and independence of Somaliland's courts to hear human rights abuse cases.

(e) The case involves three 'Somalilanders' (plaintiffs) and the Total Oil Plant in Barbera (Somaliland) that took place in 1991 and was brought to the court of Barbera and the Supreme Court in Hargeisa (Somaliland). The plaintiffs were recognized to be victims of inhuman treatment because they were forced to work in oil containers, painting them with toxic colors without having any protection (gloves, masks, uniforms, etc). The Somaliland Supreme Court found the Total Oil Plant responsible for the illnesses that the plaintiffs suffered and for the violation of their civil and human rights and awarded about US\$ 500,000 to the three Somalilanders.

(f) 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 an organized fashion and would be incapable of taking retaliatory action against Plaintiffs or their families.

(g) The clan system of Somalia assures protection to its clan members. As Mr. Samantar belongs to a minor clan, which has no significant power in any part of the country, after his forcible departure from Somalia, he would have had no power to exact acts of revenge upon Plaintiffs or anyone in Somalia and particularly in Somaliland.

(h) 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 conducting an investigation of his/her claim in 1991 than today. It should also be noted

that risks of retaliation against him/her or his/her family would not have been substantially greater than it is today.

(i) 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).

(j) My direct work experience with the UN in Somalia/Somaliland and Iraq allow me to compare the judicial systems of these countries and to note that the international community recognizes the possibility of bringing a human rights case in a court in Iraq (a notoriously war torn country), and similarly, that a Somali could have brought a human rights case to the court in Somaliland. Considering the far superior level of peace and stability in Somaliland and that it has had a functioning judicial system since 1991, it is clear that Somaliland presents an available and adequate forum for Plaintiffs' claims.

7. With regard to the status of Italian law, I wish also to add that according to Art. 5 of the UN Convention against torture, cruel or inhuman punishment or treatment (which Italy has ratified), a Somali could have brought an action against Mr. Samantar in an Italian court at a time during the period from February 20, 1991 (when Mr. Samantar moved to Italy) to November 9, 1997 (when Mr. Samantar left Italy).

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

Alessandro Campo

Alessandro Campo

A handwritten signature in black ink, appearing to be 'AC', written over a horizontal line.