

MEMORANDUM OF DETERMINATIONS

Political Violence Claim of International Rescue Committee (the “Investor”)

Republic of South Sudan – Project Country Annex to Master Contract of Insurance No. X-075

I. CLAIM

By an e-mail dated January 21, 2014, the Investor notified OPIC that the Investor had losses of Covered Property as a result of political violence in the Republic of South Sudan. On April 7, 2014, the Investor submitted an initial application for compensation and provided an account of the lost Covered Property. On August 12, 2014, the Investor requested adjustments to the amount claimed and provided an updated and final account of the lost Covered Property. On January 29, 2015, the Investor provided a certificate confirming its representations in respect of the claim.¹

The losses occurred as a result of looting by South Sudanese police officers, government officials and forces, and other affiliated groups at the IRC office located in Bentiu, the capital of Unity State, in northern South Sudan. From mid-December 2013 until late January 2014, there was heavy fighting between the Government of President Salva Kiir and opposition forces aligned with former Vice President Riek Machar. On December 15, 2013, the Sudan People’s Liberation Army (SPLA) rebel forces took control of Bentiu, where one of the Investor’s South Sudan offices is located. During the month that followed, government forces, affiliated groups and police officers forcibly seized Covered Property, such as office equipment and vehicles. OPIC finds that the claim is valid and that the Investor is entitled to compensation in the amount of up to \$205,949.

II. FACTUAL BACKGROUND

South Sudan is the youngest and one of the world’s least developed nations, and since its secession from Sudan in 2011, has experienced a period of prolonged political instability and lawlessness.² Violence broke out in South Sudan on December 15, 2013, in the city of Juba. There had been growing tension between President Kiir and former Vice President Machar and other Sudan People’s Liberation Movement (SPLM) leaders. It is believed the violence was triggered at a meeting of the SPLM’s National Liberation Council (NCL), between members of the Presidential Guard.³ The Government of the Republic of South Sudan

¹ The notice, application for compensation and related documents are attached as Exhibit 1.

² The factual description is based upon reports in the international press, State Department background notes, and press briefings, copies of which are attached hereto as Exhibit 2.

³ UNMISS, Interim Report on Human Rights: Crisis in South Sudan, February 21, 2014, 5.

believed Machar and his supporters attempted a coup, and the escalation of the violence from that date was in part driven by ethnic differences in the nation's population. The United Nations Mission in South Sudan (UNMISS) reported that many soldiers from the two largest ethnic groups, the Dinka and the Nuer, aligned themselves with either the President (of Dinka origin) or former Vice President (of Nuer origin).⁴ The violence and unrest had spread to Unity by December 19, 2013.⁵ Machar stated his intention to topple President Kiir's leadership, and opposition forces gained control of the capitals of the Jonglei, Upper Nile, and Unity states. On December 21, the SPLA Commander of Division IV announced that he had deposed the Governor of Unity and that his soldiers were no longer loyal to President Kiir.⁶ These Nuer soldiers, now loyal to the opposition, and security forces including the South Sudan National Police Service (SSNPS) and the National Prison Service of South Sudan (NPSSS), targeted those of Dinka origin for looting and killings until roughly January 9, 2014.⁷

The town of Bentiu, which is the capital of Unity State, changed hands several times from late December 2013 to mid-January 2014.⁸ On December 30, 2013, police officers, now loyal to the opposition, arrived at the shared Mercy Corps-IRC office in Bentiu and demanded fuel and three vehicles, one of which belonged to the Investor. These items were never returned, and on January 3, 2014, Government officials, also loyal to the Nuer opposition at this time, appeared and demanded that the Investor turn over the keys to its rented Bentiu guesthouse, which they believed to be owned by an individual of Dinka origin. Finally, the Investor reported that on January 10, 2014, the Mercy Corps-IRC office in Bentiu was looted by Government forces and affiliated groups on both sides of the political and ethnic divide, as were other NGO and UN compounds and private shops. UNMISS similarly reported that the opposition forces looted property belonging to international NGOs, UN agencies, and businesses, and that from January 10-12, 2014, parts of Bentiu were almost completely looted and burned down.⁹ When Government forces arrived in Bentiu on January 10, 2014, UNMISS reported that most Nuer civilians fled the city, and the Government forces pillaged and destroyed civilian property, foreign business, and the premises of humanitarian aid organizations.¹⁰

Overall, the violence between the Government and opposition forces, and their alternating control and occupation of multiple cities from December 2013-January 2014, resulted in widespread looting, displacement, and human rights violations throughout South Sudan. The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) estimated over 740,000 people in South Sudan

⁴ UNMISS, Interim Report on Human Rights: Crisis in South Sudan, February 21, 2014, 5.

⁵ UNMISS, Interim Report on Human Rights: Crisis in South Sudan, February 21, 2014, 9.

⁶ UNMISS, Interim Report on Human Rights: Crisis in South Sudan, February 21, 2014, 16.

⁷ UNMISS, Interim Report on Human Rights: Crisis in South Sudan, February 21, 2014, 16.

⁸ UNMISS, Interim Report on Human Rights: Crisis in South Sudan, February 21, 2014, 6.

⁹ UNMISS, Interim Report on Human Rights: Crisis in South Sudan, February 21, 2014, 17.

¹⁰ UNMISS, Interim Report on Human Rights: Crisis in South Sudan, February 21, 2014, 17.

had already been displaced by the end of January 2014.¹¹ Multiple international organizations' facilities were targeted, and looting and violence persisted even after the attempted overthrow of the government on December 15, 2013.

The Investor is an international nongovernmental organization that provides humanitarian aid in over 40 countries and in 22 U.S. cities. The Investor offers emergency aid and long-term assistance to refugees and those displaced by war, persecution, or natural disaster. The Investor has operated in South Sudan for over 20 years, continuing its operations when the country gained independence in 2011. The Investor has maintained operations in some areas of South Sudan throughout the recent political violence, although at diminished capacity. The Investor's Bentiu office is currently closed and the Investor does not have access to the office.

III. THE CONTRACT

A. Scope of Coverage

The Master Contract of Insurance No. X-075 dated May 24, 2010 (the "Master Contract") and the Country Annex for South Sudan dated October 28, 2013 (the "Country Annex") together constitute the contract of insurance ("the Contract").¹²

Article VI of the Master Contract provides compensation if Political Violence is the direct and immediate cause of the permanent loss of all or some of the Covered Property due to physical damage, destruction, or the physical seizure and retention of the Covered Property. "Political Violence" is defined in Section 6.01 as "a violent act undertaken with the primary intent of achieving a political objective, such as declared or undeclared war, hostile action by national or international armed forces, civil war, revolution, insurrection, civil strife, terrorism or sabotage." "Covered Property" is defined in Section 1.01.1 as the "computers, office equipment, vehicles, inventory, buildings, furniture, generators, telecommunications equipment and other property" that the Investor provides from time to time to its branch offices (each a "Foreign Enterprise") for use in carrying out the Project and of which the Investor is the direct or indirect beneficial owner or controller. The "Project" is defined in Section 1.01.2 as the Investor's humanitarian relief projects, including, but not limited to, providing emergency and lifesaving assistance, delivering medical and public health services, shelter and food, and providing training, education and income-generating programs to refugees.

B. Compensation

¹¹ UNMISS, Interim Report on Human Rights: Crisis in South Sudan, February 21, 2014, 6.

¹² Copies of the Master Contract and the Country Annex are attached hereto as Exhibit 3. Terms capitalized herein for other than grammatical reasons are used as defined in the Contract. Section references are to the Master Contract.

Section 7.01 of the Master Contract provides that, if the requirements of Article VI are satisfied and subject to limitations and self-insurance obligations, compensation will be payable in the amount of the reasonable cost to repair any item of Covered Property or replace it with equivalent new property. In either case, compensation may not exceed 200% of the historical cost of the Covered Property. The Investor is required to retain 10% of the risk of loss on a per loss basis (§1.03 Self-Insurance Requirement). The Investor must repair or replace the lost property within three years of the loss (§7.01 (a)(ii)) as a condition of compensation.

IV. DETERMINATIONS UNDER THE CONTRACT

A. Political violence was the direct and immediate cause of the permanent loss of Covered Property

A political struggle between those loyal to President Kiir and forces aligned with former Vice President Machar escalated to violence that was motivated by both political and ethnic differences. It is believed that Machar's supporters were attempting to overthrow Kiir, and the widespread strife constituted Political Violence. The SPLA, government forces, and police officers alike, constituting members on both sides of the political rivalry, destroyed and seized property from individuals, public parties, and NGOs, including humanitarian aid agency offices throughout the country. The extent of the violence and its causes are well documented by accounts in the international press, as well as State Department releases and background notes.

The Investor's claim arises from the looting of its branch office in Bentiu, Unity State. The Investor represents that South Sudanese police officers, government officials, government forces and affiliated groups seized IRC property and looted IRC's Bentiu office on December 30, 2013, January 3 and January 10, 2014. Independent sources describe the looting and other acts of violence in Bentiu on those dates by both government and opposition forces during the insurrection.

The Contract insured Covered Property defined to include computers, office equipment, vehicles, inventory, buildings, furniture, generators, telecommunications equipment and other property used to carry out the Investor's humanitarian relief efforts in South Sudan. The Investor has certified that the property that is the subject of the claim constitutes Covered Property as defined in the Contract.

None of the exclusions set forth in Section 6.03 of the Contract apply, as (a) the amount of compensation payable is not less than the minimum compensable loss; (b) there are no measures that the Investor could have taken to protect the Covered Property; (c) there is no question of provocation by the Investor; (d) the

Covered Property does not include any excluded items; and (e) the Investor is not obligated to assign any insurance proceeds to a third party (§6.03 (a) – (e)).

B. Compensation is payable in an amount of up to \$205,949

The Investor has certified the historical cost of the looted Covered Property at \$173,409. Under the Contract, compensation is payable for the reasonable cost to replace the lost Covered Property with equivalent new property. Such compensation may not to exceed 200% of the historical cost of the Covered Property and is subject to a 10% risk retention by the Investor. If the Investor elects compensation based on replacement cost, it must replace the lost property within three years of the loss (§7.01(a)(ii)).

The Investor has requested compensation based on replacement cost and has requested compensation in an amount equal to actual replacement for the Covered Property consisting of two vehicles (up to the 200% historical cost limit for each vehicle) and compensation in an amount equal to 100% of the historical cost of the other items of Covered Property. According to the Investor’s Certificate, the historical cost of the vehicles is \$55,423 and the historical cost of the other items of Covered Property is \$117,987. The maximum amount of compensation is as follows:

Vehicles	\$ 110,845 (200% of historical cost)
Other Covered Property	\$ 117,987 (100% of historical cost)
Subtotal	\$ 228,832
Less 10% Retention	\$ 22,883
Maximum Compensation	\$ 205,949

None of the limitations upon compensation applies. This claim, together with all other compensation paid under the Master Contract, does not exceed the Master Contract Maximum Aggregate Compensation on the date of loss (\$5,000,000). To date, the only compensation approved under the Master Contract is with regard to IRC’s Central African Republic claim, for the amount of up to \$595,413.40. The present claim is the first claim under the Master Contract in South Sudan and is less than the Project Country Maximum Aggregate Compensation in the Country Annex (\$4,680,664). Payment of compensation in the above amount would not violate the Investor’s duty to be self-insured (§1.03; §1.04; §7.02).

C. The Investor is in Compliance with its Contractual Duties in all material respects

The Investor has complied with its duties under the Contract in all material respects and has provided a certificate to that effect that is satisfactory to OPIC.

OPIC will pay compensation in an amount equal to the actual replacement cost of the Covered Property consisting of two vehicles (up to 200% of the historical cost of the vehicles minus the 10% risk of loss retained by the Investor) upon presentation to OPIC of documentation evidencing the replacement of the vehicles and the amount paid. OPIC will pay compensation in an amount equal to the historical cost of the other Covered Property that is the subject of this claim, minus the 10% risk of loss retained by the Investor. The Investor has certified that it will replace the Covered Property that is the subject of this claim within three years of the applicable loss.

The Investor will execute an assignment, and a receipt and release in connection with payment of compensation transferring to OPIC the Investor's claims arising out of the losses due to Political Violence.

V. CONCLUSION

Based on the foregoing determinations and subject to the execution by the Investor of an assignment and a receipt and release, I find that the political violence claim of the Investor is valid and that OPIC is liable for up to \$205,949 in compensation. The actual amount for the vehicles will be established and paid based upon subsequent documentation and in consideration of the Investor's release of OPIC from further liability for this incident.

**OVERSEAS PRIVATE INVESTMENT
CORPORATION**



By: **Kimberly Heimert**

Its: **Vice President and General Counsel**

Date: February **9**, 2015