

MEMORANDUM OF DETERMINATIONS

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

Democratic Republic of the Congo (the “DROC”) – Project Country Annex to Master Contract of Insurance No. X-060 (OPIC Contract of Insurance No. F516)

I. CLAIM

By an e-mail dated October 30, 2008, the Investor gave notice to OPIC that the Investor had losses of Covered Property as a result of political violence in the DROC. The Investor subsequently made an application for compensation, providing an account of the lost Covered Property on December 22, 2008 and additional information on the circumstances of the losses on January 6, 2009.¹

The losses occurred during fighting involving the Congolese army and various illegal armed groups whose objectives include the overthrow or destabilization of the elected government or seizure from it of control over the eastern part of the DROC. The resulting humanitarian situation required the Investor’s to expose its Covered Property to additional risk as it attempted to assist refugees in an atmosphere of heightened political violence. OPIC finds that the claim is valid and that the Investor is entitled to compensation in the amount of up to \$ 68,202.

II. FACTUAL BACKGROUND

For more than ten years, the DROC has been torn by armed struggles with its neighbors and internal strife among indigenous armed groups linked with competing political factions and competing rebel organizations backed by its neighbors.² In the eastern Congo, Rwandan troops and Rwandan-backed rebel movements have fought the Congolese army and its allies for de facto control. Notwithstanding the signature of peace accords and communiqués intended to bring about the withdrawal of foreign troops and the disarmament of the various factions, the eastern Congo continues to suffer.

Most recently, General Nkunda, leading the National Congress for the Defense of the People (“CNDP”) announced his intentions to overthrow the Congolese government. The offensive launched by the CNDP has driven hundreds of thousands of civilians from their homes and increased pressure on aid organizations like the Investor. The Tutsi-led CNDP is opposed by the FDLR, an armed group composed of Hutu militia fighters who fled Rwanda after the 1996 genocide. Allegedly, the CNDP is supported by Rwandan troops and the FDLR by Congolese troops. The violence has been described as a continuation and overflow of Rwanda’s internal strife of 1996, and a struggle between the

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 and State Department background notes and statements, copies of which are attached hereto as Exhibit 2.

Congolese and Rwandan governments and the various armed groups for control of the mineral riches of the eastern Congo.

The Investor has claimed that Covered Property was taken or irreparably damaged at Rutshuru, a town north of Goma, in North Kivu Province, eastern Congo, and at the nearby town of Kiwanja. Independent sources describe the CNDP's capture of both towns, alleged civilian deaths in Kiwanja, hundreds of thousands of displaced persons in North Kivu, and attacks on the aid agencies that have been attempting to assist them, including confiscation of materials and looting of supplies.

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 DROC (OPIC Contract of Insurance No. F 516) dated February 7, 2005 (the "Country Annex") together constitute the contract of insurance ("the Contract").³

Article VI of the Master Contract provides compensation if Political Violence in the DROC 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."

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

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.

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

Whether the objective of General Nkunda's rebels is the overthrow of the government of the DROC, the ouster of central government forces from eastern Congo, or the defeat of Rwandan – backed Hutu militants to protect his fellow Tutsis, the CNDP'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 releases and background notes.

Kiwanja and Rutshuru are not among the locations listed in the original Country Annex and were not added in connection with any subsequent annual premium payment. However, they are among the locations in eastern Congo where political violence has been reported in the international press, other locations in eastern Congo are listed in the Country Annex, the Contract does not preclude the Investor from moving Covered Property to locations that are not listed, implementation of the Project clearly required the Investor to expand its operation in the eastern Congo, and the Country Annex shows the Investor as having one of its two main offices in the DROC in Bukavu, eastern Congo. 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 \$ 68,202

The Investor has provided a file listing the lost Covered Property at Historical Cost of \$34,101. 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).)

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 (\$3,333,047, 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 Country Annex, the Historical Cost of the Covered Property is \$3,703,385, and the Maximum Insured Amount is \$3,333,047 or 90% of the

Historical Cost. Therefore, the requirement that the Investor bear the risk of loss of 10% of the Historical Cost of the Covered Property is satisfied (Sec.1.03).⁴

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.

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 up to \$68,202 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: Mark A. Garfinkel

Its: Vice President and General Counsel

Date: January 14, 2009

⁴ A schedule of Covered Property in all the countries to which the Master Contract applies dated 2008 shows the Historical Cost of Covered Property in the DROC as \$3,562,908. The Maximum Insured Amount would then be \$3,206,617. The self insurance requirement is still satisfied.