

COMMUNICATION TO:

UN Secretary-General: His Excellency Mr António Guterres
UN Assistant Secretary-General for Human Rights: Mr Andrew Gilmour
President of the Human Rights Council: His Excellency Ambassador Coly Seck

UN Working Group on Arbitrary Detention
Special Rapporteur on the Independence of Judges and Lawyers: Mr Diego Garcia-Sayan

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In the Matter of
MARIA LAZAREVA
Citizen of the Russian Federation

v.

Government of Kuwait

COMPLAINT CONCERNING REPRISALS AGAINST MS LAZAREVA AND HER LEGAL COUNSEL

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I. INTRODUCTION AND BACKGROUND

1. This reprisals complaint (“**Complaint**”) is made on behalf of Ms Maria (Marsha) Lazareva (“**Ms Lazareva**”), a business executive who was arbitrarily detained by the State of Kuwait (“**Kuwait**”) for over 470 days, and her legal team from Omnia Strategy LLP, Crowell & Moring LLP, Doughty Street Chambers and 4 New Square Chambers. It relates to reprisals and intimidation by the Kuwait Port Authority (“**KPA**”), a Kuwaiti State entity, against Ms Lazareva and her legal team and other advisers. The reprisals relate to and are a direct response to: (i) their engagement with the UN and UN Special Mechanisms, including their urgent appeals to the Working Group on Arbitrary Detention (“**WGAD**”) and the UN Special Rapporteur on the Independence of Judges and Lawyers (“**UNSR**”); and (ii) an international arbitration brought against Kuwait by Ms Lazareva and administered by the International Centre for Settlement of Investment Disputes (“**ICSID**”), an organ of the World Bank.
2. The UN, and in particular its human rights bodies and mechanisms, rely on the cooperation of the people they serve. The UN has made clear that addressing and preventing acts of intimidation and reprisals against individuals and groups seeking to cooperate with, inform and complain to the UN on human rights issues is a matter of grave concern. In October 2016, the Secretary-General publicly stated that “*such acts undermine the effectiveness and credibility of the UN, and are an attack on the Organisation itself*” and that, “*these courageous individuals are often our only eyes and ears in extremely tough environments – and we owe them our best possible support*”. The UN, in its description of the steps since taken to strengthen the systems in place for preventing and addressing intimidation and reprisals, states:

*the freedom to engage with the UN is a basic exercise of fundamental freedoms and human rights of all, and must be respected and protected. When those engaging with the UN face intimidation, threats, imprisonment and worse for doing so, we all lose, and the credibility of the UN is damaged. The UN as a whole has a collective responsibility to stop and prevent these reprehensible acts.*¹

¹ ‘Acts of intimidation and reprisal for cooperation with the United Nations in the field of human rights,’ available at <https://www.ohchr.org/EN/Issues/Reprisals/Pages/ReprisalsIndex.aspx>.

3. This Complaint is addressed to the Secretary-General, H.E. Mr António Guterres; the Assistant Secretary-General, Mr Andrew Gilmour, who is leading UN efforts concerning the issue of reprisals; the President of the UN Human Rights Council (“**HRC**”), H.E. Ambassador Coly Seck, who is mandated to protect those engaging with the HRC; and to the WGAD and the UNSR, the UN Special Mechanisms to which Ms Lazareva’s complaints have been directed.
4. The reprisals relate to the following complaints to UN Special Mechanisms:
 - i. A petition to the WGAD dated 23 May 2019, submitting, among other things, that Kuwait has arbitrarily detained Ms Lazareva in breach of its obligations under international law (notably Articles 9 and 14 of the International Covenant on Civil and Political Rights (“**ICCPR**”))(the “**Petition**”). The Petition is included at Annex 1; and
 - ii. An Urgent Appeal (“**Urgent Appeal**”) to the UN Special Rapporteur on the Independence of Judges and Lawyers (“**UNSR**”) dated 12 June 2019. The Urgent Appeal detailed serious concerns regarding the systematic lack of independence of judges, prosecutors and defence counsel within Kuwait’s legal system; the lack of impartiality of the Prosecutor, the Attorney General and the judicial panels in Ms Lazareva’s cases; and interference with the independence of Ms Lazareva’s defence counsel and her right to a defence, as a result of the improper prosecution of Ms Lazareva’s local defence counsel. The Urgent Appeal is included at Annex 2.
5. The reprisals also relate to an arbitration, which Ms Lazareva filed on 10 July 2018 pursuant to the Kuwait-Russian Federation Bilateral Investment Treaty dated 24 November 1994, alleging breaches of fair and equitable treatment because of (among other matters), the denial of justice and procedural violations of Kuwaiti and international law which Ms Lazareva has faced. This arbitration was brought pursuant to the United Nations Commission on International Trade Law (“**UNCITRAL**”) rules, and is being administered by the World Bank through ICSID, and is ongoing.

6. On 28 August 2019, Counsel for Ms Lazareva filed Case Updates and Requests for Action with the WGAD and UNSR (“**Update(s)**”), informing them of developments in Ms Lazareva’s cases, including her release on bail and continued unjustified prosecution (see Annexes 3 and 4).
7. We do not, in this Complaint, repeat the submissions contained in the Petition and Urgent Appeal. However, and by way of background, we wish to draw attention in particular to the points set out in the following paragraphs.
8. Ms Lazareva is a Russian citizen who, until her arrest in 2017, was working in Kuwait where she lived with her young son, a U.S. citizen, for whom she is the sole parent and the primary caregiver. Ms Lazareva is employed by KGL Investment Co., K.S.C.C. (“**KGLI**”). She and another former KGLI executive have both been arrested and detained in relation to a number of connected criminal cases that falsely allege misappropriation of public funds, money laundering and embezzlement associated with their work with KGLI in Kuwait. The authors of this Complaint are instructed to act for Ms Lazareva.
9. Ms Lazareva was initially tried and convicted for embezzlement on 6 May 2018 in respect of Case 1942/2015 in Kuwait despite there being no credible evidence to justify her conviction and in proceedings involving serious violations of her fair trial rights. Ms Lazareva was sentenced to 10 years’ imprisonment with hard labour.
10. The 6 May 2018 conviction was successfully appealed and, on 5 May 2019, the Kuwait Court of Appeal declared the 6 May 2018 conviction void and invalid. However, despite quashing the verdict, the Court of Appeal imposed a staggering bail of KWD 20 million (approximately USD 66 million) and failed to make any order for Ms Lazareva’s continued detention, rendering her ongoing imprisonment a violation of the Kuwaiti Code of Criminal Procedure and unlawful.
11. On 2 June 2019, the Kuwaiti Court of Appeal performed a U-turn and ordered a significantly reduced bail payment of KWD 1 million (approximately USD 3.3 million) while also making a belated order for Ms Lazareva’s continued detention in an attempt to cure the defect *ex post facto*. Still, inexplicably, the Attorney General of Kuwait demanded the payment of an additional KWD 1 million.

Supporters of Ms Lazareva provided the loan to pay this additional sum but, even then, further unprecedented extra-judicial requirements were imposed before she could be released.

12. Ms Lazareva was belatedly released on bail on 12 June 2019, but upon leaving Sulaibiya jail, she was followed by people in three cars who tracked and monitored her. Surveillance has been maintained continuously, despite there being no known court order providing for such interference with her liberty. Members of Ms Lazareva's legal team and other supporters have also been followed after meetings with her, which in some cases has intimidated and deterred persons living in Kuwait from providing material support.
13. Ms Lazareva continues to be the target of unwarranted proceedings in an additional case, Case 1496/2012, which involves allegations of misappropriating funds of the KPA by subscribing and investing in an investment vehicle called The Port Fund. Despite a self-evident lack of evidence to justify the continuation of this case, after over eight months of inactivity, Case 1496/2012 has been restarted. That this coincides with the Court overturning the separate conviction in Case 1942/2015 gives rise to questions about the Kuwaiti authorities' motivation.
14. Upcoming hearings in Ms Lazareva's cases are scheduled on 9 September 2019 in Case 1496/2012 and 15 September 2019 in Case 1942/2015. For both, members of her international legal team will travel to Kuwait to continue their work defending Ms Lazareva and to provide counsel to her as a victim of human rights violations. However, there are serious concerns regarding their safety following the threats made by the KPA, which are the subject of this Complaint, and the possibility of further reprisals.

II. REPRISALS BY KUWAIT

15. On 17 August 2019, a Kuwaiti State entity called the Kuwait Port Authority (already defined in this Complaint as the "**KPA**") issued a press release (the "**Press Release**") that directly, and in clear and unambiguous terms, threatened Ms Lazareva and her international legal team as a result of their recent engagement with UN Special Mechanisms and in the ICSID administered international arbitration (being conducted under the UNCITRAL Arbitration Rules).

16. Arabic (unofficial English translation) and English versions of the Press Release are included at Annexes 5 and 6 of this complaint and discussed in detail in the Updates to the WGAD and UNSR (respectively at paragraphs 39-65 and paragraphs 20-67). For the purposes of this Complaint, we set out the key parts of the Arabic and English press releases here. It is notable that the Arabic and English language versions of the Press Release are not mirror translations and contain separate content clearly aimed at different audiences.

The Arabic Language Version of the Press Release

17. The Arabic version of the Press Release criticises Crowell & Moring LLP (Ms Lazareva's international legal team based out of the USA), who instruct Omnia Strategy LLP and counsel in London on Ms Lazareva's behalf in relation to engagement with the UN and UN Special Mechanisms. Importantly, the KPA's Press Release condemns the fact that complaints have been filed before UN Special Mechanisms alleging violations of the ICCPR:

[...] Crowell & Moring filed complaints against Kuwait at the United Nations alleging violations of the International Covenant on Civil and Political Rights, as well as the UNCITRAL Arbitration Center.

(Unofficial English translation)

18. Of particular concern is that the KPA, a State institution, equates the work of Ms Lazareva's legal team, including its legitimate engagement with the UN Special Mechanisms, with "treason" and breaching Kuwait's national security, threatening those working on Ms Lazareva's case with criminal prosecution. The Arabic version of the Press Release states:

KGL's attacks against Kuwait, especially in light of the fact that some of the company's officials are Kuwaitis, constitutes criminal crimes that may be classified as treason and international breach of Kuwait national security. Such attacks should be addressed by the competent authorities and security agencies in the country.

(Unofficial English translation)

English Language Press Release

19. In a similar vein to the Arabic version of the Press Release, the English version:
- (i) recounts and condemns specific instructions that the KPA says Crowell & Moring LLP have given to individuals working on Ms Lazareva’s case, despite the fact that such instructions, if given, are legitimate and in furtherance of their work as part of Ms Lazareva’s defence team; and
 - (ii) recounts and condemns that complaints alleging violations by Kuwait of the ICCPR have been filed before UN Special Mechanisms. The English version expressly names Omnia Strategy LLP for this firm’s work in connection with Ms Lazareva’s case.
20. Crowell & Moring LLP instructs and receives advice from Marathon Strategies, a US-based public relations firm advising Ms Lazareva’s US defence team. Marathon Strategies made a regulatory filing describing the scope of its work under the Foreign Agents Registration Act (“FARA”) and Crowell & Moring LLP made a similar regulatory filing under the Lobbying Disclosure Act (“LDA”) as required under US law in connection with its work. Based in part of those public filings, the English version threatens Ms Lazareva’s international legal team in the following terms:

*In response [to the work of Ms Lazareva’s international legal team], **the Kuwait Port Authority confirms that it will bring to the notice of the relevant criminal authorities in Kuwait the recent FARA filings made by Marathon Strategies. The combination of the LDA filings and the FARA filings suggests that the advisors, including Crowell & Moring LLP and Marathon Strategies, are fully knowledgeable that that they are utilizing Kuwaiti government funds (derived through Kuwait’s investments in The Port Fund) in a highly unethical scheme to attack the Kuwaiti government itself. In Kuwait, these actions could also be tantamount to a further misappropriation of public funds on the part of all of those concerned, as well as a violation of crimes against the State.***

The Kuwait Port Authority further warned any advisors engaged by KGL or its former executives — including Crowell & Moring LLP and

Marathon Strategies — that, to the extent they claim to be engaged by The Port Fund or have received payments from assets rightfully belonging to The Port Fund, no such engagement was approved by the investors of The Port Fund, and such investors will seek to hold responsible those receiving such monies unlawfully from assets belonging exclusively to The Port Fund.

(Emphasis added)

21. The UN Special Mechanisms have a mandate to consider and opine on Ms Lazareva's case by virtue of Kuwait's voluntary membership of the United Nations. Further, Ms Lazareva's commencement of UNCITRAL arbitration proceedings against Kuwait has been validly pursued as part of Ms Lazareva's rights under international law and in furtherance of her desire to resolve her dispute with the Government of Kuwait peacefully.
22. In contrast, the KPA's description of Ms Lazareva's UN engagement as an "attack" and a "national security" breach is incendiary and is clearly stated as a response to the UN engagement conducted by Ms Lazareva's international counsel.
23. The right to unhindered access to and communication with international bodies on matters of human rights and fundamental freedoms is provided for and protected by international law and derives from the right to freedom of expression, association, assembly and movement contained in foundation international human rights instruments² and in customary international law.
24. Kuwait has an obligation to uphold this right and to take all necessary measures to ensure the protection of any individuals against any threats of reprisals or intimidation as a consequence of his or her legitimate engagement with UN Special Mechanisms.

² See, for e.g., Articles 12, 19, 20 and 21 ICCPR; Articles 8, 18, 19 and 20 of the Universal Declaration of Human Rights 1948; UN General Assembly Resolution 36/21 on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, A/HRC/RES/36/21, adopted on 6 October 2017; United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, Annex to UN Doc A/RES/53/144, 8 March 1999 ("**Declaration on Human Rights Defenders**").

25. The KPA is a Kuwaiti Government institution whose director, H.E. Sheikh Yousef Abdullah Sabah Al-Nasser Al-Sabah (“**Sheikh Yousef**”), is a member of Kuwait’s ruling family. Whether or not the KPA’s actions were sanctioned or notified in advance to the Government of Kuwait, as a matter of international law, Kuwait is responsible for the actions of State agencies. It follows that both the KPA and Kuwait:
- (i) have, in clear and unambiguous terms, sought to intimidate and hinder the work of Ms Lazareva’s legal team by improperly threatening them because of their work – including their engagement with UN Special Mechanisms and work at the Human Rights Council – and warning them that it will bring their actions to the attention of the Kuwaiti criminal authorities and that their acts constitute wrongful interference with Kuwait public funds or (most alarmingly) crimes against the State, treason and /or attacks on Kuwait’s national security;
 - (ii) are falsely alleging that the money with which Ms Lazareva (and her employer) are financing her legal defence are improperly obtained public funds and/or the proceeds of crime, with the intention or practical effect of frustrating Ms Lazareva’s ability to solicit, receive and utilise resources for the purpose of calling upon and retaining the assistance of legal counsel of her choice to uphold her rights; and
 - (iii) have made clear that Kuwaiti law does not ensure that lawyers working on Ms Lazareva’s case can make good faith statements in written pleadings, including before international bodies such as the UN Special Mechanisms, without fear of criminal sanctions in Kuwait.
26. We wish to make clear, for the avoidance of doubt, that it is wholly inaccurate to state or imply that any member of Ms Lazareva’s legal team has been, is being or will be paid using Kuwait Government funds and/or funds from The Port Fund in connection with her defence. This assertion has not been substantiated or explained. Indeed, the healthy and legitimate profit made by The Port Fund has already been distributed to investors (including the KPA).

27. In threatening Ms Lazareva and her international legal team through the Press Release issued by the KPA, the KPA and Government of Kuwait have violated international legal norms and breached the State's obligation to support the work of the UN Special Mechanisms and not hinder access to and any communication with them.
28. As explained in the Updates, these threats are particularly alarming because they indicate an attempt to criminalise professional legal work and they constitute clear and unambiguous warnings to Ms Lazareva's international legal team not to continue with their work, including engaging with the WGAD and UNSR, as well as the international arbitration claim seeking to peacefully protect Ms Lazareva's interests. The threats must be condemned in the strongest terms, as they constitute a threat against Ms Lazareva's legal team – and are an attack on the integrity of the UN human rights system and the international rule of law.
29. The threat to members of Ms Lazareva's legal team appears to be intentionally designed to intimidate counsel from working on Ms Lazareva's case and to deter team members from traveling to Kuwait under threat of being arrested. As already noted above, the English and Arabic version of the Press Release are clearly drafted differently for different audiences: only the English language version of the Press Release names London-based law firm Omnia Strategy LLP and uses language that is plainly threatening, for example by stating that advisors have been "*warned*" of the consequences of continuing with their work.
30. Many members of Ms Lazareva's international legal team are required to travel to Kuwait to meet with Ms Lazareva in order to be able to effectively represent her interests and ensure that her human rights are protected. The threat comes in the weeks before two major hearings in the cases against Ms Lazareva on 9 and 15 September 2019 when international counsel plan to travel to Kuwait. In this context, the Press Release implicitly deters Ms Lazareva's defence lawyers from travelling to Kuwait to attend these hearings and cannot but cause concern to them regarding their own liberty and safety.
31. Finally, the KPA's actions also carry the very real risk of deterring other (and future) victims in Kuwait from engaging with the UN Special Mechanisms, for fear of

retaliation. These steps are alarming and a serious threat not only to the work of human rights defenders in Kuwait but the integrity of the UN human rights system.

III. REQUESTS FOR ASSISTANCE FROM THE ASSISTANT SECRETARY GENERAL FOR HUMAN RIGHTS

32. Actions that hinder or restrict the ability of individuals or organisations to engage with the UN Special Mechanisms violate the right, individually and in association with others, to unhindered access to communication with international bodies, and amount to an attack on the UN Special Mechanisms themselves and the integrity of the UN human rights system. The steps taken by the KPA can therefore only be interpreted as a reprisal.

33. In the circumstances, we respectfully ask that:
 - (i) The Assistant Secretary-General and the UNSR raise the present matter with the Government of Kuwait, request and obtain information regarding their response to this Complaint;

 - (ii) The Secretary-General and Assistant Secretary-General publicly make concrete recommendations to the Government of Kuwait and the KPA regarding the importance of the UN human rights mechanisms, emphasising the gravity of a UN member state intimidating and/or initiating reprisals against Ms Lazareva and her international legal counsel;

 - (iii) The President of the HRC raise the matter with Government of Kuwait's Permanent Representation in Geneva; and

 - (iv) The Assistant Secretary-General and UNSR issue an opinion making findings regarding the actions of the Government of Kuwait and the KPA in this regard.

34. While the Assistant Secretary-General for Human Rights is responsible for leading UN efforts to put an end to reprisals against those cooperating with the UN on human rights, we also urge that the UNSR consider these threats under his own

mandate given that specific threats have been made against Ms Lazareva's international and domestic counsel.

35. We have previously requested that the UNSR consider a public statement in our original Urgent Appeal to the UNSR dated 12 June 2019 and in the Update dated 28 August 2019. We reiterate that request and ask further that his statement address the issue of reprisals as detailed in the submissions, as a matter of urgency.
36. We are available to provide further information as required.

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4 September 2019