

MEMORANDUM OF DETERMINATIONS

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

**Islamic Republic of Afghanistan ("Afghanistan") – Project Country Annex to
Master Contract of Insurance No. X-060 (OPIC Contract of Insurance No. F 498)**

I. CLAIM

By telephone call on or about August 14, 2008 and as supplemented by its follow-on Application for Compensation dated November 17, 2008 (the "Certificate"), the Investor gave notice to OPIC that the Investor had losses of Covered Property as a result of political violence in Afghanistan.¹ The losses occurred during an attack on the Investor's two clearly marked aid vehicles in which three of its aid workers and one driver were killed. The Taliban claimed responsibility for the attack. The Taliban is an insurgent force in Afghanistan whose objectives include the overthrow or destabilization of the elected government or seizure from it of control over Afghanistan. OPIC finds that the claim is valid and that the Investor is entitled to compensation in the amount of up to \$84,991.

II. FACTUAL BACKGROUND

Although the former Taliban regime was removed from political power more than seven years ago, its remnants operate in various parts of Afghanistan with the aim to weaken or bring down its new Government, and to drive Westerners out of the country with the use of violence, such as attacks against foreign civilians who use the Kabul-Jalalabad road and other roads throughout the country. Afghanistan faces daunting challenges, including defeating the insurgents and terrorists, recovering from over two decades of civil strife, rebuilding a shattered physical, economic and political infrastructure, and dealing with years of severe droughts. Coalition and NATO forces under ISAF are working in partnership with Afghan security forces to combat Taliban and al-Qaida elements who continue to seek to terrorize the population and challenge the government.²

On August 13, 2008, Taliban fighters with assault rifles shredded the Investor's SUV with dozens of bullets, killing three Western women and their Afghan driver. [REDACTED]

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

² The factual description is based upon State Department background notes and travel warnings, copies of which are attached hereto as Exhibit 2.

[REDACTED] The women were driving from the eastern province of Paktia to Kabul in a white SUV marked with the Investor's emblem.³

The Taliban claimed responsibility for the killings, saying its fighters attacked two vehicles of the "foreign invader forces". According to Taliban spokesman Zabuiullah Mujahid, "[those killed] were not working for the interests of Afghanistan and they belonged to those countries whose forces . . . took Afghanistan's freedom."⁴

The Investor provides emergency relief and rehabilitation and works for protection of human rights and post-conflict development in countries around the world.⁵ It has been working in Afghanistan for 20 years. In the 1980s, the Investor provided medical aid to Afghan refugees fleeing into Pakistan during the Soviet occupation.⁶

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 Afghanistan (OPIC Contract of Insurance No. F498) dated September 24, 2004 (the "Country Annex") together constitute the contract of insurance (the "Contract").⁷

Article VI of the Master Contract provides compensation if Political Violence in Afghanistan 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 county annex. "Political Violence" is defined in Sec. 6.01 as "a violent act undertaken with the primary intent of achieving a political objective."

³ This factual description is based upon an Associated Press report in the Chicago Sun-Times, dated August 13, 2008.

⁴ This factual description is based upon an Associated Press report in the Chicago Sun-Times, dated August 13, 2008.

⁵ Investor's Website.

⁶ This factual description is based upon an Associated Press report in the Chicago Sun-Times, dated August 13, 2008.

⁷ 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.

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.

The Taliban's armed offensive has a political objective and therefore constitutes political violence. The extent of the violence and its causes are well documented by accounts in the international press, as well as State Department background notes and travel warnings.

Logar is not among the locations listed in the original Country Annex and was not added in connection with any subsequent annual premium payment. However, Logar is among the locations in Afghanistan where political violence has been reported in the international press, other locations in eastern Afghanistan are listed in the Country Annex, the Contract does not preclude the Investor from moving Covered Property to locations that are not listed, and implementation of the Project clearly required the Investor to expand its operation in eastern Afghanistan.

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 \$84,991.

The Investor has provided a file listing two items of Covered Property, the Toyota Prado GX with Model No. IHZ-0400436 and the

Toyota Hilux-Pick Up D/C with Model No. 3L5274068, at Historical Cost of \$36,475 and \$23,367, respectively, and is claiming compensation for the replacement cost of the former item, which the Investor has established at \$38,257, and compensation for the repair of the latter item.

Under the Contract, compensation is payable for the reasonable cost to repair any item of Covered Property or to replace the lost Covered Property with equivalent new property, less anything of value received by the Investor on account of the Covered Property lost, but not to exceed 200% of the Historical Cost of the Covered Property for which compensation is paid. (Sec. 7.01(a).) Due to ongoing criminal and other investigations by the U.S. and other authorities, the Investor has been unable to access the Toyota Hilux-Pick-Up in order to seek bids on the costs of its repair and to furnish OPIC with documentation to establish the actual cost of such repairs. Because the possibility cannot be excluded that the second vehicle may be permanently lost, this determination establishes the upper limit of the compensation that might be payable (*i.e.*, 200% of the item's Historical Cost or \$46,734). The actual compensation paid with respect to the second vehicle is expected to be substantially less if the Investor recovers the vehicle and the only repair required is the cost to purchase and install a new windshield. Compensation will be paid upon submission of proof of permanent loss or the cost of repair.

None of the limitations upon compensation applies. The above amount is less than the Maximum Aggregate Compensation (Sec.1.04) on the date of loss (\$5,000,000) and less than the Maximum Insured Amount in the Country Annex (\$1,841,715), and payment of compensation in the above amount would not violate the Investor's duty to be self-insured (Sec. 1.04 (a),(b); Sec.7.02 (a) – (c); Sec.9.01.3).

According to the current Country Annex, the Historical Cost of the Covered Property is \$2,046,350. The maximum insured amount is \$1,841,715 or 90% of the Historical Cost, and so the requirement that the Investor entitled to bear the risk of loss of 10% of the Historical Cost of the Covered Property is satisfied (Sec.1.03).

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 the 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 receipt and release I find that the political violence claim of the Investor is valid and that OPIC is liable for up to \$84,991 in compensation. The actual amount 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: Dev Jagadesan
Its: Acting General Counsel
Date: February 17, 2009
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CLAIMS/MEMORANDUM OF
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