

## MEMORANDUM OF DETERMINATIONS

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

#### **Chad – Project Country Annex to Master Contract of Insurance No. X-060 (OPIC Contract of Insurance No. F526)**

#### **I. CLAIM**

By an e-mail dated February 6, 2008, the Investor gave notice to OPIC that the Investor had losses of Covered Property as a result of political violence in Chad. The Investor subsequently made an application for compensation, providing an account of the lost Covered Property on November 17, 2008 and additional information on the circumstances of the losses on January 20, 2009.<sup>1</sup>

The losses occurred during fighting in N’Djamena involving Chadian government troops and various armed rebel groups whose objectives include the overthrow of the elected government. As a result of the political violence and the ensuing instability, a civilian mob was able to loot and destroy the Covered Property. OPIC finds that the claim is valid and that the Investor is entitled to compensation in the amount of \$130,680.

#### **II. FACTUAL BACKGROUND**

For the past few years, Chad has been engaged in armed struggle with competing rebel organizations allegedly backed by Sudan in the eastern part of the country.<sup>2</sup> The rebels, who accuse the government of clan-based favoritism and corruption, seek to overthrow the elected government of President Idriss Deby. The violence is related to the conflict in Darfur, where Sudan accuses Chad of backing anti-government rebels there. In 2006 and 2008, rebel forces attacked the Chadian capital, N’Djamena, which is located in the western part of the country.

The Investor has claimed that, late in the morning on February 2, 2008, there was fighting between rebels and government forces around the Investor’s N’Djamena offices and that, after fighting moved away from the offices, a mob of civilians entered the Investor’s compound, where Covered Property, including, computers, copiers, scanners, telephones, furniture, office supplies, medicine, fuel, spare parts and shelter supplies, was taken or destroyed in three waves.

Sources independent of the Investor describe how early on February 2, 2008, three main rebel groups, the United Force for Democracy and Development, the Rally of Forces for Change, and the UFDD-Fondamentale, launched an attack on the capital, seizing large parts of the city, and surrounding the Presidential Palace.

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<sup>1</sup> The notice, application for compensation, and related documents are attached as Exhibit 1.

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

Those sources also describe instances of looting as a result of the fighting. Chadian government forces eventually pushed the rebels out of the city and a cease fire was signed on February 5, 2008.

### **III. THE CONTRACT**

#### **A. Scope of Coverage**

The Master Contract of Insurance No. X-060 dated September 24, 2004 (the “Master Contract”) and the Country Annex for Chad, OPIC Contract of Insurance F526 dated April 20, 2005 (the “Country Annex”) together constitute the contract of insurance (“the Contract”).<sup>3</sup>

Article VI of the Master Contract provides compensation if Political Violence in Chad is the direct and immediate cause of the permanent loss of all or some of the Covered Property used for the Project due to physical damage, destruction or the physical loss and retention of the Covered Property. “Covered Property” is defined in Sec.1.01.1 as the office equipment and other property that the Investor has provided to its branch offices (each a “Foreign Enterprise”) as described in each country annex. “Political Violence” is defined in Sec. 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.”

The Investor is required to provide a current list of Covered Property, including its historical cost and localities, in connection with each annual premium payment (Sec 6.01; Sec 9.01).

#### **B. Compensation**

Section 7.01 of the Master Contract provides that, if the requirements of Article VI are satisfied and subject to limitations, compensation will be payable in the amount of the reasonable cost to repair any item of Covered Property lost or replace it with equivalent new property but not to exceed 200% of the Historical Cost of the Covered Property for which compensation is paid (Sec 7.01 (a)). The Historical Cost is that set forth in the corresponding Country Annex.

### **IV. DETERMINATIONS UNDER THE CONTRACT**

#### **A. Political violence was the direct and immediate cause of the permanent loss of Covered Property used for the Project**

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<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 to the Master Contract.

As the objective of the rebels is the overthrow of the government of Chad, the armed attack launched on N'Djamena had a political objective and therefore constituted political violence. The political violence is well documented by accounts in the international press, as well as State Department background notes.

N'Djamena is not among the locations listed in the original Country Annex and was not added in connection with any subsequent annual premium payment. However, it is among the locations in Chad where political violence has been reported in the international press, a location in the eastern part of the country (where political violence has regularly occurred over the past few years) is listed in the Country Annex, the Contract does not preclude the Investor from moving Covered Property to locations that are not listed and the Project required the Investor to expand its operations in Chad. For all these reasons, OPIC has determined to treat this omission as immaterial.

None of the exclusions apply, as the amount of compensation payable is not less than the minimum compensable loss, there are no measures that the Investor could have taken to protect the Covered Property, there is no question of provocation by the Investor, and the Covered Property does not include any excluded items (Sec. 6.03 (a) – (d).)

#### **B. Compensation is payable in an amount of up to \$ 130,680**

The Investor has provided a file listing lost Covered Property at Historical Cost of \$144,614. Under the Contract, compensation is payable for the reasonable cost to replace the lost Covered Property with equivalent new property, but not to exceed 200% of the Historical Cost of the Covered Property for which compensation is paid (Sec. 7.01 (a).)

A limitation upon compensation applies. Although the above amount is less than the Maximum Aggregate Compensation (Sec.1.04) under the Master Contract on the date of loss (\$5,000,000), the amount exceeds the Maximum Insured Amount in the Country Annex (\$130,680). Accordingly, payment of compensation is limited to \$130,680.

Payment of compensation in the above limited amount would not violate the Investor's duty to be self-insured (Sec. 1.03, 1.04(b); Sec.7.02 (a) – (c); Sec.9.01.3). According to the Country Annex, the Historical Cost of all Covered Property is \$145,200, and the Maximum Insured Amount is \$130,680 or 90% of the Historical Cost. Therefore, the requirement that the Investor bear the risk of loss of 10% of the Historical Cost of all Covered Property is satisfied (Sec.1.03). Should the Investor experience a loss on any additional Covered Property in Chad, no further compensation will be payable under the Contract.

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

The Investor did not file an application for damage to the Covered Property within six months of the loss (Sec. 8.01(a)). However, the Investor was seeking coverage for the loss from its other loss carrier during such period and only after the claim was finally denied on September 23, 2008 did the Investor seek compensation from OPIC. For this reason, OPIC has determined to treat this omission as immaterial.

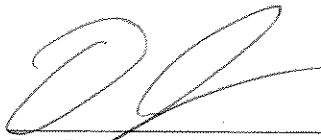
The Investor has complied with its duties under the Contract in all material respects and has provided a certificate to that effect that is satisfactory to OPIC.

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

**V. CONCLUSION**

Based on the foregoing determinations and subject to the execution of the certificate and receipt and release I find that the political violence claim of the Investor is valid and that OPIC is liable for \$130,680 in compensation. The amount will be paid in consideration of the Investor's release of OPIC from further liability for this incident.

OVERSEAS PRIVATE INVESTMENT  
CORPORATION



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Its: Acting Vice President and General  
Counsel

Date: 3/10, 2009