

## MEMORANDUM OF DETERMINATIONS

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

#### Republic of South Sudan (“South Sudan”) – Project Country Annex to Master Contract of Insurance No. X-075

#### I. CLAIM

By an e-mail dated September 2, 2015, the Investor notified OPIC that the Investor had losses of Covered Property as a result of political violence in South Sudan. On September 11, 2015, the Investor submitted an initial application for compensation and provided an account of the lost Covered Property. On November 8, 2016, the Investor requested adjustments to the amount claimed to include additional lost Covered Property. On May 30, 2017, the Investor provided a certificate (the “Investor’s Certificate”) confirming its representations in respect of the claim.<sup>1</sup>

The losses occurred as a result of looting by South Sudan police officers, government forces, and other affiliated groups and/or political opposition groups at the Investor’s branch office in Koch County, Unity State, in northern South Sudan and at the Norwegian Refugee Council’s branch office in Leer County, Unity State, where certain of the Investor’s property was relocated due to civil strife in Koch County. During the period from April to May 2015 and in July 2016, government forces and affiliated groups seized Covered Property, such as office items, inventory and vehicles. OPIC finds that the claim is valid and that the Investor is entitled to compensation in the amount of up to \$98,621.42.

#### II. FACTUAL BACKGROUND<sup>2</sup>

South Sudan is the youngest and one of the world’s least developed nations and since its secession from Sudan in 2011, the country has experienced a period of prolonged political instability and civil strife. In 2013, violence erupted within the government forces, the Sudan People’s Liberation Army (the “SPLA”), apparently fueled by ethnic tensions between the Dinka and Nuer ethnicities. The events led to armed conflict between government forces, led by President Salva Kiir (of Dinka origin), and newly formed opposition forces, led by Vice President Reeik Machar (of Nuer origin), the SPLA-In Opposition (SPLA-IO), in several states across the country and to ethnic violence that has continued despite multiple ceasefire agreements. The ouster of Vice President Machar and a controversial executive order to increase the number of the country’s states from 10 to 28, which may have

---

<sup>1</sup> The Investor Certificate and related documents are attached as Exhibit 1.

<sup>2</sup> The factual description is based upon reports from the U.S. Department of State, the United Nations and secondary sources including the international and local press, copies of which are attached hereto as Exhibit 2.

contravened South Sudan's 2011 transitional constitution and some provisions of a peace agreement, have contributed to the prolonged civil strife.

The SPLA has committed gross human rights and international humanitarian law violations including extrajudicial killings, rape of women and children, targeting civilians based on ethnicity, destruction of property, and denial of humanitarian access in order to drive potential opposition supporters into the wilderness. Many civilians have been attacked and killed in their homes, shelters, hospitals, places of worship and even at United Nations (U.N.) premises. Unity State and Upper Nile State have been most heavily affected by the conflict. In April 2015, SPLA forces launched a military attack to regain control over the territories under the control of the opposition in Unity State, largely targeting civilians with scorched earth tactics that destroyed civil society infrastructure including homes, personal property, and livestock. Unity State, and its capital Bentiu, has been a particular target of the government forces because of its perceived support for the opposition. The SPLA began its military campaign in Bentiu, pushing south and quickly overtaking SPLA-IO forces in Guit County and Koch County before attacking Leer County.

The severity of the fighting not only killed thousands and displaced over two million people, but has critically limited the availability of humanitarian assistance in the region. Humanitarian organizations were forced to evacuate from their premises in Koch County and Leer County once the SPLA took control of those areas. The deprivation of humanitarian assistance and the looting of supplies of aid organizations appears to have been part of the SPLA's strategy, designed to further discourage the residents from remaining in the region and to disrupt the capacity of aid organizations to support the population. In May 2015, the U.N. Secretary-General advised the U.N. Security Council that there were reasonable grounds to believe that crimes against humanity have been committed in South Sudan. While all parties to the conflict are responsible for atrocities, the U.N. reports that the SPLA appears to be primarily responsible for the gross and systematic human rights violations.

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.

### 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").<sup>3</sup>

Section 6.01.1 of the Master Contract provides for compensation "if Political Violence (as hereinafter defined) is the direct and immediate cause of the permanent loss due to physical damage, destruction, or the physical seizure and retention of all or some of the Covered Property." "Political Violence" is defined in Section 6.01.2 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

Section 7.01(a)(i) of the Master Contract provides that, if the requirements of Article VI are satisfied and subject to the limitations and self-insurance obligations, compensation will be payable in the amount of the lowest of the (i) historical cost, (ii) fair market value, or (iii) reasonable cost to repair items of lost Covered Property. The Investor is required to retain 10% of the risk of loss on a per loss basis (Section 1.03, Self- Insurance Requirement).

---

<sup>3</sup> 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 the Master Contract.

#### **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. The widespread civil strife that has resulted from such political and ethnic differences constituted Political Violence. The extent of the violence and its causes are well documented by accounts of the State Department, the U.N. and the international press.

The Investor's claim arises from the looting of (i) the Investor's branch office in Koch County and (ii) the Norwegian Refugee Council's branch office in Leer County, where certain of the Investor's Covered Property was relocated following the occurrence of political violence in Koch County. The Investor represents that South Sudan police officers, government forces and other affiliated groups, and/or political opposition groups seized and retained or destroyed beyond repair the Investor's Covered Property during conflicts that occurred from April 27, 2015 to May 4, 2015 and from July 13, 2016 to July 15, 2016. The U.S. Department of State and other sources previously cited describe the looting and other acts of violence in Koch County and Leer County on or around the aforementioned dates by government and/or 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 additional 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 (Section 6.03(a) – (e), Exclusions).

##### **B. Compensation is Payable in the Amount of \$98,621.42**

The Investor has requested compensation based on the lowest of the (i) historical cost, (ii) fair market value, and (iii) reasonable cost to repair any item of lost

Covered Property consisting of four vehicles, a laptop computer and printer, and refrigerator (“Vehicles and Other Assets”), and compensation in an amount equal to 100% of the historical cost for other items of Covered Property consisting primarily of office items and inventory (“Office Items and Inventory”) (Section 7.01(a)(i), Losses due to Political Violence (Damage to Covered Property)). The Investor has certified pursuant to the Investor’s Certificate the historical cost and fair market value (as applicable) of the seized and retained or destroyed Covered Property from the Investor’s branch office in Koch County, Unity State, or, upon relocation of certain Covered Property in response to political violence, at the office of the Norwegian Refugee Council in Leer County, Unity State. Under the Contract, compensation is payable in an amount equal to (i) the historical cost of two vehicles and the fair market value of the other items constituting Vehicles and Other Assets totaling \$80,964.84 and (ii) the historical cost of Office Items and Inventory totaling \$28,614.51, in each case, subject to a 10% risk of loss retained by the Investor.

The amount of compensation is as follows:

Vehicles and Other Assets	\$80,964.84 (lesser of FMV and historical cost)
Office Items and Inventory	\$28,614.51 (historical cost)
Subtotal	\$109,579.35
Less 10% Retention	\$10,957.94
Maximum Compensation	\$98,621.42

None of the limitations on compensation applies. This claim, together with all other compensation paid under the Master Contract to date<sup>4</sup>, is less than the Master Contract Maximum Aggregate Compensation on the date of loss (\$5,000,000). This claim is the second claim under the Master Contract in South Sudan and, when combined with the first claim in South Sudan, 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 (Section 1.03, Self-Insurance Requirement; Section 1.04, Maximum Aggregate Compensation; and Section 7.02, Limitations).

---

<sup>4</sup> Six other claims have been submitted under the Master Contract: a claim under the Chad Country Annex for up to \$130,680.00, a claim under the Afghanistan Country Annex for up to \$84,991.00, a claim under the Central African Republic Country Annex for up to \$595,413.40, a claim under the South Sudan Country Annex for up to \$205,949.00, a claim under the Democratic Republic of Congo Country Annex for up to \$68,202.00, and a claim under the Yemen Country Annex for up to \$73,711.80. The maximum total amount of all six claims is \$1,158,947.20.

**C. The Investor is in Compliance with its Contractual Duties in all Material Respects**

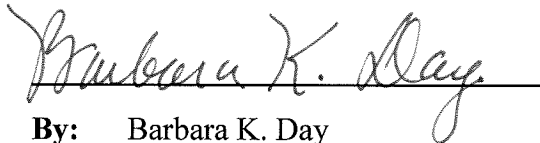
The Investor has complied with its duties under the Contract in all material respects and has provided a certificate to that effect that is satisfactory to OPIC. OPIC will pay compensation in the amount equal to (i) the historical cost of two vehicles and the fair market value of the other items constituting Vehicles and Other Assets and (ii) the historical cost of the Office Items and Inventory, in each case, minus the 10% risk of loss retained by the Investor.

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 receipt and release, I find that the political violence claim of the Investor is valid and that OPIC is liable for \$98,621.42 in compensation. OPIC will pay the compensation in consideration of the Investor's release of OPIC from further liability for this incident.

**OVERSEAS PRIVATE INVESTMENT  
CORPORATION**

A handwritten signature in cursive script, reading "Barbara K. Day", is written over a horizontal line.

**By:** Barbara K. Day

**Its:** Vice President and General Counsel

**Date:** June 13, 2017