

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' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR LEAVE TO
FILE THE SECOND AMENDED COMPLAINT**

INTRODUCTION

Plaintiffs Bashe Abdi Yousuf, Aziz Mohamed Deria, John Doe I, Jane Doe, and John Doe II move for leave to file the attached Second Amended Complaint. The Second Amended Complaint differs from the First Amended Complaint in four principal respects. The Second Amended Complaint: a) reflects the appointment of Aziz Mohamed Deria as Plaintiff in his representative capacity for the claims related to the killings of Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II; b) reflects the voluntary dismissal of the claims of Plaintiffs John Doe III and John Doe IV; c) pleads an additional theory of liability based on the doctrine of joint criminal enterprise; and d) makes other generalized revisions or rewordings throughout the complaint. A red-line version of the Second Amended Complaint is attached hereto as Exhibit 1 to highlight the revisions.

This Motion is made very early in the proceeding, and there is no prejudice to Defendants at this stage. Consistent with the liberal requirements in Fed. R. Civ. P. 15, the Court should

grant Plaintiffs' Motion. The proposed Second Amended Complaint is attached to Plaintiffs' Motion for Leave to File the Second Amended Complaint as Exhibit 1.

BACKGROUND

On November 10, 2004, Plaintiffs Bashe Abdi Yousuf, John Doe I, Jane Doe, John Doe II, John Doe III and John Doe IV filed a Complaint alleging, among other things, that Defendant Samantar is liable under domestic and international law for Plaintiffs' injuries, pain and suffering resulting from Defendant Samantar's role in acts of extrajudicial killing, attempted extrajudicial killing, torture, crimes against humanity, war crimes, cruel, inhuman, or degrading treatment or punishment, and arbitrary detention. The Defendant filed a Motion to Dismiss on December 1, 2004. With that motion still pending and before an answer was filed, on January 7, 2005, the Court issued an Order holding the case in abeyance pending input from the State Department. On January 26, 2005, the Plaintiffs filed a First Amended Complaint which corrected the inadvertent disclosure of anonymous Plaintiffs' names, added Plaintiff Aziz Mohamed Deria, and made other minor revisions to the Complaint. On August 30, 2005, the Court removed the case from its active docket. Then, on January 22, 2007, the Court entered an Order returning the case to the active docket. The Motion to Dismiss is still pending and no answer has yet been filed. The Court will hold a status conference on February 23, 2007.

During the pendency of this case, the Virginia Circuit Court for the City of Alexandria appointed Aziz Mohamed Deria administrator of the estates of his father, Mohamed Deria Ali, his younger brother, Mustafa Mohamed Deria, and John Doe I's brothers, James Doe I and James Doe II. In the interest of efficiency, Plaintiffs seek to amend the First Amended Complaint to reflect Aziz Mohamed Deria's appointment as Plaintiff in his capacity as representative for the estates of all decedents named in the First Amended Complaint: Mohamed

Deria Ali, Mustafa Mohamed Deria, James Doe I and James II. Aziz Mohamed Deria will no longer pursue his claims in his individual capacity.

Plaintiffs John Doe III and John Doe IV have filed notice with the Court of their voluntary dismissal of claims against Defendant Samantar. The remaining Plaintiffs seek leave to amend the First Amended Complaint to remove these claims.

Plaintiffs also seek leave to amend the First Amended Complaint to add a joint criminal enterprise theory of liability. The Second Amended Complaint alleges that Defendant Samantar knew of, and was an active participant in, an organized system of repression and ill-treatment against members of the Isaaq clan, which included Plaintiffs and their families. It alleges that Defendant Samantar was a participant in a common, shared design on the part of the leaders of the Barre regime and the Armed Forces of Somalia to rid the northern region of Somalia of members of the Isaaq clan, and to engage in a systematic attack against civilian populations.

ARGUMENT

Rule 15(a) provides that leave to amend “shall be freely given when justice so requires.” Fed. R. Civ. P. 15. The Supreme Court has held that leave to amend should be freely given except where the movant’s request is the result of 1) undue delay, bad faith or dilatory motive on the part of the movant, 2) repeated failure to cure deficiencies by amendments previously allowed, 3) undue prejudice to the opposing party by virtue of allowance of the amendment, or 4) futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

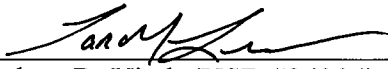
None of the factors mentioned by the Supreme Court are present here. This case was stayed on January 7, 2005, and was reinstated just recently on January 22, 2007. The Court has not held a Rule 16(b) conference and the parties have not yet exchanged discovery. Substantively, the proposed Second Amended Complaint is very similar to the First Amended

Complaint, with few changes in the claims asserted against Defendant Samantar. Plaintiffs added Aziz Mohamed Deria as a plaintiff in his capacity as personal representative for the decedents' estates to prevent further delay caused by the need to resolve potential standing issues. *See Estate of Cabello v. Fernandez-Larios*, 205 F. Supp. 2d 1325, 1334-1335 (holding that Congress intended to allow the legal representative of a deceased victim to recover on behalf of the victim's estate). Plaintiffs also added a theory of joint criminal enterprise liability that comports with the substantive allegations of the First Amended Complaint and the developing jurisprudence in this area. *See, e.g.*, Allison M. Danner and Jenny S. Martinez, *Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law*; 93 Cal. L. Rev. 75 (2005); *Prosecutor v. Tadic*, Judgement, ICTY Appeals Chamber, at para. 194-204, Case No. IT-94-1-A (July 15, 1999). These amendments, made at this stage of the litigation, do not trigger any of the three factors set forth in *Foman v. Davis*, 371 U.S. at 178.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court grant leave to Plaintiffs to file their Second Amended Complaint.

BASHE ABDI YOUSUF, *et al.*,
By Counsel

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Dated: February 22, 2007

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify, this 22nd day of February, 2007, that a true copy of the foregoing was sent by electronic mail and overnight delivery to the following counsel of record:

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Exhibit 1

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

ALEXANDRIA DIVISION

BASHE ABDI YOUSUF

)

) Civil Action No. 1:04 CV 1360 (LMB/BRP)

)

AZIZ MOHAMED DERIA,

) ~~FIRST~~**SECOND AMENDED**

in his capacity as the personal
representatives of the estate of
Mohamed Deria Ali,

) **COMPLAINT COMPLAINT-**

) **FOR TORTURE; EXTRAJUDICIAL**

) **KILLING; ATTEMPTED**

) **EXTRAJUDICIAL KILLING; CRUEL,**

AZIZ MOHAMED DERIA, in his capacity
as the personal representative of the estate
of Mustafa Mohamed Deria,

) **INHUMAN OR DEGRADING**

) **TREATMENT OR PUNISHMENT;**

) **ARBITRARY DETENTION; CRIMES**

) **AGAINST HUMANITY; AND WAR**

JOHN DOE I,

) **CRIMES**

)

AZIZ MOHAMED DERIA, in his capacity
as the personal representative of the estate
of James Doe I (the deceased brother of
John Doe I),

) **JURY TRIAL DEMANDED**

)

)

)

)

)

AZIZ MOHAMED DERIA, in his capacity
as the personal representative of the estate
of James Doe II (the deceased brother of
John Doe I),

)

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)

)

)

JANE DOE, I

)

)

and JOHN DOE II

)

JOHN DOE III

)

JOHN DOE IV,

)

)

Plaintiffs,

)

)

v.

)

)

MOHAMED ALI SAMANTAR,

Defendant.

For their complaint against the Defendant Mohamed Ali Samantar, Plaintiffs Bashe Abdi Yousuf, John Doe I, Jane Doe I, John Doe II, John Doe III, and John Doe IV (collectively "Plaintiffs") complain and allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action for compensatory and punitive damages for torts in violation of international and domestic law. Plaintiffs institute this action against Defendant Mohamed Ali Samantar ("Ali-Samantar") for his responsibility for the torture of Plaintiff Bashe Abdi Yousuf; for the torture; extrajudicial killing of Decedents Mohamed Deria Ali and Mustafa Mohamed Deria; for the torture, arbitrary detention and cruel, inhuman or degrading treatment or punishment ~~and arbitrary detention~~ of Plaintiff John Doe I; for the extrajudicial killing of Decedents James Doe I and James Doe II, the brothers of Plaintiff John Doe I; for the torture; rape; arbitrary detention and cruel, inhuman or degrading treatment or punishment; ~~and arbitrary detention~~ of Plaintiff Jane Doe I; and for the attempted extrajudicial killing; ~~torture; torture, arbitrary detention and~~ cruel, inhuman or degrading treatment or punishment; ~~and arbitrary detention~~ of Plaintiff John Doe II; ~~for the attempted extrajudicial killing; torture; cruel, inhuman or degrading treatment or punishment and arbitrary detention~~ of Plaintiff John Doe III; and for the extrajudicial killings of Decedents James Doe III, James Doe IV, James Doe V and James Doe VI, the brothers of Plaintiff John Doe IV. Plaintiffs John Doe I, Jane Doe I, John Doe II, John Doe III and John Doe IV, Plaintiffs also bring claims for crimes against humanity. Plaintiffs John Doe I, Jane Doe I and John Doe II also bring claims for and war crimes based upon those wrongful acts.

2. Plaintiffs allege that Defendant Ali-Samantar exercised command responsibility over, conspired with, or aided and abetted ~~subordinates in~~members of the Armed Forces of Somalia, or ~~person~~persons or groups acting in coordination with the Armed Forces or under their control, to commit acts of extrajudicial killing~~;~~; attempted extrajudicial killing~~;~~; torture~~;~~; crimes against humanity~~;~~; war crimes~~;~~; arbitrary detention, and cruel, inhuman, or degrading treatment or punishment~~;~~; and ~~arbitrary detention~~, and to cover up those abuses. Accordingly, Plaintiffs assert that Defendant Ali Samantar is liable under domestic and international law for their injuries, pain and suffering.

JURISDICTION AND VENUE

3. Plaintiffs allege that Defendant Ali-Samantar is liable for acts of torture, extrajudicial killing and attempted extrajudicial killing as defined by customary international law and the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350, note). Alien plaintiffs further allege that Defendant Ali-Samantar is liable for torture~~;~~; extrajudicial killing~~;~~; attempted extrajudicial killing~~;~~; crimes against humanity~~;~~; war crimes~~;~~; cruel, inhuman and degrading treatment or punishment~~;~~; and arbitrary detention under the Alien Tort ~~Claims Act~~Statute, 28 U.S.C. §1350, in that they were in violation of customary international law. Accordingly, this Court has jurisdiction over this action based on 28 U.S.C. § 1350 (Alien Tort ~~Claims Act~~Statute) and 28 U.S.C. § 1331.

4. On information and belief, Defendant Ali-Samantar is a citizen of Somalia and resides in Fairfax, Virginia. Therefore venue is proper in the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. §§ 1391(b) or (d).

PARTIES
Defendant

5. On information and belief, Defendant Mohamed Ali Samantar is a native and citizen of Somalia and currently resides in Fairfax, Virginia.

6. From about January 1980 to December 1986, Defendant Ali-Samantar served as First Vice President and Minister of Defense of the Democratic Republic of Somalia (“Somalia”).

7. In or about January 1987, Defendant Ali Samantar was appointed Prime Minister of Somalia, a position he held until approximately September 1990.

Plaintiffs

8. Bashe Abdi Yousuf is a native of Somalia, ~~and~~ a naturalized U.S. citizen ~~and a resident of Georgia~~. He is a member of the Isaaq clan. He brings this action for the torture he suffered at the hands of the Somali Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control.

9. Aziz Mohamed Deria is a native of Somalia and a naturalized U.S. citizen. He is a member of the Isaaq clan. He brings this action in his capacity as personal representative of decedents’ estates for the extrajudicial killing of Mohamed Deria Ali (his father) and Mustafa Mohamed Deria (his brother), during the indiscriminate attack on the city of Hargeisa by the Somali Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, in or about mid-June 1988. Mohamed Deria Ali and Mustafa Mohamed Deria were citizens and residents of Somalia at the time of their death. Aziz Mohamed Deria also brings this action in his capacity as personal representative of decedents’ estates for the extrajudicial killing of James Doe I and James Doe II (the brothers of plaintiff John Doe I), at the

hands of the Somali Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control.

10. ~~9.~~ John Doe I is a native, citizen and resident of Somalia. He is a member of the Isaaq clan. He brings this action ~~in his individual capacity for the extrajudicial killing of his two brothers, James Doe I and James Doe II, during a mass execution carried out against Isaaq civilians by the Somali Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, on or about December 20, 1984, and for the torture;~~for the torture, arbitrary detention and cruel, inhuman, or degrading treatment or punishment, ~~and arbitrary detention~~ he suffered at the hands of the Somali Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control. Plaintiff John Doe I seeks to proceed under a pseudonym because he fears reprisals against himself or his family as a result of his participation in this lawsuit.

11. ~~10.~~ Jane Doe I is a native, and citizen ~~and resident~~ of Somalia. She currently resides in the United Kingdom. She is a member of the Isaaq clan. She brings this action for the torture, rape, arbitrary detention and cruel, inhuman or degrading treatment or punishment, ~~and arbitrary detention~~ she suffered at the hands of the Somali Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control. Plaintiff Jane Doe I seeks to proceed under a pseudonym because she fears reprisals against herself or her family as a result of her participation in this lawsuit.

12. ~~11.~~ John Doe II is a native, citizen and resident of Somalia. He is a member of the Isaaq clan. He brings this action for the attempted extrajudicial killing, torture, cruel, inhuman or degrading treatment or punishment, and arbitrary detention that he suffered at the hands of the Somali Armed Forces, or persons or groups acting in coordination with or under their control,

when he survived a mass execution of Isaaq officers and soldiers in the Somali ~~Army on~~Armed Forces in or about June 8, 1988. Plaintiff John Doe II seeks to proceed under a pseudonym because he fears reprisals against himself or his family as a result of his participation in this lawsuit.

~~12. John Doe III is a native and citizen of Somalia and a resident of Kuwait. He is a member of the Isaaq clan. He brings this action for the attempted extrajudicial killing; torture; cruel, inhuman or degrading treatment or punishment; and arbitrary detention that he suffered at the hands of the Somali Armed Forces, or persons or groups acting in coordination with or under their control, when he survived a mass execution of Isaaq civilians on or about July 17, 1989. Plaintiff John Doe III seeks to proceed under a pseudonym because he fears reprisals against himself or his family as a result of his participation in this lawsuit.~~

~~13. John Doe IV is a native, citizen and resident of Somalia. He is a member of the Isaaq clan. He brings this action in his individual capacity for the extrajudicial killing of his four brothers, James Doe III, James Doe IV, James Doe V and James Doe VI, at the hands of the Somali Armed Forces, or persons or groups acting in coordination with or under their control, during a mass execution of Isaaq civilians on or about July 17, 1989. Plaintiff John Doe IV seeks to proceed under a pseudonym because he fears reprisals against himself or his family as a result of his participation in this lawsuit.~~

STATEMENT OF FACTS

~~13.~~ ~~14.~~ Throughout the 1980s, the Somali Armed Forces committed gross human rights abuses against the civilian population of Somalia, including the widespread and systematic use of torture, rape, arbitrary ~~and prolonged~~ detention, and mass executions. This deliberate reign of state terror occurred during the period Defendant Ali-Samantar served first as Minister of

Defense, from about January 1980 to December 1986, and then as Prime Minister, from about January 1987 to about September 1990. These human rights abuses were the hallmark of the military government that came to power in 1969 and brutally ruled Somalia until the government was toppled in 1991.

14. ~~15.~~ In October 1969, a coup led by Major General Mohamed Siad Barre overthrew the first and only democratic government of the new nation of Somalia. Power was assumed by the Supreme Revolutionary Council (SRC), which consisted primarily of the Army officers who had supported and participated in the coup, including Defendant Ali Samantar. The SRC suspended the existing Constitution, closed the National Assembly, abolished the Supreme Court and declared all political parties illegal. To further strengthen its grip on power, the SRC declared all groups not sponsored by the government, including civic or religious groups, to be illegal.

15. ~~16.~~ To further strengthen its grip on power, the military leadership, ~~composed primarily of members of the Marehan, Ogadeni, and Dulbahante clans,~~ systematically favored its own clans and oppressed other clans. Even before Somalia became an independent nation, the clan system served as the fundamental building block of Somali society. Clan affiliation had long attracted great emotional allegiance and had often been the sole avenue to jobs and other scarce resources.

16. ~~17.~~ The military leadership built upon and exploited the clan system. It appointed members of the ~~Marehan, Ogadeni, and Dulbahante~~ favored clans to top positions in the Armed Forces, the bureaucracy, and Somali state industries. ~~At the same time, while it ruthlessly oppressed and targeted other clans. It, including in particular the Isaaq clan in the Northern regions. The military leadership~~ systematically excluded ~~them~~ disfavored clans from positions of

power within the government and military and pursued draconian policies intended to weaken them politically and harm them the economically. This oppression led some disfavored clans to oppose the military government.

17. ~~18.~~ Somalia's defeat in its the Ogaden War with Ethiopia from 1977 to 1978 significantly weakened support for the military government. As a result, the government took increasingly fierce measures against perceived opponents, including civilians from disfavored clans. Beginning in the early 1980s and escalating over the course of the decade, the Armed Forces committed numerous atrocities against ordinary citizens including businessmen, teachers, high school students, and nomads simply tending their herds. These measures were intended to terrorize the civilian population and to deter it from supporting the growing opposition movements.

18. ~~19.~~ ~~The Armed Forces worked hand in hand with Somalia's notorious security forces.~~ The National Security Service ("NSS"), the Red Berets and the military police known as Hangash were the government's principal intelligence gathering agencies. These security forces frequently acted in coordination with or under the control of the Armed Forces, often conducted joint operations with members of the Armed Forces, and operated with the tacit approval and permission of the Armed Forces and their commander, Defendant Ali-Samantar. Security forces acting in coordination with or under the control of the Armed Forces were together responsible for the widespread and systematic use of torture, arbitrary and prolonged detention, and extrajudicial killing against the civilian population of Somalia.

19. ~~20.~~ The Isaaq clan, located primarily in the northwestern region of Somalia, was a special target of the government. The Isaaq were among the best educated and most prosperous Somalis and were therefore perceived from the outset as potential opponents. In the 1970s, the

military government relied primarily upon discriminatory economic measures to weaken the Isaaq clan: it limited economic development in the north and restricted the clan's lucrative livestock trade. ~~In 1979, When the Ogaden War ended in 1978 and~~ Ethiopian refugees flooded the north at the end of the war, ~~the northern Somalia, the Somali~~ government even implemented economic policies favoring ~~the~~ those refugees over the Isaaq. During the 1980s, when Defendant Ali Samantar was Minister of Defense and then Prime Minister, the government changed its approach and unleashed the Armed Forces in a violent campaign to eliminate Isaaq clan opposition.

~~20.~~ ~~21.~~ The government's extreme oppression led some members of the Isaaq clan to establish the Somali National Movement ("SNM") in 1981. The SNM articulated Isaaq grievances ranging from inadequate political representation and economic neglect of the north to the torture and detention of Isaaq citizens. In 1983 and 1984, some members of the SNM began a campaign of violent resistance and, operating from bases in Ethiopia, SNM commandos attacked military posts near the northern cities of Hargeisa, Burao, and Berbera.

~~21.~~ ~~22.~~ In response, human rights abuses and war crimes by the Somali Armed Forces dramatically increased. The Somali National Army initiated a brutal counterinsurgency campaign that intentionally disregarded the distinction between civilians and SNM fighters. It killed and looted livestock, blew up water reservoirs, destroyed homes, tortured and detained alleged SNM supporters, and indiscriminately killed civilians as collective punishment for SNM activities. Such acts were intended to, and did, spread terror among the Isaaq clan in order to deter them from assisting the SNM.

~~22.~~ ~~23.~~ This violent confrontation between the SNM and the Armed Forces of Somalia from 1983 to 1990 constituted an armed conflict not of an international character.

23. This pattern of crimes against humanity, including war crimes, committed against the Issaq clan reached its peak continued in 1988 during the period Defendant Ali-Samantar served as Prime Minister. In June and July 1988, following SNM attacks on military targets, the Somali Armed Forces launched an indiscriminate aerial and ground attack on cities and towns in northwest Somalia, including Hargeisa, the second largest city in the country. A 1989 U.S. General Accounting Office study, conducted at the request of Congress, found that the attack destroyed most of Hargeisa, with the most extensive damage in the residential areas, the marketplace and in public buildings in the downtown areas. A State Department report found that the Somali ~~Army~~ Armed Forces engaged in systematic assaults on unarmed civilians, ~~leaving~~ killing more than 5,000 ~~dead~~ people. As a result of the fighting, approximately 400,000 Somalis fled to Ethiopia, a country itself racked by drought and internal conflict, where they remained in refugee camps for many years. More than a million people were displaced internally.

24. Throughout 1989 and 1990 the crimes of oppression and armed resistance continued, gradually leading to the reduced effective territorial control of the Barre regime and withdrawal of American and international support. By the end of 1990, the Barre regime was in the final stages of complete state collapse. In early December 1990, President Barre declared a state of emergency, and in January 1991, armed opposition factions finally drove Barre out of power, resulting in the complete collapse of the central government. When Barre and his supporters were ousted from power, they fled the country. Defendant Samantar fled first to Italy, then, in 1997, arrived in the United States.

Plaintiff Bashe Abdi Yousuf

25. ~~24.~~ At the time of the events at issue, Plaintiff Bashe Abdi Yousuf was a young businessman in Hargeisa, the main city in the northwest region of Somalia. He operated a wholesale business selling goods imported from London and Saudi Arabia.

26. ~~25.~~ In early 1981, he joined with some friends to form a volunteer group to improve living conditions in Hargeisa, especially the local public schools and hospital. The group took the name of UFFO, which referred to the refreshing whirlwind that precedes the desert rains. UFFO's first project was to clean the sewage system of the Hargeisa General Hospital and to raise money for the purchase of badly-needed items such as bandages and medicine.

27. ~~26.~~ On or about November 19, 1981, in the late morning, Bashe Abdi Yousuf was working in the warehouse of his business. Three NSS agents entered the warehouse, forced him into a Land Cruiser and took him to the building that had housed the Somali immigration services, but was now reserved for the detention and interrogation of members of UFFO. He was searched, put in a room and left there for two days without food or water.

28. ~~27.~~ One night in early December 1981, two military policemen and an NSS officer came to Bashe Abdi Yousuf's cell. He was blindfolded, handcuffed, and forced into the back of a Land Cruiser. One of the interrogators put his boot on Bashe Abdi Yousuf's neck, forcing him to lean forward and keep his head down.

29. ~~28.~~ When the Land Cruiser stopped, Bashe Abdi Yousuf was pushed out of the car and forced face down on the ground. The interrogators tightly tied his hands and feet together behind his back so that his body was arched backward in a slightly-tilted U shape, with his arms and legs high in the air. Bashe Abdi Yousuf's interrogators slowly placed a heavy rock on his

back, causing him excruciating pain. This form of torture was called the “Mig,” because it placed the prisoner’s body in a shape that resembled the Somali Air Force’s MIG aircraft, with its swept-back wings. They also tightened the ropes causing deep cuts to his arms and legs. They then turned him over and put the rock on his back again. They questioned him about the members and activities of UFFO and told him they would stop the torture if he confessed to anti-government crimes.

30. ~~29.~~ The interrogators also subjected him to torture by water. They held his nose closed, forced his mouth open and poured water into it, making him feel like he was suffocating. They repeated this several times until he lost consciousness.

31. ~~30.~~ Bashe Abdi Yousuf was tortured in this manner eight times in the three months after he was arrested. He also twice endured electric shocks to his armpits.

32. ~~31.~~ On or about February 19, 1982, Bashe Abdi Yousuf was served with official indictment papers. He was charged with high treason, a crime that carried a mandatory death sentence by hanging. He also met with his court-appointed attorney that day. The meeting lasted five to ten minutes. Bashe Abdi Yousuf’s attorney admitted there was no redress available to him.

33. ~~32.~~ In the early morning of February 28, 1982, Bashe Abdi Yousuf, and the twenty-seven other detained members of UFFO, were taken before the National Security Court, a special military court with jurisdiction over civilians accused of national security crimes, including political offenses. The courthouse was entirely surrounded by Army tanks and soldiers with machine guns.

34. ~~33.~~The trial, which considered evidence against all twenty-eight men, lasted only two days. Neither Bashe Abdi Yusuf~~Yousuf~~, nor any other UFFO member, was allowed to speak other than to answer preliminary questions such as “How do you plead?” He pleaded not guilty.

35. ~~34.~~On or about March 3, 1982, Bashe Abdi Yousuf was again taken before the National Security Court. He was sentenced to twenty years in prison. He and the other twenty-seven members of UFFO were immediately taken to Hargeisa Central Prison. They were all placed together in a small cell. Bashe Abdi Yousuf remained in Hargeisa Central Prison for eight months.

36. ~~35.~~On or about October 24, 1982, Bashe Abdi Yousuf was transferred to Labaatan Jirow prison, a notorious maximum security prison for political prisoners. He was placed in a small, windowless cell approximately 6 feet by 6 feet. The cell had an outer door that, when closed, put the cell in total darkness. The outer door was closed every day at 4 p.m. and not opened again until 7 a.m. He was fed millet gruel twice a day. He remained there in solitary confinement for approximately six and a half years.

37. ~~36.~~Bashe Abdi Yousuf was released from prison in or about May 1989 and fled Somalia. He arrived in the United States in 1991.

**Plaintiff John Doe Aziz Mohamed Deria, in his capacity
as personal representative of the estates
of Mohamed Deria Ali and
Mustafa Mohamed Deria**

38. In 1988, Aziz Mohamed Deria was living in California. Five years earlier he had fled Somalia where he had been persecuted because of his political activities on behalf of the Isaaq clan. His family, including his father, Mohamed Deria Ali, and his younger brother, Mustafa Mohamed Deria, remained in Somalia. Mohamed Deria Ali was a highly successful

businessman who operated a large import-export business in Hargeisa. Like his father, Mustafa Mohamed Deria, then approximately 22 years old, was also in the import-export business.

39. In or about June of 1988, the Somali Armed Forces launched an indiscriminate aerial and ground attack on Hargeisa. The Somali Armed Forces dropped bombs on downtown Hargeisa as well as the surrounding residential areas and shelled Hargeisa with heavy artillery from the hills surrounding the city. The Somali tanks and other armored vehicles also entered the city. Groups of soldiers shot, tortured, and detained civilians throughout Hargeisa.

40. In or about June of 1988, Aziz Mohamed Deria's family members were trapped in their home by the Armed Forces' attack on the city. From the window of their home, the family could see the bombs dropping on the city and Army vehicles taking civilians away to be executed. Several buildings owned by the family were completely destroyed during the bombing.

41. On a morning in mid-June 1988, during the indiscriminate bombing of the city, a group of approximately twenty members of the Somali Armed Forces came to the family's home. They kicked down the door and entered the house. They asked the family about the clan to which they belonged. The soldiers replied that they were going to kill all the members of the Isaaq clan that day. The soldiers then grabbed Mohamed Deria Ali and dragged him out of the house. The family never saw him again.

42. Later that afternoon, the same group of soldiers returned to the family's home. The soldiers told the family that their father, Mohamed Deria Ali, had been killed. They then grabbed Mustafa Mohamed Deria and dragged him out of the house. The family never saw Mustafa Mohamed Deria again.

Plaintiffs John Doe I and Aziz Mohamed Deria,
in his capacity as personal representative
of the estates of James Doe I and James Doe II

43. ~~37.~~ On ~~the~~ or about December 18, 1984, John Doe I, along with two of his brothers, Decedents James Doe I and James Doe II, and a young nephew were tending the family's camels in the rural areas around Burao, a small city in the north of Somalia. A large group of soldiers from the Somali Armed Forces, followed by ~~three~~ military vehicles, approached them. The soldiers interrogated them about SNM activity in the area the previous evening. When they denied having any knowledge of SNM activities, they were forced into one of the military truck and taken to the military installation in the village of Magaaloyar.

44. ~~38.~~ That night, John Doe I and his brothers, James Doe I and James Doe II, were ordered into a small hut made of thorns in the middle of the military base. He and his brothers were ordered to lie down on their chests. They were then tied into the "Mig" position, their bodies arched backward in a slightly-tilted U shape, causing them excruciating pain. The soldiers also beat them with guns and kicked them. When the soldiers were tired, the soldiers threw John Doe I and his brothers, still tied in the "Mig" position, into the back of an army truck. They were transported to the military base in the city of Burao.

45. ~~39.~~ At Burao, the soldiers untied John Doe I and his brothers, James Doe I and James Doe II, and ordered them out of the truck. They were directed to enter an office, one by one, where they were questioned by military officers. John Doe I was asked his name, age, and place of arrest. He was also interrogated at length about SNM activities in the Burao area. His answers were recorded in a register. He was then ordered to wait outside the office. His two brothers were similarly interrogated.

46. ~~40.~~ There were ~~immediately~~ taken to a very small cell that already contained eleven prisoners. John Doe I was handcuffed to one prisoner already in the cell, and his two brothers, James Doe I and James Doe II, were handcuffed together. The cell had no windows or toilet, and the men were forced to urinate and defecate on the floor where they slept. They received one small meal of cooked rice ~~at about 2:00 p.m.~~ in mid-afternoon.

47. ~~41.~~ The next day, John Doe I, his brothers, James Doe I and James Doe II, and ten other prisoners were ordered out of the cell, loaded onto a military truck and taken, with armored vehicles as escorts, to the military court in Burao. Two of the soldiers who had detained John Doe I and his brothers testified that the brothers had ~~concealed~~ hidden SNM fighters and probably were themselves members of the SNM. The brothers' attorney, whom they had met for the first time only at the start of the trial, argued that the brothers were innocent. The presiding judge closed the hearing, and the thirteen men, including John Doe I and his brothers were returned to their small cell in the military base.

48. ~~42.~~ Four days later, all the prisoners detained at the military base, approximately eighty men, including John Doe I and his brothers, James Doe I and James Doe II, were ordered out of their cells and taken to the courthouse. The road to the courthouse was heavily guarded by military vehicles. The presiding judge called the names of the first forty-five prisoners, including John Doe I and his brothers, and sentenced each to death, with the sentence to be executed immediately.

49. ~~43.~~ The prisoners to be executed were then directed out of the courthouse into army trucks waiting at the courthouse. ~~The~~ A commander of the local paramilitary forces was standing at the truck, monitoring the count of prisoners. As John Doe I and his brothers James Doe I and James Doe II entered the truck, the commander asked John Doe I whether the three

men were brothers. When John Doe I answered yes, the commander untied John Doe I from his brothers, led him to the front of the gate around the courthouse, and ordered the guard at the gate to let him escape.

50. ~~44.~~ As John Doe I ran down the road away from the courthouse, he was passed by the truck carrying the condemned prisoners, including his two brothers. The truck was heading for the road to the Burao airport, a well-known execution site. As he reached his brother's house, he heard the sound of gunshots and saw many people running toward the airport. His two brothers, James Doe I and James Doe II, were among the men executed ~~at that time~~.

51. ~~45.~~ Later that night, John Doe I was told that the paramilitary forces were searching for him because he had been illegally released. He therefore fled Burao on foot to the remote village of Shanshacade, and then headed to the rural settlement area of Urruraha where his extended family, including the families of his two dead brothers, lived. He subsequently moved the extended family for safety to a refugee camp in Ethiopia. John Doe I remained in northern Somalia.

Plaintiff Jane Doe-I

52. ~~46.~~ ~~On the~~ One night of in or around July 15, 1985, Jane Doe-I, a student at Farah Omar Secondary School, was at home with her family in Hargeisa. Several ~~National Security Service~~ NSS agents arrived at her house, banged on the door and then kicked in the door. She and other members of her family were taken to NSS headquarters. They were detained there for one week. She was accused of being a "subversive leader" for her alleged support of the Somali National Movement.

53. ~~47.~~ ~~On or about~~ July 22, 1985, A few days later, Jane Doe-I was taken to the headquarters of the 26th Military Sector, the headquarters for all military and security forces in

the northern region of Somali. She was held in a very small cell with one other woman. Her arms were tied behind her back with wire and then chained to the wall. Her left leg was chained to the floor. She was given food only once a day at 7:00 p.m. The cell was always completely dark. She was detained at the 26th Military Sector headquarters in this manner for three months.

54. ~~48.~~ Jane Doe I was regularly interrogated during her detention at the Military Sector headquarters. Each time, she was taken to a small room not far from her cell. She was subjected to continuing torture as the soldiers attached very tight clips to her nipples.

55. ~~49.~~ During her detention at the 26th Military Sector headquarters, Jane Doe I was also raped at least fifteen times. On each occasion, she was taken from her cell and locked in a room. Although the room was dark, she could see that her rapist was wearing a camouflage uniform. Like other girls in Somalia, Jane Doe I had been subject to the practice of infibulation, a procedure whereby her vagina had been sewn closed except for a very tiny hole through which urine and menstrual blood could flow. Her rapist opened her vagina by cutting through her skin with the part of a fingernail clipper used for cleaning under the fingernails. Throughout this period, and after, Jane Doe I suffered constant and severe physical pain. She never received medical attention for her injuries.

56. ~~50.~~ ~~On the morning of May 31, 1986,~~ Months later, Jane Doe I, along with the six other high school students who had been detained at the same time, was taken from her cell, loaded into an open Army truck with a net across the top and taken to the National Security Court. The courthouse was entirely surrounded by Army tanks and soldiers with machine guns.

57. ~~51.~~ At her trial, Jane Doe I was not permitted defense counsel nor was evidence presented against her. The following day, the National Security Court sentenced her to life in prison. She was immediately taken by Army soldiers to a truck waiting outside the courthouse,

where the soldiers severely beat her. Because of this beating, ~~heshe~~ could not stand or walk for months.

58. ~~52.~~ She was ~~immediately then~~ taken to Hargeisa Central prison. She was held alone in a very small cell measuring approximately 3½ feet by 5½ feet. Her hands were tied together in front of her at all times. She remained in solitary confinement for the next three and a half years.

59. ~~53.~~ In November 1989, Jane Doe I and three other women prisoners were taken to Mogadishu in an Army airplane. On the sixth night after their arrival, they were taken by Army soldiers to the presidential villa to see Major General Siad Barre. Barre asked Jane Doe I why she supported the SNM. Barre then told Jane Doe I to stay away from the SNM and released her from prison, but he ordered her not to leave the country.

60. ~~54.~~ After her release, Jane Doe I fled Somalia. She remained with her family in a refugee camp in Ethiopia for two years. She returned to Somalia in ~~1991-1991,~~ and later immigrated to the United Kingdom.

Plaintiff John Doe II

61. ~~55.~~ During the Spring of 1988, John Doe II, a non-commissioned Isaaq officer in the Somali National Army, was assigned to the Hargeisa Department of Public Works to help with the repair of the Hargeisa airport.

62. ~~56.~~ ~~On~~ In or about ~~around~~ June 2, 1988, John Doe II was arrested by an Army officer and three Red Berets while working near a small town about 50 kilometers from Hargeisa. He was immediately taken to the headquarters of the 26th Military Sector. There, he saw many other Isaaq Army officers with whom he had served in the nearby towns of Gebiley

and Dararweine. He realized that they were being detained by the Somali Army for fear that they would desert and join the opposition Somali National Movement.

~~57. On or about June 3, 1988, The next day,~~ 63. around 4:00 p.m., Army soldiers began taking prisoners in groups of four from the 26th Military Sector headquarters. They were taken and executed near the banks of the river that runs through the center of Hargeisa, just a mile away from the military headquarters. This well-known execution site was known as Malko Dur-Duro.

~~58. Around 6:30 p.m., Army soldiers took John Doe II and three other Isaaq officers from their cell and drove them to Malko Dur-Duro. A group of Army officers, Army soldiers and Red Berets were waiting at the execution site. John Doe II and the other Isaaq officers were told to stand between two poles located at the edge of the river. An Army officer ordered the Red Beret soldiers to shoot the prisoners. The Red Berets shot at the men and they all fell backward into the riverbed. John Doe II received only flesh wounds and briefly fell unconscious. When he awoke, he found himself lying among the dead bodies. He remained there, covered by dead bodies, until the mass execution was completed and the soldiers had left the area. He subsequently fled Hargeisa and did not return until 1991.~~

64. Around 6:30 p.m., Army soldiers took John Doe II and three other Isaaq officers from their cell and drove them to Malko Dur-Duro. A group of Army officers, Army soldiers and Red Berets were waiting at the execution site. John Doe II and the other Isaaq officers were told to stand between two poles located at the edge of the river. An Army officer ordered the Red Beret soldiers to shoot the prisoners. The Red Berets shot at the men and they all fell backward into the riverbed. John Doe II received only flesh wounds and briefly fell unconscious. When he awoke, he found himself lying among the dead bodies. He remained there, covered by dead bodies, until the mass execution was completed and the soldiers had left the area. He subsequently fled Hargeisa and did not return until 1991.

Plaintiff John Doe III

~~59. In 1987, John Doe III moved from northern Somalia to Mogadishu in order to attend college. He became a full-time student at the Somali Institute of Development Administration and Management.~~

~~60. At about midnight on or about July 17, 1989, five Army soldiers and Red Berets broke down the door of his house and abducted him and all the men living there. He was taken~~

to a nearby collection point where other Isaaq men from his neighborhood were seated with their heads between their knees.

61. When forty seven men had been detained at the collection point, three military trucks pulled up. The men were loaded into two trucks and the soldiers climbed into the other. The trucks drove toward the southern edge of Mogadishu, turned down a makeshift road, and headed for an isolated beach area known as Jezira Beach. The truck stopped at the top of a small hill and the soldiers began unloading the men five at a time.

62. John Doe III was among the last five men unloaded from the truck and taken over the hill. He saw the other men sitting on the beach, in groups of five, with their heads between their legs. One soldier identified John Doe III's group as the "last group." When his group was seated with the other men, the commanding officer shouted, "Execute them. What are you waiting for?" The soldiers then fired their machine guns. John Doe III was hit by a bullet under his shoulder in the fleshy area and fell over on his back. He pretended to be dead. All the other men died immediately.

63. The commanding officer then ordered the soldiers to bury all the bodies in the sand. John Doe III put his head under his arm to create a pocket of air so he could breathe. He remained in that position as a soldier buried him with sand. He remained there until the soldiers left the beach.

64. Once the soldiers left the beach, John Doe III crawled out of the sand. He remained briefly in hiding in Hargeisa and subsequently fled Somalia.

Plaintiff John Doe IV

~~65. In 1989, John Doe IV was living in Mogadishu with his mother, sister, four brothers—James Doe III, James Doe IV, James Doe V and James Doe VI—and five male first cousins. He and several of his brothers and cousins worked as mechanics at a nearby garage.~~

~~66. During the night of July 16, 1989, eight Army soldiers arrived at John Doe IV's home. They rounded up all the men present in the house, including John Doe IV's four brothers and five male cousins. Plaintiff John Doe IV was not at home that night.~~

~~67. The Army soldiers severely beat John Doe IV's brothers and cousins, then loaded them onto a truck and drove them away. His mother attempted to stop the soldiers from abducting her sons and nephews, but she too was beaten with a gun. John Doe IV's brothers and cousins were taken to Jezira Beach and shot in the same massacre which Plaintiff John Doe III survived. All of John Doe IV's brothers and cousins died at Jezira Beach.~~

~~68. Plaintiff John Doe IV returned home the next morning. His mother told him that his four brothers and five cousins had been abducted by Army soldiers.~~

~~69. Later that day, Plaintiff John Doe IV met secretly with Plaintiff John Doe III, the sole survivor of the Jezira Beach massacre. Plaintiff John Doe III confirmed that Plaintiff John Doe IV's four brothers—James Doe III, James Doe IV, James Doe V and James Doe VI—had been murdered the previous night at Jezira Beach.~~

GENERAL ALLEGATIONS

Theories of Liability

~~65. 70.~~ The acts ~~described~~described herein were carried out under actual or apparent authority or color of law of the government of Somalia. The acts of torture, extrajudicial killings, attempted extrajudicial killings, rape, arbitrary detention, and cruel, inhuman or degrading

punishment or treatment inflicted upon Plaintiffs and Decedents were part of a pattern and practice of widespread or systematic human rights violations committed against the civilian population in Somalia from 1980 to 1990, and contrary to customary international law and the laws and customs of war, for which Defendant Ali-Samantar, acting as Minister of Defense, and later as Prime Minister, bears responsibility.

~~66.~~ 71. At all relevant times between 1980 and 1987, Defendant Ali-Samantar, as Minister of Defense, possessed and exercised command and effective control over the Armed Forces of Somalia. He also acquiesced in and permitted persons or groups acting in coordination with the Armed Forces, or under their control, to commit human rights abuses. Defendant Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit extrajudicial killings, attempted extrajudicial killings, torture, crimes against humanity, war crimes, cruel, inhuman, or degrading treatment, or arbitrary detentions.

~~67.~~ 72. At all relevant times between 1980 and 1987, Defendant Ali Samantar, as Minister of Defense, had the legal authority and practical ability to exert control over subordinates in the Armed Forces, or persons or groups acting in coordination with the Armed Forces, or under their control, who participated in the extrajudicial killings of Decedents James Doe I and James Doe II, and the ~~torture, rape, arbitrary detention and cruel, inhuman or degrading treatment or punishments of~~ abuses against Plaintiffs Bashe Abdi Yousuf, John Doe I, and Jane Doe-I. Defendant Ali Samantar's command over such forces included the authority and responsibility to give orders to, set policy for, and manage the affairs of, the forces under his control, and to appoint, remove and discipline personnel of such forces. Furthermore, Defendant Samantar had the actual authority and practical ability to investigate abuses, prevent their commission, and punish those responsible.

68. ~~73.~~ At all relevant times between 1980 and 1987, as Minister of Defense, Defendant Ali-Samantar had a duty under customary international law and multilateral treaties to ensure the protection of civilians, to prevent violations of international law by the Armed Forces, and to ensure that all persons under his command were trained in, and complied with, the laws of warfare and international law, including the prohibitions against torture, extrajudicial killing, rape, arbitrary detention, cruel, inhuman or degrading treatment or punishment, war crimes and crimes against humanity. Furthermore, Defendant Ali Samantar was under a duty to investigate, prevent and punish violations of international law committed by the members of the Armed Forces under his command.

~~74.~~

69. At all relevant times between 1980 and 1987, Defendant Ali-Samantar failed or refused to take all necessary measures to investigate and prevent these abuses, or to punish personnel under his command for committing such abuses.

70. At all relevant times between 1980 and 1987, Defendant Samantar failed or refused to take all necessary measures to investigate and prevent these abuses, or to punish personnel under his command for committing such abuses. Defendant Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit extrajudicial killings, attempted extrajudicial killings, torture, crimes against humanity, war crimes, cruel, inhuman, or degrading treatment, or arbitrary detentions.

71. ~~75.~~ At certain relevant times between 1987 and 1990, Defendant Ali Samantar, as Prime Minister, possessed and exercised command and effective control over the Armed Forces of Somalia. At times he also acquiesced in and permitted persons or groups acting in coordination with the Armed Forces, or under their control, to commit human rights abuses. In

particular, he was in Hargeisa in May and June of 1988 and had command of the Somali Armed Forces that were engaged in the indiscriminate attack upon the civilian population of the city of Hargeisa. Defendant Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit extrajudicial killings, attempted extrajudicial killings, torture, crimes against humanity, war crimes, cruel, inhuman, or degrading treatment, or arbitrary detentions.

72. 76. At all certain relevant times between 1987 and 1990, Defendant Ali Samantar, as Prime Minister of Somalia, had the legal authority and practical ability to exert control over subordinates in the Armed Forces, or person or groups acting in coordination with the Armed Forces or under their control, who participated in the extrajudicial killings of Decedents James Doe III, James Doe IV, James Doe V and James Doe VI, and the torture, attempted extrajudicial killing, arbitrary detention and cruel, inhuman and degrading treatment or punishment of Plaintiffs John Doe II and John Doe III Mohamed Deria Ali and Mustafa Deria and the abuses against Plaintiffs Bashe Abdi Yousuf, John Doe I, Jane Doe, and John Doe II. In particular, he was in Hargeisa in May and June of 1988 and had command of the Somali Armed Forces that were engaged in the indiscriminate attack upon the civilian population of the city of Hargeisa. Furthermore, Defendant Samantar had the actual authority and practical ability to investigate abuses, prevent their commission, and punish those responsible.

73. 77. At all relevant times between 1987 and 1990, as Prime Minister of Somalia, Defendant Ali Samantar had a duty under customary international law and multilateral treaties to ensure the protection of civilians, to prevent violations of international law by the Armed Forces, and to ensure that all persons under his command were trained in, and complied with, the laws of warfare and international law, including the prohibitions against torture, extrajudicial killing,

~~attempted extrajudicial killing; arbitrary detention; attempted extrajudicial killing, arbitrary detention,~~ cruel, inhuman or degrading treatment or punishment; war crimes and crimes against humanity. Furthermore, Defendant Ali-Samantar was under a duty to investigate, prevent and punish violations of international law committed by the members of the Armed Forces under his authority.

74. At all relevant times between 1987 and 1990, Defendant Samantar failed or refused to take all necessary measures to investigate and prevent these abuses, or to punish personnel under his command for committing such abuses.

75. ~~78.~~ The acts of torture, extrajudicial killing, attempted extrajudicial killing, rape, arbitrary detention, and cruel, inhuman or degrading treatment or punishment inflicted upon Plaintiffs and Decedents between 1980 and 1990 were part of a pattern and practice of widespread or systematic human rights violations against the civilian population of Somalia and contrary to the law and customs of war. At all relevant times, the persons who carried out these acts knew or reasonably should have known that the acts were part of a widespread or systematic attack against a civilian population. At all relevant times, Defendant Ali Samantar knew or reasonably should have known of the pattern or practice of gross human rights abuses perpetrated against the civilian population by subordinates under his command, ~~including the abuses committed against Plaintiffs and Decedents.~~

76. ~~79.~~ Defendant Ali Samantar failed or refused to take all necessary measures to investigate and prevent these abuses, or to punish personnel under his command for committing such abuses.

77. ~~80.~~ Defendant Ali-Samantar, both as Minister of Defense and as Prime Minister, conspired with, or aided and abetted ~~subordinates in~~ members of the Armed Forces or persons or

groups acting in coordination with the Armed Forces or under their control to commit acts of torture; extrajudicial killing; attempted extrajudicial killing; rape; arbitrary detention; cruel, inhuman or degrading treatment or punishment; war crimes and crimes against humanity, and to cover up these abuses.

78. The attempted acts of torture, extrajudicial killing, attempted extrajudicial killing, rape, arbitrary detention, cruel, inhuman or degrading treatment or punishment, war crimes and crimes against humanity described herein were a part of an organized system of repression and ill-treatment against members of the Isaaq clan.

79. Defendant Samantar had knowledge of and was an active participant in the enforcement of this system of repression and ill-treatment against members of the Isaaq clan.

80. Moreover, it was the intent of Defendant Samantar while he was the Minister of Defense and while he was the Prime Minister to further this system of repression and ill-treatment.

81. Additionally, the acts of torture, extrajudicial killing, attempted extrajudicial killing, rape, arbitrary detention, cruel, inhuman or degrading treatment or punishment, war crimes and crimes against humanity described herein were natural and foreseeable consequences of a common, shared design on the part of the leaders of the Barre regime and the Armed Forces of Somalia to rid the northern region of Somalia of members of the Isaaq clan, and to engage in a systematic attack against civilian populations.

82. The civilian populations targeted by this joint criminal enterprise included, but were not limited to, members of the Isaaq clan.

83. Defendant Samantar intended to participate in this common design and was reckless or indifferent to the risk that acts of torture, extrajudicial killing, attempted extrajudicial

killing, rape, arbitrary detention, cruel, inhuman or degrading treatment or punishment, war crimes and crimes against humanity would occur during the effecting of that common purpose.

Equitable Tolling of the Statute of Limitations

84. Defendant Samantar has resided in the United States only since 1997. Before that time, neither this court, nor any other United States court, could exercise jurisdiction over Samantar for claims relating to the actions described herein. For this reason, the statute of limitations for these claims was tolled until 1997.

85. Also, prior to 1997, Isaaq victims of human rights abuses committed in the 1980s by the Somali Armed Forces, or persons or groups acting in coordination with the Somali Armed Forces or under their control, could not have been expected to pursue a cause of action in the United States. Until approximately 1997, victims' reasonable fear of reprisals against themselves or members of their families still residing in Somalia served as an insurmountable deterrent to such action. Also, until approximately 1997, it would not have been possible to conduct safely investigation and discovery in Somalia in support of such a case.

86. Throughout the 1990s, Somalia fell into increasing chaos. Following the violent defeat of the military government in 1991, Somalia's central government collapsed. Fighting among rival clan leaders resulted in the killing, displacement, and mass starvation of tens of thousands of Somali citizens. The ensuing chaos led the United Nations to intervene militarily in 1992, though it proved incapable of restoring even a minimum level of order. Somalia's clan-based civil war and anarchic violence proved to be so brutal that it drove the United Nations from the country in 1994. Rival clan militias continued to commit gross and systematic human rights abuses in the years after the United Nations' departure, including the deliberate killing and kidnapping of civilians because of their clan membership.

87. ~~83.~~ During these years, conditions in Somalia precluded human rights cases against former commanders of the Somali Armed Forces from being brought either in Somalia or the United States or elsewhere. Throughout the time period alleged in the complaint, and up to the present, each of the Plaintiffs either lived in Somalia or had immediate family still residing there. No national government existed in Somalia to protect them from the continuing clan-based violence. Gross and systematic human rights violations openly committed by rival clans had a further chilling effect. Pursuit of human rights claims, even in the United States, would have exposed victims and their families to acts of retribution that discouraged them from pursuing such a course. Witnesses also reasonably feared acts of reprisal for assisting in such cases.

88. ~~84.~~ The return of stability sufficient to permit victims of Barre-era human rights abuses to come forward has been a slow and uneven process. Stable conditions still do not exist in most regions of the country. It took until approximately 1997 for even one region to establish the conditions that permitted victims to consider bringing their claims.

89. ~~85.~~ This region, the former British protectorate of Somaliland, is dominated by the Isaaq clan. In 1991, it declared its independence, reclaimed its previous name, and seceded from Somalia. A rudimentary civil administration was established there in 1993, but major armed conflicts in 1994 and 1996 plunged the region back into turmoil. Since about 1997, Somaliland's government has exercised a modicum of authority over its territory. Nonetheless, conditions remain dangerous and unstable throughout the country. Clan allegiances are still very strong, violence is still a daily possibility, and fear of clan-based repercussions is still of paramount concern to the anonymous plaintiffs of this case.

Absence of Remedies in Somalia

90. ~~86.~~ Somalia remains without a functioning national government and national judicial system in which victims of Barre-era human rights abuses could bring their claims. Shari'a courts operate in some regions of the country, filling the vacuum created by the absence of governmental authority, but such courts impose religious and local customary law often in conflict with universal human rights conventions. ~~Despite the very recent selection of a former warlord as president,~~ Somalia still does not have a functioning national government with a court system capable of reviewing human rights abuses committed by the military government in the 1980s. The country remains under the de facto control of competing clan leaders, warlords and criminal gangs, many of whom commit or countenance the commission of serious human rights abuses.

91. ~~87.~~ Somaliland does not offer a forum in which victims of human rights abuses can bring their claims. Although civil order has prevailed there since 1997, it remains impossible to seek judicial remedies in its courts for such claims. The Somaliland government's human rights record is weak, and human rights activists are frequently arrested and detained. The judicial system remains very tied to religious and political elites and lacks properly trained judges and other legal personnel. Furthermore, no former members of the Barre government reside within Isaaq-dominated Somaliland. Thus the people who should be held accountable reside beyond the jurisdictional reach of the Somaliland courts. Accordingly, there were and are no adequate and available remedies for Plaintiffs to exhaust in Somalia.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(~~Extrajudicial Killing - Plaintiffs John Doe I and John Doe IV~~Plaintiff Aziz Deria, in his capacity as the personal representative of the estates of the decedents)

~~92.~~ ~~88.~~ ~~Plaintiffs John Doe I and John Doe IV reallege and incorporate~~Plaintiff Aziz Deria realleges and incorporates by reference the allegations set forth in paragraphs 1 through ~~8791~~ as if fully set forth herein.

~~93.~~ ~~89.~~ The extrajudicial killings of Decedents Mohamed Deria Ali and Mustafa Mohamed Deria (father and brother of Plaintiff Aziz Mohamed Deria) and of Decedents James Doe I and James Doe II, (brothers of Plaintiff John Doe I, and of Decedents James Doe III, James Doe IV, James Doe V and James Doe VI, brothers of Plaintiff John Doe IV,) constitute extrajudicial killings as defined by the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 Note). Additionally, the extrajudicial killing of Decedents Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I, and James Doe II, James Doe III, James Doe IV, James Doe V, and James Doe VI constitute “tort[s] ... committed in violation of the law of nations or a treaty of the United States” under the Alien Tort ~~Claims Act~~Statute, 28 U.S.C. § 1350, in that they were in violation of customary international law prohibiting extrajudicial killing as reflected, expressed, defined, and codified in multilateral treaties and other international instruments, international and domestic judicial decisions and other authorities.

~~94.~~ ~~90.~~ The extrajudicial killings of Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II, brothers of Plaintiff John Doe I, and of James Doe III, James Doe IV, James Doe V and James Doe VI, brothers of Plaintiff John Doe IV, were not authorized by a

judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

95. ~~91.~~ Defendant Ali-Samantar exercised command responsibility over, conspired with, or aided and abetted ~~subordinates in~~members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, to murder Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II, brothers of Plaintiff John Doe I, and James Doe III, James Doe IV, James Doe V and James Doe VI, brothers of Plaintiff John Doe IV. Furthermore, Defendant Ali-Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit human rights abuses ~~were being committed by his subordinates,~~ and he failed to prevent the abuses or to punish those responsible.

96. Moreover, defendant Samantar was an active participant in the joint criminal enterprise that resulted in the murders of Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II.

97. ~~92.~~ Defendant Ali Samantar's acts or omissions described above and the acts committed by his subordinates, caused the extrajudicial killings of ~~Decedents~~Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II, brothers of Plaintiff John Doe I, and James Doe III, James Doe IV, James Doe V and James Doe VI, brothers of Plaintiff John Doe IV, and caused Plaintiffs John Doe I and John Doe IV to suffer severe mental pain and suffering and caused family members of the decedents to suffer.

98. ~~93.~~ Defendant Ali Samantar's acts or omission described above and the acts committed by his subordinates against Decedents Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II, brothers of Plaintiff John Doe I, and James Doe III, James Doe

~~IV, James Doe V and James Doe VI, brothers of Plaintiff John Doe IV, were committed under actual or apparent authority, or color of law, of the government of Somalia.~~

~~99. 94. As a result of the extrajudicial killing of James Doe I, James Doe II, James Doe III, James Doe IV, James Doe V and James Doe VI, Plaintiffs John Doe I and John Doe IV are~~
killings of Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II, Plaintiff Aziz Mohamed Deria, in his capacity as personal representatives of the estates of the decedents, is entitled to damages in an amount to be determined at trial.

~~100. 95. Defendant Ali Samantar's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.~~

SECOND CLAIM FOR RELIEF
(Attempted Extrajudicial Killing — ~~Plaintiffs~~ Plaintiff
~~John Doe II and John Doe III~~)

~~101. 96. Plaintiffs~~Plaintiff John Doe II and John Doe III reallege and incorporate
realleges and incorporates by reference the allegations set forth in paragraphs 1 through 95~~100~~ as if fully set forth herein.

~~102. 97. The attempted extrajudicial killings~~killings of ~~Plaintiffs~~Plaintiff John Doe II and John Doe III ~~constitute attempts~~constitutes an attempt to commit an extrajudicial ~~killings~~killings as defined by the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 Note). Additionally, the attempted extrajudicial killing of ~~Plaintiffs~~Plaintiff John Doe II and John Doe III ~~constitute~~constitutes a “tort[s] ... committed in violation of the law of nations or a treaty of the United States” under the Alien Tort ~~Claims Act~~Statute, 28 U.S.C. § 1350, in that ~~they were~~it was in violation of customary international law prohibiting extrajudicial killings as reflected, expressed, defined, and codified in multilateral

treaties and other international instruments, international and domestic judicial decisions and other authorities.

103. ~~98.~~ The attempted extrajudicial ~~killings~~killings of John Doe II and John Doe III ~~were~~was not authorized by a judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

104. ~~99.~~ Defendant Ali-Samantar exercised command responsibility over, conspired with, or aided and abetted ~~subordinates in~~members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, in their attempts to extrajudicially kill John Doe II and John Doe III. Furthermore, Defendant Ali-Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit human rights abuses ~~were being committed by his subordinates~~, and he failed to prevent the abuses or to punish those responsible.

105. Moreover, defendant Samantar was an active participant in the joint criminal enterprise that resulted in the attempted extrajudicial killing of Plaintiff John Doe II.

106. ~~100.~~ Defendant Ali Samantar's acts or omissions described above and the acts committed by his subordinates against ~~Plaintiffs~~Plaintiff John Doe II and John Doe III were committed under actual or apparent authority, or color of law, of the government of Somalia.

107. ~~101.~~ Defendant Ali-Samantar's acts or omissions described above and the acts committed by his subordinates, caused the attempted extrajudicial ~~killings~~killings of John Doe II, and John Doe III, and caused ~~them~~him to suffer severe mental pain and suffering.

108. ~~102.~~ As a result of these attempts to kill ~~them~~him extrajudicially, John Doe II and John Doe III ~~are~~is entitled to damages in an amount to be determined at trial.

109. ~~103.~~ Defendant Ali-Samantar's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF
**(Torture – Plaintiffs Bashe Abdi Yousuf, John Doe I,
Jane Doe I, and John Doe II, ~~John Doe III~~)**

110. ~~104.~~ Bashe Abdi Yousuf, John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III~~ reallege and incorporate by reference the allegations set forth in paragraphs 1 through ~~103~~109 as if fully set forth herein.

111. ~~105.~~ The acts described herein constitute torture as defined by the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 Note). Additionally, these acts constitute “tort[s] ... committed in violation of the law of nations or a treaty of the United States” under the Alien Tort ~~Claims Act~~ Statute, 28 U.S.C. § 1350, in that they were in violation of customary international law prohibiting torture as reflected, expressed, defined, and codified in multilateral treaties and other international instruments, international and domestic judicial decisions and other authorities.

112. ~~106.~~ The acts described herein were inflicted deliberately and intentionally upon Bashe Abdi Yousuf, John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III~~ for purposes that include, among others, intimidating or coercing them, discriminating against them for their presumed political beliefs, or discriminating against them for their membership in a specific ethnic group.

113. ~~107.~~ The torture of Bashe Abdi Yousuf, John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III~~ did not arise from, and was not inherent in or incidental to, lawful sanctions.

114. ~~108.~~ Defendant Ali Samantar exercised command responsibility over, conspired with, or aided and abetted ~~subordinates in~~ members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, to torture Bashe Abdi Yousuf, John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III.~~ Furthermore, Defendant Ali Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit human rights abuses ~~were being committed by his subordinates,~~ and he failed to prevent the abuses or to punish those responsible.

115. Moreover, defendant Samantar was an active participant in the joint criminal enterprise that resulted in the torture of Bashe Abdi Yousuf, John Doe I, Jane Doe and John Doe II.

116. ~~109.~~ Defendant Ali Samantar's acts or omissions described above and the acts committed by his subordinates against Bashe Abdi Yousuf, John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III~~ were committed under actual or apparent authority, or color of law, of the government of Somalia.

117. ~~110.~~ Defendant Ali Samantar's acts or omissions described above and the acts committed by his subordinates, caused the torture of Bashe Abdi Yousuf, John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III,~~ and caused them to suffer severe physical and mental pain and suffering.

118. ~~111.~~ As a result of their torture, Bashe Abdi Yousuf, John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III~~ are entitled to damages in an amount to be determined at trial.

119. ~~112.~~ Defendant Ali Samantar's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF
**(Cruel, Inhuman or Degrading Treatment or Punishment – Plaintiffs John Doe I,
Jane Doe I,and John Doe II,and John Doe III)**

120. ~~113.~~ John Doe I, Jane Doe I,and John Doe II,and John Doe III reallege and incorporate by reference the allegations set forth in paragraphs 1 through ~~112~~119 as if fully set forth herein.

121. ~~114.~~ The acts described herein constitute “tort[s] ... committed in violation of the law of nations or a treaty of the United States” under the Alien Tort ~~Claims Act~~Statute, 28 U.S.C. § 1350, in that they were in violation of customary international law prohibiting cruel, inhuman or degrading punishment or treatment as reflected, expressed, defined, and codified in multilateral treaties and other international instruments, international and domestic judicial decisions and other authorities.

122. ~~115.~~ The acts of cruel, inhuman or degrading treatment or punishment described herein had the intent and effect of grossly humiliating~~inflicting severe or serious physical or mental pain or suffering upon~~ John Doe I, Jane Doe I,and John Doe II,and John Doe III ~~and inducing fear and anguish~~. As an intended result of these acts, John Doe I, Jane Doe I,and John Doe II,and John Doe III ~~were placed in great fear of their lives and suffered psychological abuse and agony~~ suffered severe or serious physical or mental pain or suffering.

123. ~~116.~~ The cruel, inhuman, or degrading treatment or punishment of John Doe I, Jane Doe I,and John Doe II,and John Doe III did not arise from, and was not inherent in or incidental to, lawful sanctions.

124. ~~117.~~ Defendant Ali Samantar exercised command responsibility over, conspired with, or aided and abetted subordinates in the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, to inflict cruel, inhuman or degrading

treatment or punishment upon John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III.~~

Furthermore, Defendant Ali-Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit human rights abuses ~~were being committed by his subordinates~~, and he failed to prevent the abuses or to punish those responsible.

125. Moreover, defendant Samantar was an active participant in the joint criminal enterprise that resulted in the cruel, inhuman or degrading treatment or punishment of John Doe I, Jane Doe and John Doe II.

126. 118. Defendant Ali Samantar's acts or omissions described above and the acts committed by his subordinates against John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III~~, were committed under actual or apparent authority, ~~or~~ color of law, of the government of Somalia.

127. 119. Defendant Ali-Samantar's acts or omissions described above and the acts committed by his subordinates, caused the cruel, inhuman or degrading treatment or punishment of John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III~~ and caused them to suffer severe or serious physical or mental pain and/or suffering, including prolonged mental harm.

128. 120. As a result of the cruel, inhuman or degrading treatment or punishment described above, John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III~~ are entitled to damages in an amount to be determined at trial.

129. 121. Defendant Ali-Samantar's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF
(Arbitrary Detention – Plaintiffs John Doe I, Jane Doe I,and
John Doe II,~~and John Doe III~~)

130. ~~122.~~ Plaintiffs John Doe I, Jane Doe I,and John Doe II,~~and John Doe III~~ reallege and incorporate by reference the allegations set forth in paragraphs 1 through ~~121~~129 as if fully set forth herein.

131. ~~123.~~ The arbitrary detentions of Plaintiffs John Doe I, Jane Doe I,and John Doe II,~~and John Doe III~~ described herein constitute “tort[s] ... committed in violation of the law of nations or a treaty of the United States” under the Alien Tort ~~Claims Act~~Statute, 28 U.S.C. §1350, in that they were in violation of customary international law prohibiting arbitrary detention as reflected, expressed, defined, and codified ~~in~~ multilateral treaties and other international instruments, international and domestic judicial decisions and other authorities.

132. ~~124.~~ John Doe II ~~and John Doe III~~ ~~were~~was detained without warrant, probable cause, or articulable suspicion and ~~were~~was never provided due process protections.

133. ~~125.~~ John Doe I and Jane Doe I ~~were~~ detained without warrant, probable cause, or articulable suspicion and were sentenced by courts that failed to accord them due process protections.

134. ~~126.~~ Defendant Ali-Samantar exercised command responsibility over, conspired with, or aided and abetted ~~subordinates in~~members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, to arbitrarily detain John Doe I, Jane Doe I,and John Doe II,~~and John Doe III~~. Furthermore, Defendant Ali-Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit human rights abuses, and he failed to prevent the abuses or to punish those responsible.

135. ~~Moreover, defendant Samantar was an active participant in the joint criminal enterprise that resulted in the arbitrary detentions of John Doe I, Jane Doe and John Doe II.~~

136. ~~127.~~ Defendant ~~Ali~~ Samantar's acts or omissions described above and the acts committed by his subordinates against John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III,~~ were committed under actual or apparent authority, or color of law, of the government of Somalia.

137. ~~128.~~ As a result of their arbitrary detention as described above, John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III~~ are entitled to damages in an amount to be determined at trial.

138. ~~129.~~ Defendant ~~Ali~~ Samantar's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

SIXTH CLAIM FOR RELIEF
(Crimes Against Humanity – Plaintiffs Aziz Mohamed Deria,
(in his capacity as personal representative of the estates
of the decedents), John Doe I, Jane Doe I,
and John Doe II, ~~John Doe III and John Doe IV)~~

139. ~~130.~~ Plaintiffs ~~Bashe Abdi Yousuf~~ Aziz Mohamed Deria, in his capacity as personal representative of the decedents, John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III~~ reallege and incorporate by reference the allegations set forth in paragraphs 1 through ~~129~~ 138 as if fully set forth herein.

140. ~~131.~~ The extrajudicial killings of Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II ~~and James Doe III, James Doe IV, James Doe V, and James Doe VI,~~ the torture of John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III;~~ the attempted extrajudicial killings of John Doe II, ~~and John Doe III;~~ the rape of Jane Doe I, the cruel,

inhuman, or degrading treatment or punishment of John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III~~; and the arbitrary detentions of John Doe I, Jane Doe I, and John Doe II, ~~and John Doe III~~ described herein constitute “tort[s] ... committed in violation of the law of nations or a treaty of the United States” under the Alien Tort ~~Claims Act~~ Statute, 28 U.S.C. §1350, in that they were in violation of customary international law prohibiting crimes against humanity as reflected, expressed, defined, and codified in multilateral treaties and other international instruments, international and domestic judicial decisions and other authorities.

~~141. 132.~~ These acts were committed as part of a widespread or systematic attack against a civilian population, ~~namely the Isaaq clan.~~

~~142. 133.~~ These acts were committed by members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, ~~with knowledge of the attack.~~ The persons who carried out these acts knew or reasonably should have known that the acts were part of a widespread or systematic attack against a civilian population. Defendant Samantar knew or reasonably should have known of the pattern or practice of gross human rights abuses perpetrated against the civilian population by the subordinates under his command.

~~143. 134.~~ Defendant Ali Samantar exercised command responsibility over, conspired with, or aided and abetted ~~subordinates in~~ members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, to commit crimes against humanity, including the extrajudicial killings of Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II ~~and James Doe II and James Doe III, James Doe IV, James Doe V,~~ ~~and James Doe VI;~~ the torture of John Doe I, Jane Doe I, ~~John Doe II, and John Doe III;~~ and John Doe II, the attempted extrajudicial killings of John Doe II ~~and John Doe III,~~ the rape of Jane Doe I, the cruel, inhuman, or degrading treatment or punishment of John Doe I, Jane Doe I, ~~John Doe~~

~~II, and John Doe III; and John Doe II,~~ and the arbitrary detentions of John Doe I, Jane Doe I, ~~and John Doe II, and John Doe III.~~ Furthermore, Defendant Ali Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit human rights abuses ~~were being committed by his subordinates~~ and that they were being committed as part of a widespread or systematic attack on civilians, and he failed to prevent the abuses or to punish those responsible.

144. Moreover, defendant Samantar was an active participant in the joint criminal enterprise that resulted in the crimes against humanity described herein.

145. ~~135.~~ Defendant Ali Samantar's acts or omissions described above, and the acts committed by his subordinates, were committed under actual or apparent authority, or color of law, of the government of Somalia.

146. ~~136.~~ As a result, Plaintiffs Aziz Mohamed Deria (in his capacity as the personal representative of the estates of the decedents), John Doe I, Jane Doe I, ~~and John Doe II, John Doe III and John Doe IV~~ are entitled to damages in an amount to be determined at trial.

147. ~~137.~~ Defendant Ali Samantar's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

SEVENTH CLAIM FOR RELIEF
(War Crimes – Plaintiffs Aziz Mohamed Deria (in his capacity as personal representative of the estates of the decedents),
John Doe I, Jane Doe I,
and John Doe II)

148. ~~138.~~ Plaintiffs Aziz Mohamed Deria, (in his capacity as personal representative of the estates of the decedents), John Doe I, Jane Doe I, and John Doe II reallege and incorporate by reference the allegations set forth in paragraphs 1 through ~~137~~147 as if fully set forth herein.

149. ~~139.~~ The attempted extrajudicial killing; extrajudicial killings, torture; rape, cruel, inhuman, or degrading treatment or punishment; or arbitrary detention of Plaintiffs John Doe I, Jane Doe I and John Doe II treatments or punishments, and arbitrary detentions described herein constitute “tort[s] ... committed in violation of the law of nations or a treaty of the United States” under the Alien Tort Claims Act Statute, 28 U.S.C. §1350, in that they were in violation of customary international law prohibiting war crimes as reflected, expressed, defined, and codified in multilateral treaties and other international instruments, international and domestic judicial decisions and other authorities.

150. ~~140.~~ These acts were committed during the armed conflict in northern Somalia against a civilian population, namely the Isaaq clan between the SNM and the Armed Forces of Somalia.

151. ~~141.~~ This armed conflict was sufficient to trigger at least some of bound Defendant Samantar to follow the obligations of the four Common Article 3 of Geneva Conventions of 1949 and the customary norms of internal armed conflict.

152. ~~142.~~ Defendant Ali Samantar exercised command responsibility over, conspired with, or aided and abetted subordinates in members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, to commit war crimes, including the attempted extrajudicial killing; killings, extrajudicial killings, torture; rape, cruel, inhuman or degrading treatment or punishment; or treatments or punishments, and arbitrary detention of, suffered by Plaintiffs John Doe I, Jane Doe I and John Doe II and decedents during the armed conflict in northern Somalia. Furthermore, Defendant Ali Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit

human rights abuses ~~were being committed by his subordinates~~, and he failed to prevent the abuses or to punish those responsible.

153. ~~143.~~ As a result of these acts, Plaintiffs~~Plaintiff Aziz Mohamed Deria (in his capacity as personal representative of the estates of the decedents)~~, John Doe I, Jane Doe-I, and John Doe II are entitled to damages in an amount to be determined at trial.

154. Moreover, defendant Samantar was an active participant in the joint criminal enterprise that resulted in the war crimes described herein.

155. ~~144.~~ Defendant Ali~~Defendant Samantar's~~ acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

156. As a result of these acts, Plaintiffs Aziz Mohamed Deria (in his capacity as personal representative of the estates of the decedents), John Doe I, Jane Doe, and John Doe II are entitled to damages in an amount to be determined at trial.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against ~~each~~the Defendant as follows:

1. ~~1.~~ For compensatory damages according to proof;
2. ~~2.~~ For punitive and exemplary damages, according to proof;
3. ~~3.~~ For prejudgment interest as allowed by law;
4. ~~4.~~ For attorneys' fees and costs of suit, according to proof;
5. ~~5.~~ For any such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

The plaintiffs hereby demand a trial by jury.

Dated: ~~November 10, 2004~~February 22,
2007

BASHE ABDI YOUSUF
JOHN DOE I
JANE DOE I

CERTIFICATE OF SERVICE

I hereby certify, this 22nd day of February, 2007, that a true copy of the foregoing was sent by electronic mail and overnight delivery to the following counsel of record:

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