

MEMORANDUM OF DETERMINATION

Political Violence Claim of International Rescue Committee (the "Investor")

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

I. CLAIM

By emails dated July 23, 2015 and August 25, 2015, the Investor notified OPIC that it had suffered losses of Covered Property as a result of political violence in the Republic of Yemen, submitted an application for compensation and provided an account of the lost Covered Property. On February 19, 2016, the Investor provided a certificate confirming its representations in respect of the claim.¹

The Investor's losses occurred as a result of several months of heavy fighting earlier this year in Aden, Yemen between Houthi rebels and security forces loyal to President Abd Rabbah Mansur Hadi backed by Saudi military support. Between March and June 2015, heavy fighting over control of the Aden International Airport resulted in the destruction of a customs warehouse where a portion of the Covered Property (medical supplies) was being held. For security reasons, all Investor personnel were evacuated from Aden from March 22 to July 22, 2015. When the personnel returned, they learned that the office had been attacked and that Covered Property (office equipment and medical supplies) had been looted and destroyed. OPIC finds that the claim is valid and that the Investor is entitled to compensation in the amount of up to \$73,711.80.

II. FACTUAL BACKGROUND²

Political instability in the Republic of Yemen and fighting between groups in the former Yemen Arab Republic in the North and the former People's Democratic Republic of Yemen in the South have been ongoing for decades and have made Yemen an attractive base for violent extremist groups. In September 2014, Houthi forces, led by Shia cleric Hussein Badreddin al-Houthi, began a campaign to overthrow the President of Yemen, Abd Rabbah Mansur Hadi. Houthi rebels seized control of the capital city of Sana'a, placed Hadi under house arrest, dissolved parliament, and declared a new acting president, effectively dismantling the Hadi government. In February 2015, Hadi fled to Aden, a major port city in southwest Yemen. Violence erupted in Aden soon thereafter. In mid-March 2015, Saudi forces began a campaign of airstrikes in Aden in support of Hadi government forces. On March 19, 2015, Houthi rebels took control of the Aden International Airport, and on March 25, 2015, amid escalating violence, Hadi fled by boat to Saudi Arabia. Fighting between Houthi rebels and Hadi government forces (with support from the Saudis) continued through the spring, resulting in

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

² Unless otherwise noted, the factual description is based upon reports from the United States Department of State ("Recent Violence in Yemen," March 20, 2015; "Relocation of U.S. Personnel from Yemen," March 21, 2015), and supported secondary sources, including Oxford Economics and IHS Economics and Risk, the International Press, and the United Nations Security Council, copies of which are attached hereto as Exhibit 2.

significant damage to the airport and widespread looting of government and civilian buildings in Aden. In July 2015, Hadi government forces, with air support from the Saudi air force, regained control of the Aden International Airport and the Aden city center.

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. Around 80% of Yemeni citizens are in need of emergency aid, and the Investor has been meeting that need by providing water, healthcare, nutrition, and other essential services in Yemen since 2012.

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 Yemen dated May 30, 2014 (the “Country Annex”) together constitute the contract of insurance (the “Contract”).³

Section 6.01.1 of the Master Contract provides compensation “if Political Violence 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

Unless the Investor requests to be compensated under Section 7.01(a)(ii) of the Master Contract, compensation will be determined in accordance with Section 7.01(a)(i) of the Master Contract. Section 7.01(a)(i) of the Master Contract provides that if the requirements of Article VI are satisfied and subject to limitations and self-insurance

³ 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.

obligations, compensation will be payable in the amount of the lowest of (i) the historical cost, (ii) fair market value, or (iii) the reasonable cost to repair any item of lost Covered Property. The Investor is required to retain 10% of the risk of loss on a per loss basis (Master Contract Section 1.03, Self-Insurance Requirement).

C. Compliance with Action Plan

The Investor has certified it has complied with each and all of its obligations under the Contract and the Project Country Annexes, including, without limitation, the Action Plan attached as Annex A to the Project Country Annex, which *inter alia* requires that the Investor shall cause all drugs supplied under development relief efforts to be on the WHO essential drug list and be sourced from a manufacturer in compliance with the GMP of the WHO.

IV. DETERMINATIONS UNDER THE CONTRACT

A. Political Violence was the Direct and Immediate Cause of the Loss of Covered Property

The Houthi campaign to remove President Hadi from office targeted and achieved a political objective—the overthrow of the Hadi government—and therefore constituted political violence. During the conflict, the Aden International Airport was effectively destroyed, and individuals, government offices and NGOs in Aden, including humanitarian aid agency offices such as the Investor's, were targeted by looters and suffered property damage. The extent of the violence and its causes are well documented by accounts in the international press, as well as State Department releases.

The Investor's claim arises from the destruction of medical supplies held in a customs warehouse at the Aden International Airport and the looting of its branch office in Aden. The Investor represents and has provided shipping documents and photographic evidence to support that the claimed medical supplies were destroyed at the customs warehouse. Department of State press releases and other sources confirm that the Aden International Airport was effectively destroyed during the conflict. The Investor represents that the Aden office was looted sometime between March 22 and July 22, 2015 while its personnel had been evacuated. Department of State press releases and other sources describe looting and other acts of violence committed in connection with the conflict in Aden during that period.

The Contract insures 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 Yemen. 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 of \$20,000; (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 (Section 6.03(a)-(e)).

B. Compensation is Payable in an Amount of Up to \$73,711.80

The Investor has confirmed that it does not wish to be compensated under Section 7.01(a)(ii) of the Master Contract. Accordingly, compensation is determined in accordance with Section 7.01(a)(i) of the Master Contract. The Investor has certified that the fair market value of the destroyed and looted Covered Property from the Investor’s Aden office (“*Office Supplies*”) at \$6,728.29 and the fair market value of the destroyed Covered Property from the airport customs warehouse (“*Medical Supplies*”) at \$75,173.71. The Investor has further certified and provided evidence to support that fair market value is the lowest of (i) the historical cost, (ii) fair market value, and (iii) the reasonable cost to repair any item of lost Covered Property. Under the Contract, compensation is payable for the fair market value of the Covered Property, subject to a 10% risk of loss retained by the Investor.

The amount of compensation is as follows:

Office Supplies	\$6,728.29
Medical Supplies	\$75,173.71
Subtotal	\$81,902.00
Less 10% Retention	\$8,190.20
Maximum Compensation	\$73,711.80

None of the limitations on compensation apply. The above amount, together with the six other claims under the Master Contract⁴ to date, is less than the Master Contract Maximum Aggregate Compensation on the date of loss (\$5,000,000). This is the first claim under the Country Annex, and the above amount is less than the Project Country Maximum Aggregate Compensation (\$318,939.00). Payment of compensation in the above amount would not violate the Investor’s duty to be self-insured (Master Contract Sections 1.03; 1.04; 7.02).

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

⁴ 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 the Congo Country Annex for up to \$68,202.00, and a second claim under the South Sudan Country Annex for up to approximately \$128,000.00 (claim under OPIC review). The maximum total amount of all six claims is \$1,213,235.40.

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 the fair market value of the Covered Property that is the subject of this claim, 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 a receipt and release, I find that the Investor's political violence claim is valid and that OPIC is liable for \$73,711.80 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



By: Kimberly Heimert

Its: Vice President and General Counsel

Date: February 22, 2016