

I, ACTING PRESIDENT OF THE SPECIAL COURT FOR SIERRA LEONE,

SEIZED of the Motion to Reverse the Order of the Registrar Under Rule 48(C) of the Rules of Detention filed on behalf of Sam Hinga Norman ("Applicant") on 27 January 2004 ("Motion");

NOTING that the Prosecution did not file a Response to the Motion;

HEREBY DECIDE:

I. BACKGROUND

1. On 20 January 2004, the Prosecutor made an Urgent Request to the Registrar under Rule 48 of the Rules of Detention to prohibit any contact between Hinga Norman and any other person. This Motion relates to the Registrar's Decision Prohibiting Communications and Visits of 20 January 2004 ("Decision") whereby he decided, pursuant to Rule 48(A)(ii) of the Rules of Detention as adopted on 7 March 2003 (and subsequently amended on 25 September 2003), to impose certain restrictions on communications and visits between the Accused and other persons for a period of fourteen days.
2. In his Motion, the Applicant sought the following relief:
 - a) Expedited consideration of this matter by the President having regard to the short period of exclusion and prohibition specified in the Order of the Registrar.
 - b) Reversal of the Registrar's Order to exclude and prohibit social visits and telephone calls respectively to the Applicant, and mutatis mutandis, a denial of the Prosecutor's Request under Rule 48(C) of the Rules.
 - c) Order for immediate disclosure of the audiotape of the alleged telephone conversation for transcription by the Applicant's Legal Counsel through the use of independent experts.
 - d) Any other relief as the Court sees fit and just.
3. Following the expiry of the 14 day period, all prohibitions ordered by the Registrar regarding contact between the Applicant and any other person were lifted.
4. While the relief sought in (a) and (b) have therefore been overtaken by events, the Applicant is entitled to a consideration of the issues raised in the Motion herein which I hold has been

validly brought under Rule 48(C) of the Rules of Detention, especially in cases where possible breaches of rules concerning the basic rights of detainees are alleged. In these cases the detainee has the right to have the matter reviewed even after the prohibition or restriction has been lifted or has lapsed.

II. APPLICABLE LAW

5. Rule 48 of the Rules of Detention provides as follows:

(A) The Prosecutor may request the Registrar or, in cases of emergency, the Chief of Detention, to prohibit, regulate or set conditions for contact between a Detainee and any other person if the Prosecutor has reasonable grounds for believing that such contact:

(i) is for the purposes of attempting to arrange the escape of the Detainee from the Detention Facility;

(ii) could prejudice or otherwise affect the outcome of the proceedings against the Detainee or any other investigation;

(iii) could be harmful to the Detainee or any other person; or,

(iv) could be used by the Detainee to breach an order made by a Judge or a Chamber.

(B) If the request is made to the Chief of Detention in case of an emergency, the Prosecutor shall immediately inform the Registrar of the request, together with the reasons therefore. The Detainee shall immediately be informed orally of the fact of any such request, and in writing if the circumstances permit.

(C) A Detainee may, at any time, request the President to deny or reverse a request for prohibition of contact made by the Prosecutor under this rule.

III. DISCUSSION

6. Rule 48(A)(i) to (iv) enumerates the grounds under which the Prosecutor may request the Registrar, or in cases of emergency, the Chief of Detention, to prohibit, regulate or set conditions for contact between a detainee and a third party. Where the situations listed in Rule 48(A)(i) to (iv) may occur, the Prosecutor is under a duty to show that he has reasonable

grounds to believe that such contact might result in one or other of the instances envisaged in the said Rule.

7. On a proper construction of the Rule not only must the Prosecutor have “reasonable grounds for believing that such contact” will result as listed, but the Registrar, or in cases of emergency, the Chief of Detention, must be satisfied that the Prosecutor has reasonable grounds for so believing, before granting the Prosecutor’s request. *A fortiori*, the Prosecutor does not have to satisfy either the Registrar or the Chief of Detention (as the case may be) that one or other or all of the situations will result - it is enough if either is satisfied that the situations envisaged in Rule 48(A)(i) to (iv) are *likely* to result.
8. The relevant prohibited outcome in this instance is prejudice to, or an effect on, the outcome of the proceedings against the detainee or any other investigation under Rule 48(A)(ii) of the Rules of Detention. In his Decision, the Registrar states that it follows from Rule 48(A)(ii) that communications and visits between a detainee and any other person may be prohibited if there are reasons to believe that such communications and visits would lead to a detainee’s statements appearing in the media with the effect of undermining the mandate of the Special Court.
9. The alleged contents of the telephone conversation between the detainee and an unidentified male do give reasonable grounds to believe that communications and visits *could* lead to the Applicant’s statements undermining the mandate of the Special Court. It should be noted that in these circumstances the Registrar must act swiftly as restrictions under Rule 48(A)(ii) are pre-emptive in nature.
10. The necessity for swift action does not, however, excuse any failure to inform the Applicant of the Prosecutor’s request in accordance with Rule 48(B). Although it is not stated in the Rule that the notification of a request by the Prosecutor must be given to the detainee prior to the notification of the Order of the Registrar, it is implicit in the Rule that the Registrar or Chief of Detention has the duty to inform the detainee of the request. Such notification will give an opportunity to the detainee to ask that the President deny or reverse the request of the Prosecutor. However, having regard to the fact that an immediate reaction to the contents of the taped conversation was needed, it could not reasonably be said that the detainee’s rights under Rule 48(C) were violated. The emergency situation outweighed the right to immediate

notification. Furthermore, the Applicant has been provided with rapid notification by the Registrar of both request and order.


11. The Applicant complains that the Registrar "acted summarily on the notion that the Request was justifiable".¹ As there is nothing under the Rule requiring the Registrar to hear arguments from the detainee (especially when a case of emergency is addressed) the Registrar had to act on the basis of the Prosecution's request and reasonable belief in support of that request.

12. The Applicant has requested the disclosure of the alleged telephone conversation for transcription by his counsel through the use of independent experts. I refuse this request because it is sufficient that the Applicant has been provided with the transcript relied upon by the Prosecutor and Registrar especially as the restrictions ordered were of a short duration. It is not for the Applicant to prove that the conversation was incorrectly recorded. It is for the Registrar to demonstrate that he had reasonable grounds for believing, on the basis of the transcript before him, that action under Rule 48 was necessary as a matter of urgency. Furthermore as the transcript indicates that one of the Applicant's lawyers, "the female lawyer",² is part of the threatened action, the disclosure of the tape would not seem appropriate. The presumption of innocence is unaffected by the imposition of restrictions under Rule 48 which are simply regulatory and precautionary.

IV. DISPOSITION

PURSUANT TO Rule 48(C) of the Rules of Detention this Motion is dismissed.

Done at Freetown this eighteenth day of May 2004


Justice Renate Winter
Acting President



¹ Motion, para. 14.
² Motion, Annex B.