

To the experts forming the Working Group  
on Arbitrary Detention of the United  
Nations – High Commission of the United  
Nations for Human Rights, Geneva

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## COMPLEMENTARY COMMUNICATION N°2

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IN SUPPORT OF:

**Mr Carlos Ghosn**

Born 9<sup>th</sup> March 1954 in Porto Velho (Brazil)

Of French, Lebanese et Brazilian nationalities

For the initiative of Mrs Carole Ghosn, his wife, Mrs and Mr Caroline, Nadine,  
Maya, Anthony Ghosn, his children, represented by:

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## MAY IT PLEASE THE WORKING GROUP

*This Communication follows those submitted on 4<sup>th</sup> March and 12<sup>th</sup> April 2019 to your Working Group, in order to denounce the legal persecution suffered by Mr Carlos Ghosn in regards to the denial of his freedom by the Japanese authorities.*

*Initially placed in detention on 19<sup>th</sup> November 2018 and released on 5<sup>th</sup> March 2019 under particularly restrictive conditions, Mr Carlos Ghosn was subject to a fourth arrest for the same case and for the same facts, on 4<sup>th</sup> April 2019, before being again “released” on bail on 25<sup>th</sup> April 2019, under abnormally harsh conditions, including the unjustifiable ban on contact with his wife, Mrs Carole Ghosn.*

*In fact, since the day of his first arrest, publicly dramatised by the Japanese prosecution for the sole purpose of humiliating him, Mr Ghosn has never regained the freedom to defend himself fairly, so that the current situation is a continuum of the incarceration which started on 19<sup>th</sup> November and its abuses, denounced in the referral, have not ceased.*

This is particularly true of his “release” on bail on 25<sup>th</sup> April 2019 comparable to a **house arrest** marked by very limited contact with the outside world and the prohibition of communication with his wife, which is not legally justified, **reflecting the intention of the Japanese authorities to continue to psychologically isolate and destroy the suspect in order to weaken his ability to defend himself effectively.**

*Thus, it will be shown that the authorities persist in arbitrarily detaining Mr Carlos Ghosn, in violation of his right to a fair trial.*

### **1. A “RELEASE” ON BAIL COMPARABLE TO A HOUSE ARREST**

On 25<sup>th</sup> April 2019, Mr Carlos Ghosn was released on bail after having spent another 21 days in detention in conditions infringing on his dignity and in violation of the right to a fair trial (see the Communication of 4<sup>th</sup> March 2019 and the Complementary Communication of 12<sup>th</sup> April 2019).

These conditions had been denounced by the major human rights organisations in Japan and a petition by lawyers and academics calling for the abolition of the *hostage justice system*, unique to Japan, has collected more than a thousand signatures.

A bail order was issued by the Japanese judges on 25<sup>th</sup> April 2019, acknowledging that **neither the risk of escape nor the risk of destruction of the evidence adduced by the prosecution were marked** (Exhibit 30).

Under this order, Mr Carlos Ghosn has been subject to the following fifteen obligations - in addition to the payment of a substantial bail (beyond 4 million dollars, in addition to the 9 million dollars already paid):

1. **The obligation to reside in an apartment and at an address approved by the court.**  
*If the respondent wishes to change his residence, he must obtain prior agreement by the court;*
2. *The respondent must comply to the court's summonses - except in the event of a legitimate reason, which he must inform the court in advance;*
3. *The respondent must "prohibit any behaviour likely to give the impression that he would try to flee or compromise evidence" (wording which allows for complete arbitrariness);*
4. *If the respondent intends to move (in Japan) for more than three days, he must seek prior authorisation from the court;*
5. *The respondent can not leave Japanese territory;*
6. *The respondent must surrender all his passports;*
7. *The respondent must take the necessary steps to extend his residence permit period in Japanese territory or to renew his visa until the Tokyo Court has ruled on his case, and inform the Court through his lawyers;*
8. *The respondent must not come into contact with XXXX (list of persons) or any other individual in connection with the case, directly or indirectly through anyone other than his lawyers, in any way whatsoever, which includes meetings in person, by telephone, email or any other means of communication. **Similarly, the accused must not communicate with his spouse other than through Japanese lawyers, unless he first obtains the court's approval of the time, place, manner and content of the meetings and communications.***
9. *The respondent must not interfere with the **24-hour video surveillance of his apartment, and deliver the recordings to the court every 15th of the following month;***
10. *The respondent is authorized to use only the mobile phone made available by his lawyers (N° ...), **with the exclusion of any other phone, smartphone, or other communication device. The respondent must keep the call history on his phone;***
11. *Defendant is allowed to use the personal computer (Model No. Microsoft Surface Laptop 2, Serial No. 011021910157) only that is provided by the Hironaka Law Offices (5Th Floor, KojimachiTsuruya Hachiman Bldg., 2-4, Kojimachi, Chiyoda-ku, Tokyo) where he stays on weekdays from 9:00am to 5:00pm. Defendant must not use a PC anywhere else and at any other time. Defendant must keep the internet log files stored in the PC that he is permitted to use.*
12. *The respondent **must keep the names of the persons he meets, as well as the dates and places of the meetings;***
13. ***The respondent must submit to the court a monthly history of phone calls by the end of next month (see article 10), a history of internet pages visited (see article 11) as well as a history of his meetings (article 12) before the 15th of next month;***
14. *The respondent's involvement in shareholder meetings, board meetings and any other meeting of Nissan Motors Co. Ltd is subject to the prior authorisation by the court (he was unreasonably denied such authorisation on the 11<sup>th</sup> of last March - he filed his application as director of Nissan);*
15. *The respondent must receive any document sent by the court, including summonses for trial and copies of decisions, at his registered address. If a document is sent to him by the court in his absence and he does not receive it, he must go to the post office as soon as possible.*

It is important to highlight that these obligations aggravate those stated in the orders of 5<sup>th</sup> April 2019 (exhibits n°20 and 21), that were already particularly restrictive on freedom, and to which Mr Carlos Ghosn had nevertheless scrupulously complied.

Thus, the Japanese authorities have ordered that Mr Carlos Ghosn be deprived of any direct contact with his wife, Mrs Carole Ghosn.

**In any case, considering the number and scope of these restrictions on Mr Carlos Ghosn's freedom of movement and on his communication with the outside world, the Working Group should acknowledge that, since 25<sup>th</sup> April 2019, Mr Carlos Ghosn has been under house arrest - and thus, during the continuation of his provisional detention, still subject to a denial of freedom.**

The Working Group has had the opportunity to define the concept of house arrest. Two cases have particularly caught our attention as they are similar to the present situation.

In the case concerning Julian Assange, the Working Group considered that the applicant's denial of freedom, initially characterised by his detention in Wandsworth Prison in London, had been extended throughout the 550 days spent released on bail before his flight to the Ecuadorian Embassy.

**The Working Group indeed concluded that during these 550 days, Julian Assange was “under house arrest”, considering the severe restrictions imposed on him such as the wearing of the electronic bracelet, the obligation to report himself everyday to the police and the ban on leaving his home at night, despite the fact that he was allowed to leave his place of residence during the day:**

*“That initial deprivation of liberty then continued in the form of house arrest for some 550 days. This again was not contested by any of the two States. During this prolonged period of house arrest, **Mr. Assange had been subjected to various forms of harsh restrictions**, including monitoring using an electric tag, an obligation to report to the police every day and a ban on being outside of his place of residence at night. In this regard, the Working Group has no choice but to query what has prohibited the unfolding of judicial management of any kind in a reasonable manner from occurring for such extended period of time”.<sup>1</sup>*

In another case concerning the wife of Liu Xiaobo, winner of the 2010 Nobel Peace Prize, the Working Group felt that the latter had been “*placed under house arrest*” by the Chinese authorities, as her movement, visits and communications with the outside were limited:

*“According to the information we have received, and where the Government has not provided us with any further assistance, **Ms. Liu Xia is under a house arrest with limitations on her physical movements, visits from others and communications of different kinds**”.<sup>2</sup>*

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<sup>1</sup> Julian Assange c. Sweden et United Kingdom, Opinion of Working Group n° 54/2015, passed 4th December 2015 §87

<sup>2</sup> Liu Xia v. China, WGAD Opinion No. 16/2011, Adopted May 5, 2011, §13

**In this case, it is clear that the obligation to reside at an address approved by the court, the ban on travelling within Japan without the court's authorisation, the ban on any direct contact with his wife, the existence of 24/7 video surveillance of his apartment, the prohibition on using a mobile phone other than the one made available by his lawyers, the obligation to submit a history of calls made, internet pages consulted and all the people met every month to the court, help conclude, in the light of the Assange and Liu Xiabo cases, the presence of an act of house arrest.**

Marked by their obvious disproportion, these restrictions assign the house arrest imposed on Mr Carlos Ghosn an arbitrary character.

## **2. AN UNJUSTIFIED HOUSE ARREST VIOLATING MR CARLOS GHOSN'S RIGHT TO A FAIR TRIAL**

### **2.1. An unjustified house arrest considering the absence of any risk of escape or destruction of evidence**

It should be pointed out that the fifteen obligations imposed on Mr Carlos Ghosn in the context of his release on bail on 25<sup>th</sup> April 2019 appear totally **disproportionate considering the absence of any risk of escape or destruction of evidence, noted by the Tokyo Court itself** in its bail order (Exhibit 30).

Moreover, it should be recalled that the claims against Mr. Carlos Ghosn are financial delinquency and not attacks on the human person, which would have made such restrictions far more justified...

In addition, Mr. Carlos Ghosn had the opportunity to demonstrate during his previous release on bail - between 5<sup>th</sup> March and 4<sup>th</sup> April 2019 - that he scrupulously respected all the obligations placed on him.

**Thus, the imposition of a new obligation (in addition to those which he was already bound to during his previous release on bail), consisting of the absence of any direct contact with his wife without the prior authorisation of the court, seems particularly shocking, as it is unjustifiable in this case and infringes on the fundamental rights of the person concerned.**

It should also be pointed out that this new ban - in the same way as the others - **was not imposed with any specific justification on the part of the judges, nor subject to any time limit.**

As a result, on 9<sup>th</sup> May 2019, Mr Carlos Ghosn's Japanese lawyers filed an appeal challenging this ban, denouncing the interference with the right to a private and family life as guaranteed by Article 17 of the ICCPR and Article 91 of the Japanese Constitution. (Exhibit n°31).

On May 10, 2019, the Tokyo Court of Appeal issued a **rejection decision without any stated reasoning again**, merely listing the conditions for his release on bail...

The Japanese lawyers have therefore lodged a final appeal before the Supreme Court of Japan (Exhibit XX), which issued a new rejection decision, that was **just as laconic**, refusing to reply to the contents:

*“The points of the motion do not fall under the grounds of special motion provided by the Code of Criminal Procedure 433, since the Defense counsels argue substantially just a violation of the laws and error of fact-findings, not violation of Constitution.*

*Therefore, We unanimously deny the motion under CCP 434 and 425(1).” (Exhibit n°32)*

Following the Supreme Court's decision, Mr Carlos Ghosn's lawyers filed a request on 23 May 2019 to allow him to meet his wife for at least one hour a day in the presence of his Japanese lawyers.

By decision of 24 May 2019, Judge Shimada of the Tokyo Court simply rejected this request. This decision, which is at the discretion of the judge, is not subject to appeal...

This is truly a form of **judicial persecution** against Mr. Carlos Ghosn, who is thus not allowed to meet his wife, **even in the presence of his lawyers!**

Firstly, Mrs. Carole Ghosn, who has always been at the disposal of the Japanese prosecutors, **was questioned about the facts in which her husband was implicated before he was released, so that no risk of fraudulent dialogue or pressure on the witness could be seriously considered in this case.**

Secondly, **this ban is a flagrant violation of international standards for the treatment of detainees** (see Communication of 4<sup>th</sup> March 2019).

Therefore, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by the General Assembly in its resolution 43/173 of 9<sup>th</sup> December 1988), states, in principle 15 that **“the communication of the detained or imprisoned person with the outside world, in particular with his family or his council, may not be refused for more than a few days”**.<sup>3</sup>

Moreover, Article 10.1 of the ICCPR states that *“any person deprived of his freedom shall be treated with humanity and with respect for the inherent dignity of the human person”*.

Clearly, the ban on contact with his wife even in the presence of his lawyers, lasting already nearly a month is an attack on the dignity of Mr. Carlos Ghosn, intended to weaken him psychologically and compromise his ability to defend himself effectively against an almighty prosecutor.

This inequality in arms undermines his right to a fair trial and renders his deprivation of freedom arbitrary.

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<sup>3</sup> Riad Al Turk, et al. v. Syria, WGAD Opinion No. 6/1992, Adopted Session No. 4, at ¶15 (d) (“Furthermore, unduly prolonged incommunicado detention is an infringement of Principle 15 of the Body of Principles”).

## **2.2. A final manoeuver to psychologically destroy the respondent and weaken his defence**

**The restrictions imposed on Mr Carlos Ghosn in regards his house arrest and, in particular, the prohibition on direct contact with his wife, appear as a new abuse intended to exhaust him psychologically and to place him in a position of weakness relative to the prosecution, in violation of the right to a fair trial.**

They once again characterise the relentlessness of the Japanese authorities against Mr Carlos Ghosn since his first arrest on 19<sup>th</sup> November 2018.

The prohibition on communicating with his wife, and more generally the deprivation from family contacts, is a method regularly used by the Japanese authorities to destabilise the psychological balance of prisoners, an aspect of the *hostage justice system* denounced by your Working Group.<sup>4</sup>

From his initial detention on 19<sup>th</sup> November 2018 for a first period of 108 days (until 5<sup>th</sup> March 2019), Mr Carlos Ghosn had been deprived of the right to see and communicate with all members of his family **for almost two months** (until 11<sup>th</sup> January 2019, the day when his third period in police custody ended) ...

Through this new unfair manoeuver, Mr Carlos Ghosn finds himself trapped between the concern to respect the terms of his house arrest and the basic human aspiration for emotional and family ties, a condition for balance and dignity.

The fact remains that this situation inevitably has the effect of exerting a psychological pressure on him, which *in fine* exhausts him morally.

There is no doubt that this new obstacle is intended to punish Mr Carlos Ghosn for refusing the confession desired by the Japanese authorities and for firmly disputing, without variation, any culpability.

**In its entirety, Mr. Carlos Ghosn's judicial treatment aims to intimidate and destabilize his defence:**

- since 19<sup>th</sup> November 2018, he has been arbitrarily detained several times by subjecting him to inhuman conditions of detention (see the Communication of 4<sup>th</sup> March 2019). It was only to further weaken him that he was also repeatedly denied contact with his family members.

- Mrs Carole Ghosn, herself, suffered degrading treatment during the fourth arrest of her husband on 3<sup>rd</sup> April 2019. She was the subject of body searches even though she was never indicted... (see the treatment of Mrs. Carole Ghosn during the arrest of 4<sup>th</sup> April 2019 in the Communication of 12<sup>th</sup> April 2019).

- Mr Carlos Ghosn is, once again and with neither justification nor time limit, banned from contact with his wife.

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<sup>4</sup> Opinion No. 55/2018 concerning Yamashiro Hiroji (Japan), 27 December 2018.

It is in light of this relentlessness on the part of the Japanese authorities that Mr Carlos Ghosn does not benefit from a regular defence.

**Weakened physically - his symptoms worsened in detention - and psychologically from his forced isolation from his family, he is forced to submit to the Japanese justice system, violating *a fortiori* the principle of equality of arms.**

**It is therefore difficult not to see the continuation of an arbitrary detention, which has the sole purpose of breaking Mr Carlos Ghosn, by making him a *hostage* - to borrow the term used by your Working Group in its opinion 552018 - of the Japanese judicial system.**

**Therefore, the unjustifiable conditions of this house arrest bear the mark of arbitrariness and violate the right to a fair trial.**

**As a result, Carlos Ghosn is still a “hostage” to the Japanese judicial system, which continues to exert psychological pressure as a flagrant violation of the right to a fair trial.**

## **CONCLUSION**

As a follow-up to the Communication filed in the interest of Mr Carlos Ghosn on 4<sup>th</sup> March 2019 and the Complementary Communication of 12<sup>th</sup> April 2019, the Working Group is requested to take up the house arrest, to which Mr Carlos Ghosn has been submitted since 25<sup>th</sup> April 2019, and:

- record violations of Articles 9, 10 and 14 of the International Covenant on Civil and Political Rights of 16<sup>th</sup> December 1966 on the fair trial,

**Then,**

- state that the deprivation of liberty of Mr Carlos Ghosn, in detention from 19<sup>th</sup> November 2018 to 5<sup>th</sup> March 2019, and from 4<sup>th</sup> to 25<sup>th</sup> April 2019, and placed under house arrest to this day, is arbitrary according to the criteria set by the Working Group for “Category III” cases;

**Consequently,**

- order the State of Japan to release Mr Carlos Ghosn without delay and to make full reparations for the damages resulting from his arbitrary detention since 19<sup>th</sup> November 2018.

Paris, 25 May 2019

**Maître François Zimeray**  
Avocat au Barreau de Paris

**Maître Jessica Finelle**  
Avocat au Barreau de Paris



**List of exhibits:**

Exhibit 30: Bail Order dated April 25, 2019

Exhibit 30bis: Translation of Exhibit 30

Exhibit No. 31: Appeal against the prohibition of contact with Mr. Carlos Ghosn's wife dated May 9, 2019

Exhibit No. 32: Japan Supreme Court Rejection Decision dated May 21, 2019

Exhibit 32bis: Translation of Exhibit 32