

Towards a Just Recovery

Recommendations to guarantee
the right to housing in
reconstruction after disasters

June 2019

Ayuda Legal Puerto Rico



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PUERTO RICO

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I. Introduction

The economic crisis, austerity and the increase in inequality have displaced 14% of our population in the last decade. Following the passage of hurricanes Irma and Maria, about 198,000 people went to the United States forced by the lack of safe roof, food, water and essential services.¹ Those who stayed on the island had to leave destroyed homes to find refuge in shelters, family homes or abandoned properties for months. Two years later, 30,000 people still have blue tarps.² Communities and organizations did not sit around waiting for assistance that never came. While they claim what is rightfully theirs, communities have guaranteed their livelihood through self-management and collaboration. We celebrate their ability to resist the times when we recognize that they are entitled to much more.

Puerto Rico will receive about 18 million dollars through CDBG-DR funds. If used properly, CDBG-DR funds could present an opportunity for communities to secure decent housing, adequate infrastructure, and economic recovery. If misused, these funds will not reach the communities that need them most, benefitting private sectors and potentially justifying displacements. In a context of widespread economic crisis and the rise of inequality after disasters, it is urgent to channel these resources effectively and with a vision for the sustainable recovery of Puerto Rico.

This report establishes a route to the transformation of public policies. Our main concerns can be summed up in two main points: (1) the Government of Puerto Rico has failed to establish clear, transparent and participatory parameters to ensure that the funds will reach where they should; (2) the Action Plans could promote the forced displacement of thousands of impoverished families and communities. Recovery plans portray how the country will look in the next 5, 10, 20 years. If we do not act today, in a concerted form, strategies to build a country that does not include the most impoverished people will be validated.

“Our communities are entitled to the just recovery of Puerto Rico.”

¹ This is an estimate taken from a study of the Center for Puerto Rican Studies of Hunter College, CUNY of New York.

² “30 mil familias tendrán que esperar hasta agosto para poder sacar toldos azules de techos.” *Metro International*, 10 May 2019, <https://www.metro.pr/pr/noticias/2019/05/10/30-mil-familias-tendran-que-esperar-hasta-agosto-para-poder-sacar-toldos-azules-de-techos.html>.

Our communities are entitled to the just recovery of Puerto Rico. We define just recovery as the right that people, groups and communities have to recovery plans that are made with a focus of their needs, guaranteeing human rights and real, effective and continuous participation.

In solidarity,



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This report counted with the work of student Mónica Rodríguez, Squire Patton Boggs Foundation Fellow. We appreciate your collaboration and commitment.



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More information in
www.recuperacionjustapr.com

II. The risk of forced displacements

The public policies that impede equitable access to recovery funds will result in the displacement of people and communities. These displacements can take many forms. There is a risk of forced displacement when the State does not consider mitigation and chooses to prohibit housing. There are also evictions—in ways such as expropriation—when the land in which for decades has inhabited communities is designated for economic development activities that exclude people who have built their houses there. Other forms of eviction can be given gradually. For example, when essential services such as education, electric power, drinking water and health are restricted.

Denying people to repair or rebuild their homes exposes them to a greater insecurity in the face of future disasters, forcing them to decide whether to put themselves at risk or leave their homes. This report warns against forced displacement as a widespread threat to impoverished people and communities.

What is a forced displacement?

A forced displacement occurs when people, families or communities are involuntarily pushed to leave a space, either temporarily or permanently. In order to carry out the forced displacement according to the due process of law, it is essential that it be with just cause, that there is effective participation of the affected persons and that consider alternatives that protect the necessities of the people and their social and community ties.

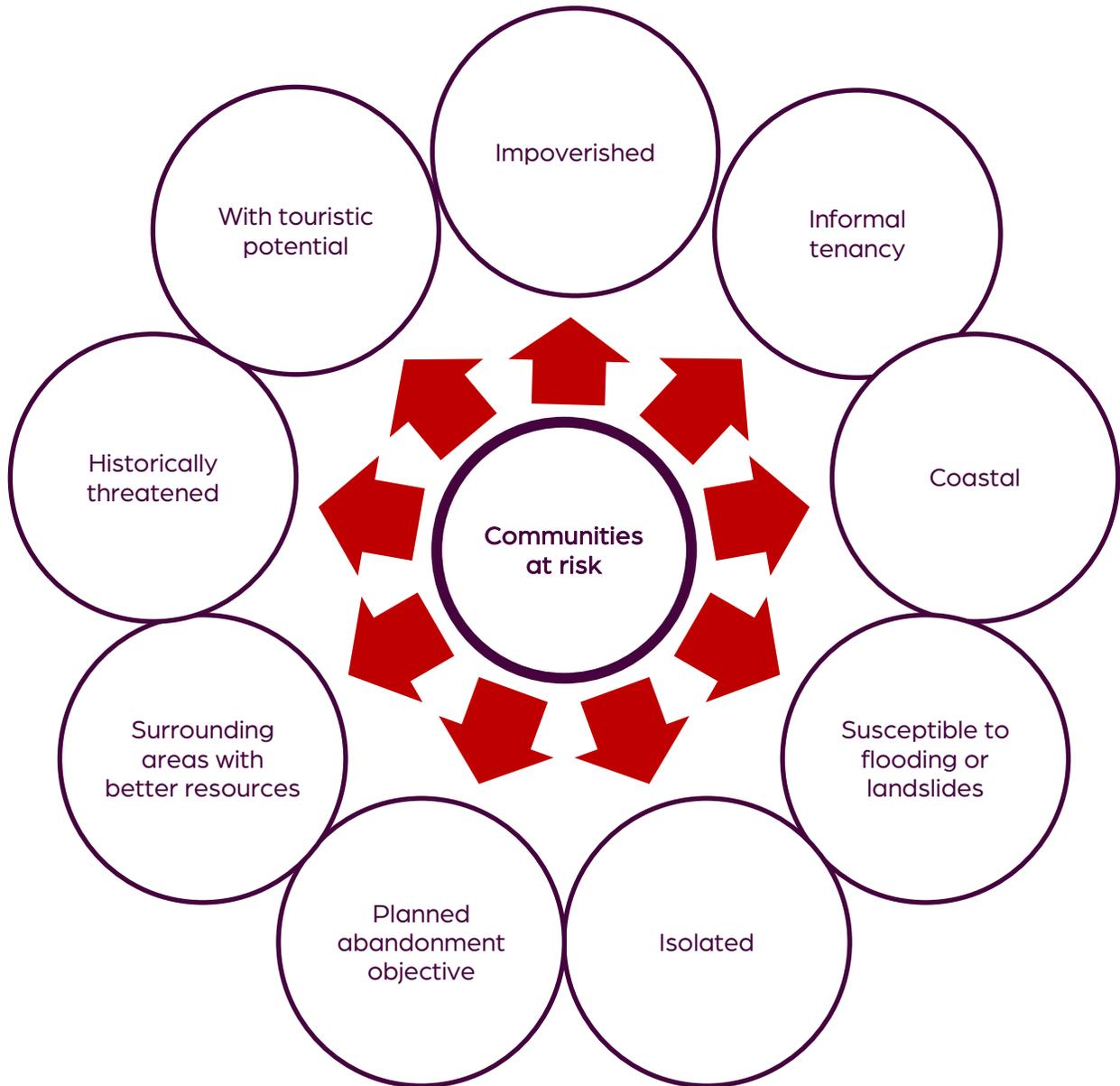
Do we promote that people live in unsafe spaces?

No. We recognize that climate change is real, as well as the precariousness of structures that are simply no longer safe. This will require relocation of people or families. Even in these cases, we believe the Government has an obligation to promote community participation in the plans to relocate, guarantee their rights, and protect the integrity of the community.

What is a community at risk?

They are communities that, because of their conditions of poverty, forms of tenancy or location, are vulnerable to actions that force them out of their space. Typically, communities at risk can be identified because they have characteristics like poverty, living in coastal zones or those susceptible to displacements, having touristic potential, isolation, among others.

Characteristics of a community at risk



III. Policies that promote forced displacements

The Action Plan for CDBG-DR funds

The Action Plan is the document in which the local government—through the Puerto Rico Department of Housing—establishes the way in which it will use the CDBG-DR funds. Under federal regulations, this Plan should have minimal components that include participation, programs that are intended for low to moderate income people, and that specific eligibility parameters, among others. The Plan does not meet these requirements. Nor does it have a clear policy to minimize displacement, which is required by applicable law. Instead, the Plan does include restrictions that once implemented would increase the risk of displacement. Some of these include the prohibition of repairing or rebuilding homes in designated flood zones or areas susceptible to landslides, the lack of uniform mechanisms for persons without formal title to be eligible for funds and barriers to grassroots organizations and communities that can manage the programs.

- 
- ⇒ About 475,000 homes were affected by the disaster.³
 - ⇒ FEMA denied close to 58% of applications and 75% of appeals.⁴
 - ⇒ 2/3 of people in Puerto Rico that received aid to repair their homes received less than \$3,000. The average assistance received was \$1,800.⁵
 - ⇒ Two years after the disasters, 30,000 houses remain with blue tarps.⁶
 - ⇒ 250,000 houses are located in flood zones.⁷
 - ⇒ 98% of the island is identified as an opportunity zone.⁸

³ "El Nuevo Día: María, Un Nombre Que No Vamos a Olvidar." *Huracán María: Nuestras Coberturas Especiales – El Nuevo Día*, <https://huracanmaria.elnuevodia.com/2017>.

⁴ Robles, Frances, and Jugal K. Patel. "On Hurricane Maria Anniversary, Puerto Rico Is Still in Ruins." *The New York Times*, 20 Sept. 2018, <https://www.nytimes.com/interactive/2018/09/20/us/puerto-rico-hurricane-maria-housing.html>.

⁵ *Ibid.*

⁶ "30 mil familias tendrán que esperar hasta agosto para poder sacar toldos azules de techos." *Metro Internacional*, 10 May 2019, <https://www.metro.pr/pr/noticias/2019/05/10/30-mil-familias-tendran-que-esperar-hasta-agosto-para-poder-sacar-toldos-azules-de-techos.html>.

⁷ "Planning Board, FEMA Estimate: 200,000 Puerto Rico Homes in Flood Zones." *Caribbean Business*, 24 Jan. 2018, <https://caribbeanbusiness.com/planning-board-fema-estimate-200000-puerto-rico-homes-in-flood-zones/>.

⁸ Arbasetti, Joel Cintrón. "Puerto Rico Gov't Lacks Plan to Integrate Communities into 'Opportunity Zones'." *Centro De Periodismo Investigativo*, 1 Mar. 2019, <https://caribbeanbusiness.com/puerto-rico-govt-lacks-plan-to-integrate-communities-into-opportunity-zones/>.

Austerity

There are many ways to displace communities. School and hospital closures, rising rents and deteriorating infrastructure encourage the abandonment of urban areas, rural spaces and other zones. No one can live in decently where the essential services to survive are denied or eliminated. Austerity promotes that external agents—particularly investors attracted by contributory exemptions and the visitor economy—appropriate from spaces that used to be of impoverished people. There is no doubt: gentrification displaces and replaces the local population.

Opportunity Zones

Opportunity zones are a contributory exemption scheme that promotes investment in disadvantaged areas. While in the United States opportunity zones can only be extended to 25% of a geographical area, in Puerto Rico an exception has allowed extending the zone to 98% of the country. The summits celebrated by the Government, as well as the type of foreign investor that is desired through the visitor economy, raises suspicions on who will benefit from this scheme. Without clear parameters or demands for accountability, this benefit can be another tool to establish gentrification projects and displace impoverished communities.

Adopted Maps

Following the passage of the hurricanes Irma and Maria, FEMA extended the zones designated as floodable by a new map. The Government of Puerto Rico adopted the decision without question. Over 250,000 homes are located in these areas and will not be able to access funds for repair and reconstruction.

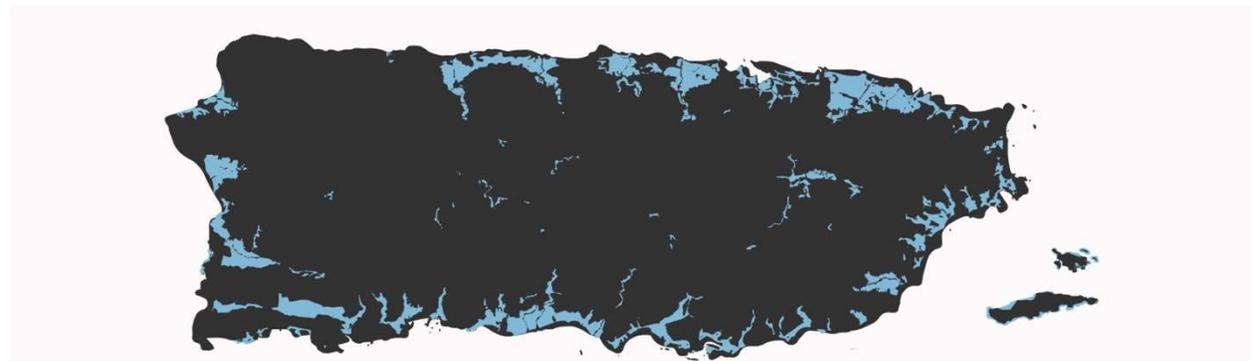


Figure 1 – FEMA Flood Maps

The local government also adopted the following map to identify landslide zones. In these, people will also not be able to access funds for repair or reconstruction.

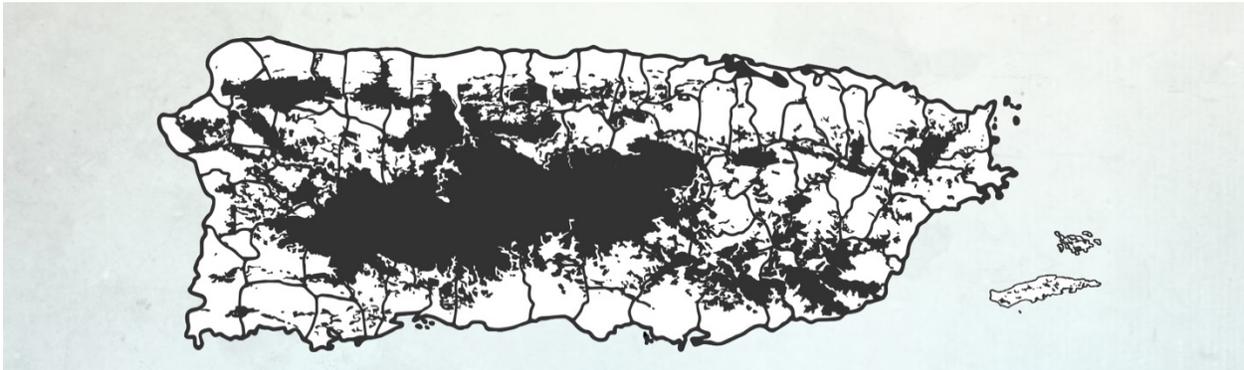


Figure 2 – Areas susceptible to landslides

Floods, landslides and climate change are real threats. However, banning housing here—without considering alternatives to mitigation or adaptation, would displace thousands of families.

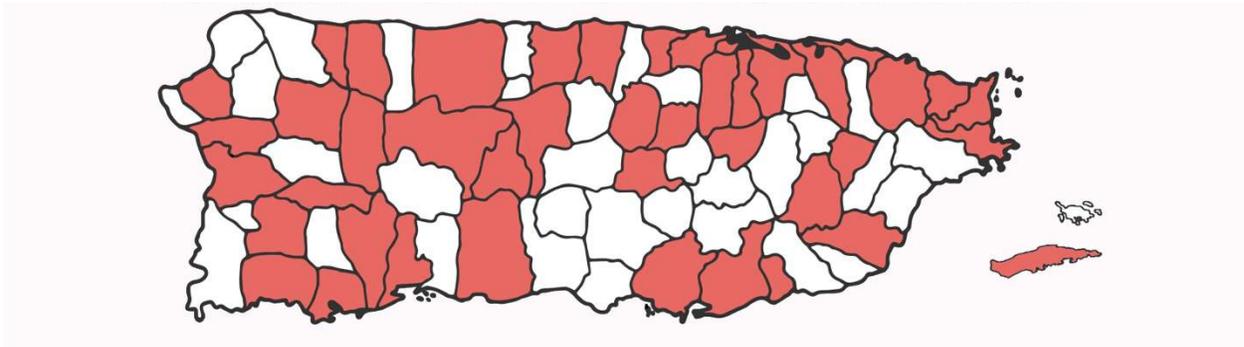
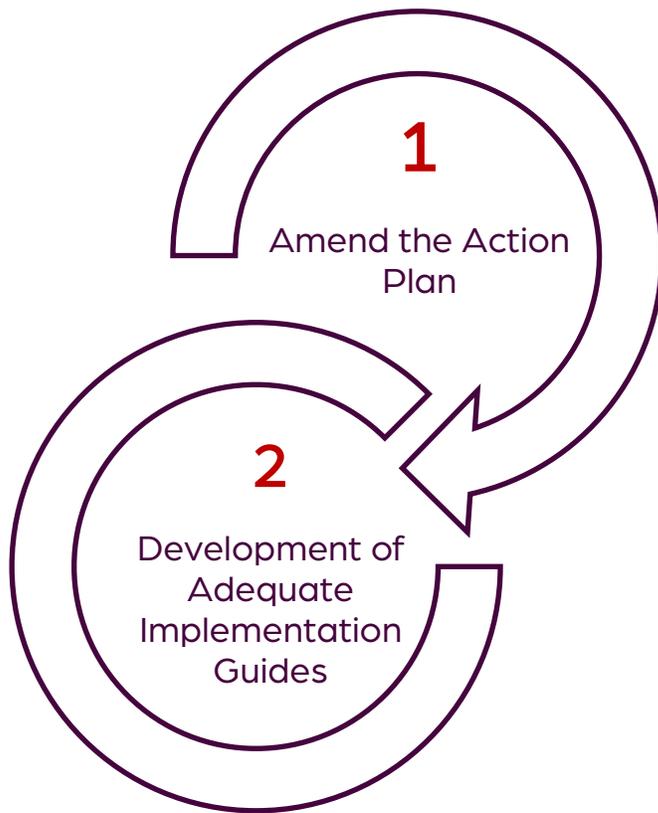


Figure 3 – Communities at risk of displacement

IV. Route for the transformation of public policies

We can act to influence the public policies on the recovery of Puerto Rico. This is the route that we suggest.



•**Objectives Phase 1**

- Eliminate the prohibition of reconstruction in zones that are at risk of floods and landslides
- Adopt statements under oath as alternative methods of showing ownership or title.
- Adopt a policy of minimizing displacements.

•**Decision-maker:** Puerto Rico Department of Housing

•**Objectives Phase 2**

- Include clear standards for mitigation and adaptation
- Adopt human rights criteria for relocations

•**Decision-maker:** Puerto Rico Department of Housing



Guarantees in the process
<ul style="list-style-type: none"> •Eliminate barriers to access funds •Promote real, effective, and continuous participation •Guarantee transparency and accountability

V. Affirmative steps towards a just recovery

A. Mitigation before evictions

The Home Repair, Reconstruction, or Relocation Program proposed in the Action Plan would allow thousands of families to fix or rebuild their homes. However, the eligibility criteria established by the Puerto Rico Department of Housing exclude thousands of families. Residents of areas known to be zones susceptible to floods and landslides—a large span of Puerto Rico—will not be able to repair or rebuild their homes. This policy disproportionately affects impoverished and black communities, which will be displaced and left with few alternatives to find decent housing in Puerto Rico. Mitigation and adaptation measures are not considered for these risks. Communities are thus denied the right to a just recovery.

250,000+ homes will be left without aid

FEMA and the Planning Board extended the areas designated as flood zones. The maps that point to the zones have been challenged by communities that reject the notion of being a flood zone. These maps cover a large span of Puerto Rico and include almost 250,000 homes. A flood zone designation has serious consequences. For example, the homes located there would have to acquire insurance under the National Flood Insurance program to obtain federal benefits, including disaster relief, which many people cannot afford. In the face of the Action Plan, people living in such areas would not be eligible under the Home Repair, Reconstruction, or Relocation Program. In addition to the number of eligibility requests for assistance to FEMA and the need for safe roofing, this prohibition would have disastrous impacts.

If the right to repair or reconstruct is denied, relocation is what will be offered. However, those who are not eligible for relocation—for not being formal title owners—or who decide to remain legitimately, will continue to live in unsafe, vulnerable, and unfit conditions. Moreover, they will not be able to withstand the onslaught of another disaster because the government has denied access to the money that exists to make their homes resilient. As a result, they will have two alternatives, to put their lives at risk by continuing to live in improper conditions or to abandon their homes.

As of the date of publication of this report, the Puerto Rico Department of Housing has not published how relocations will be carried out. The government's ability to relocate these families is unknown. Implementation guides for this program have also not been published.



We need to act now!

It is urgent to guarantee the right of the communities to remain. We demand that the Government adopt human rights standards to address issues related to precarious housing, relocations, and the impact of natural hazards and those caused by people. Whenever possible and safe for the lives of people living there, mitigation and adaptation should be the first alternatives. No one should be relocated absent these considerations. No person is to be relocated absent these considerations. Any person who may be displaced must participate in and receive adequate notification of the process as well as legal representation and other protections in the law. The public policy changes proposed here are affirmative steps in this direction.

- ⇒ The **Puerto Rico Department of Housing** must amend the Action Plan to eliminate the prohibition of repairing or rebuilding homes in areas designated as zones susceptible to floods or landslides. Risk adaptation and mitigation should always be considered before relocating or displacing communities.⁹ There must be a real and sustainable plan for relocations that are necessary.
- ⇒ The **Puerto Rico Department of Housing** should amend the Action Plan to clarify that formal title cannot be a requirement to receiving assistance for relocation when there it is understood that the risk is sufficient, and that mitigation is not appropriate. Mechanisms should be adopted to prove ownership in an alternative way, recognizing that there are multiple ways to have property rights under the law in Puerto Rico. There must be a real and sustainable plan for relocations that become necessary.
- ⇒ The **Government of Puerto Rico** must comply with federal CDBG-DR regulations and adopt clear policies to minimize displacement before initiating programs or allocating funds.
- ⇒ The **local legislature** must adopt public policies that consider human rights standards such as the right to receive notification, real and timely participation, and access to justice in relation to temporary or permanent relocations.

⁹ For example, you can adopt the standard of building 2 feet over the elevation of 1% of the flood level. This would allow poor communities in these areas to repair their homes without being forced to leave their land. 83 FR 5844.

B. Uniform processes for owners without formal titles

After the hurricanes Irma and Maria, the lack of adequate response from the local and federal government left thousands of families without assistance to repair or rebuild their homes. CDBG-DR funds may present an opportunity to ensure secure ceilings. However, the lack of clarity in eligibility criteria threatens owners who lack "formal qualifications". The refusal to accept a uniform test-title mechanism with alternate evidence would leave thousands unattended.

Communities ignored and forgotten by FEMA

FEMA required that eligible applicants in the island have "formal titles" to demonstrate ownership. To make recovery assistance under the Individuals and Households Program depend on this requirement was an unjust and disparate application of federal and Puerto Rican laws, which do not require any legal documents to prove ownership of a property. It is estimated that between 40,000 and 70,000 eligible applicants were denied assistance for this reason.

After a long process led by Ayuda Legal Puerto Rico and other organizations, FEMA recognized applicable legal regulations and accepted a statement under oath prepared by ALPR as alternate proof of ownership. This document does not require assistance from a notary or legal representation but is completed by each applicant. The adoption of this document paved the way for thousands of people who, almost two years after the hurricanes, have not yet received the necessary assistance to repair their homes. Advocates and entities continue to insist that FEMA notify people of their right to use this document.

History could be repeated

The Action Plan establishes title of property as a criterion for access to housing-repair assistance. Although the Action Plan mentions the "possibility" of accepting an alternate ownership test, this is not enough. We need clarity and that a uniform form is be accepted.

CDBG-DR funds allow the government a great deal of flexibility in determining how to invest the money granted. Federal regulations do not establish any requirement as to their ability to decide who is an eligible owner who can benefit from the assistance. Nothing prevents the authorization of alternate proofs of ownership. The Puerto Rico Department of Housing does not need HUD's authorization for this.

On October 30th, 2018, Ayuda Legal Puerto Rico sent the Puerto Rico Department of Housing a legal analysis and recommendations related to alternative proofs of ownership. The letter was sent along with a declaration model, adjusted to CDBG-DR. The document follows the example of the one accepted by FEMA and used in jurisdictions like Texas. We received the following answer: "We acknowledge receipt. We trust that together we will rebuild Puerto Rico."

DECLARATIVE STATEMENT/ DECLARACIÓN BAJO JURAMENTO

I, _____, of legal age, with the following contact information _____, mayor de edad, con la siguiente información de contacto (nombre/apellido/país) que lo presente declara bajo juramento al siguiente:

1. As a direct result of a Presidential disaster declaration on _____, my primary residence suffered damage that has not been repaired and/or reconstructed. // Que como un resultado directo de un desastre natural, según una declaración presidencial de desastre hecha en _____, mi residencia primaria sufrió daños que no han sido reparados y/o reconstruidos.

2. I am considered an owner in accordance with the following (select one). There exists evidence to the aforementioned disaster declaration. // Soy propietario de la residencia de conformidad con las siguientes (seleccionar una). Existe evidencia sobre esta declaración de desastre ante mencionada.

Although I lack a formal title in the records and pay no rent, I am responsible for the taxes or maintenance of the aforementioned property, consistent with the definition of "owner-occupied" in applicable federal regulations. I understand I must submit documentation indicating either tax or maintenance responsibilities (such as receipts) along with this declaration. // Aunque carezco de un título formal de la propiedad ante descrita, a través con la definición de dueño ocupante de la residencia federal aplicable. Comprendo que debo a esta declaración dicha documentación que respalde el pago de impuestos o gastos de mantenimiento (tales como recibos).

Herewith under the Civil Code of Puerto Rico, as the nearest relative of the decedent in the line of succession, my ownership includes all the rights and obligations of the decedent, with such rights transmitted from the time of death. The decedent's name is _____ and he or she died on _____. I understand I must submit the death certificate along with this declaration. I was an undivided fractional interest in the residence based above, as the only heir or as a member of the community of heirs. As an heir, I am succeeding under a universal title. I have the power to perform acts of administration and conservation of the property. // Derivado hereditario de persona del Código Civil. Como heredero o albano con un interés en la línea de sucesión, con todos los derechos y obligaciones del difunto con dichos derechos transmitidos al momento de su muerte. El nombre del difunto es _____ y falleció el _____ de _____ de _____. Entiendo que debo a esta declaración de sucesión el certificado de defunción del difunto. Tengo un interés indiviso sobre la residencia mencionada arriba, como único heredero o como miembro de la comunidad de herederos. Soy heredero o título universal. Tengo la facultad para realizar actos de administración y conservación de la propiedad.

I possess under the Civil Code of Puerto Rico, am the legal owner of the property acquired by prescription, if possession began by me accident, my possession complements those. // Poseo de acuerdo al Código Civil de Puerto Rico, soy el dueño de la propiedad adquirida por prescripción, si la posesión se comenzó por accidente, mi posesión complementa las de otro.

I have been in possession of the property as owner in a public, peaceful and uninterrupted manner for (select one). // He estado en posesión de la propiedad en calidad de dueño de manera pública, pacífica e ininterrumpida por (seleccionar una).

_____, no owner (while the residence existed in San Juan, Puerto Rico) // no owner (if the residence exists from Puerto Rico), or _____ years (if the residence exists outside Puerto Rico) // not owner (if the residence exists from Puerto Rico). My possession of the property was in good faith and under a proper title, meaning I believe that the person from whom I received proper title (that which legally entitles to transfer ownership) was the owner of the same and could legally convey title. I believe evidence of good faith possession along with this sworn statement, per paragraph three above. // Mi posesión sobre la propiedad fue de buena fe y bajo título justo, entendiendo que el mío mayor respecto de persona que me transfirió el título creí que se encontraba legítimamente legitimado para transmitirlo (transferir), con dicho título mismo y pacífica legítimamente transferido. Presento evidencia de mi posesión de buena fe con esta declaración según el párrafo tres.

_____, no owner (while the residence existed in San Juan, Puerto Rico) // no owner (if the residence exists from Puerto Rico). My possession of the property was in good faith and under a proper title, meaning I believe that the person from whom I received proper title (that which legally entitles to transfer ownership) was the owner of the same and could legally convey title. I believe evidence of good faith possession along with this sworn statement, per paragraph three above. // Mi posesión sobre la propiedad fue de buena fe y bajo título justo, entendiendo que el mío mayor respecto de persona que me transfirió el título creí que se encontraba legítimamente legitimado para transmitirlo (transferir), con dicho título mismo y pacífica legítimamente transferido. Presento evidencia de mi posesión de buena fe con esta declaración según el párrafo tres.

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3. If my ownership rights depend on good faith possession of less than 30 years, I submit the following evidence of paragraph 1(b). // Si mis derechos de propiedad dependen de buena fe de menos de 30 años, presento la siguiente evidencia de fondo (b).

4. I understand that the present declarative does not constitute, nor should it be construed, as granting title or occupancy rights beyond those already acknowledged or granted by the applicable laws and regulations. // Comprendo que la presente declaración no constituye, tampoco puede ser considerada como garantía de título o derecho posesionario alguno, más allá de los derechos que son reconocidos o reconocidos por las leyes y regulaciones aplicables. 4. I declare under penalty of perjury that the information above is true and correct to the best of my knowledge (18 U.S.C. sec. 1001 and 48 U.S.C. sec 1746). // Declaro bajo juramento que a mi mayor conocimiento, todo lo anteriormente expuesto es verdadero (18 U.S.C. sec. 1001 and 48 U.S.C. sec 1746).

Printed name/ Nombre en letra molde: _____ Signature/Firma: _____ Date/Fecha: _____

c

Proof of ownership in the United States and Puerto Rico

FEMA uses federal regulations to define an owner-occupied residence as "one that is occupied by: (1) the legal owner; (2) A person who does not hold formal title to the residence and pays no rent, but is responsible for the payment of taxes or maintenance of the residence; or (3) A person who has lifetime occupancy rights with formal title vested in another."¹⁰ This definition can be supported by evidence such as receipts, maintenance contracts and affidavits.

In Puerto Rico, the legal framework does not require people to have documentation or evidence that they own a property. People may have interests as owners of inheritance laws or other rights acquired by amount of time they have been in the home as owners. The law does not require a title of ownership to become owner, there are other social, historical and economic factors that can replace a "formal title".

¹⁰ 44 C.F.R §206.111

We need to act now!

It is urgent to accept uniform mechanisms to ensure that CDBG-DR funds will reach the people who need them. Learning from the errors that have been obstacles to recovery is a key part of a real recovery.

- ⇒ The **Puerto Rico Department of Housing** must adopt a clear policy that accepts alternative evidence of prove ownership. The policy would go hand-in-hand with FEMA's recent adopt of the statement under oath.

- ⇒ The federal **Department of Housing and Urban Development (HUD)** must establish uniform guides and documents not to discriminate against owners without formal ownership.

- ⇒ The **local legislature** must adopt a comprehensive public policy that protects the rights of the owners without deeds of ownership, in accordance with the provisions of the Puerto Rico Civil Code.

C. Eliminate barriers that prevent equal access to funds

Organizations that have real and participatory ties with community bases know firsthand the needs and proposals of the people. Ensuring that programs can be accessed and managed in the Action Plan is essential to promote a just recovery. The eligibility criteria for managing CDBG-DR funds are so onerous that they prevent organizations and communities from being considered as program managers. Requirements such as millionaire credit lines, reimbursement operations, and the fact that the documents are only available in English exclude these groups.

Identified barriers

Together with grassroots organizations and communities, numerous barriers that impede equal access to the administration of programs have been identified. Here are some of the main concerns:

Information on recovery funds and programs

- Lack of clear and centralized information over the CDBG-DR funds and programs
- Lack of data to report recovery efforts
- Requests for proposals and qualifications have too many requirements that continually change during the process
- Requests for proposals are only available in English

Principles of fair access

- Action Plan does not address the needs of organizations or communities
- Some programs seem to be targeted at the private sector while others exclude non-profit organizations

Capacity of organizations

- HUD establishes a refund operation policy
- Non-profit organizations are required to have the 501(c)(3) tax designation. Only 13% of the NPOs in Puerto Rico have this contributory exemption

We need to act now!

All of these barriers can be addressed through concerted efforts by the organizations, the PRDOH and HUD. The organizations have presented alternatives that include the request to the federal agency to eliminate the reimbursement requirement, the identification of entities that can serve as tax agents and the request that the documents be translated into Spanish.

D. Ensure real and effective participation

The right to real and effective participation has not been adequately guaranteed. The involvement of communities is essential for the Action Plan to address the needs discovered after disasters. If we want a just recovery, it must be the people, groups and communities most affected—which have the capacity to draw attention to their needs—who should present proposals and influence the whole process related to the reconstruction.

The current mechanisms are not enough

In addition to being a human right, federal regulations on CDBG-DR funds require community participation.¹¹ The Puerto Rico Department of Housing has not offered spaces for participation. In relation to the original Action Plan of \$1.5 billion in CDBG-DR funds, only six public hearings were organized. The participation was limited by the lack of adequate publicity on these hearings, the little information available in relations the funds, the fact that they were held in working hours and in limited geographical areas. The public comment period written for the Action Plan was limited to 14 days, insufficient time to react to a complex and extremely extensive document, riddled with grammatical errors.

Ayuda Legal Puerto Rico and the signing organizations of the CDBG-DR Community Participation Campaign (Jornada de Participación Comunitaria CDBG-DR) denounced that the first public views were only open to municipalities or private entities, with very little participation of communities. Through advocacy efforts, the Puerto Rico Department of Housing changed the location, amount and time of subsequent hearing for the Substantial Amendment to the Action Plan. Moreover, an extension to the public comment period to 30 days was achieved.

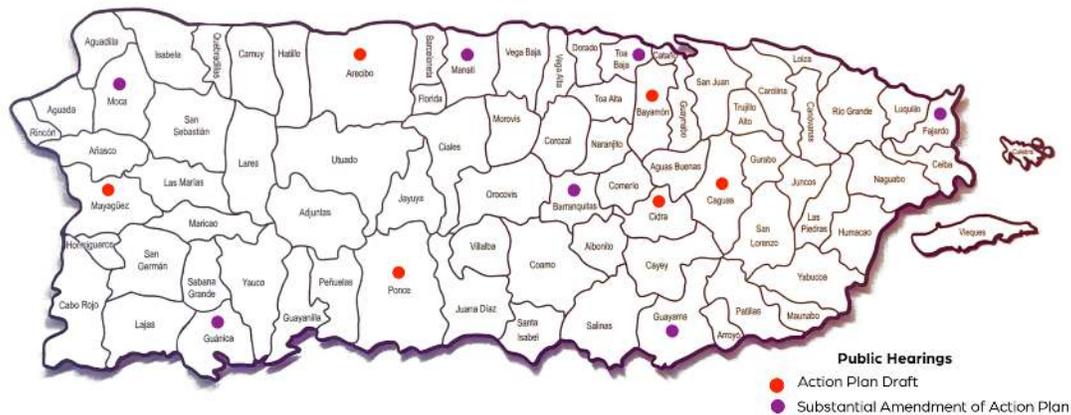
The vast majority of the comments to the Action Plan denounced the participation procedures adopted by the Puerto Rico Department of Housing. The response offered by the Department to these claims was generic: “Thank you for your comment. The Department of Housing will take this matter into account [...]”

¹¹ 83 FR 5844.

Partial participation is not participation

For the original Action Plan, six public hearings were held in Bayamón, Cidra, Caguas, Mayagüez, Ponce y Arecibo. They were scheduled from 9:00 a.m. to 5:00 p.m.

For the Substantial Amendment, eight public hearings were held in Toa Baja, Guayama, Barranquitas, Manatí, Moca, Guánica y Fajardo and took place on weekdays from 9:00 a.m. to 1:00 p.m. and from 2:00 p.m. to 8:00 p.m.



Puerto Rico has seventy-eight municipalities. Holding public hearings in only eight places is insufficient to obtain meaningful and representative participation. There were obstacles such as the lack of public transportation, the scheduling of the hearings in work hours and the fact that the call for these was made mostly by social media and the Internet—when thousands still lacked essential services. These barriers disproportionately affect historically marginalized groups such as people with limited mobility, single mothers and elderly people.

Federal regulations require more

The Puerto Rico Department of Housing must present a Citizen Participation Plan along with the Action Plan.¹² The Citizen Participation Plan is a “a pathway for all citizens to exercise their voice and influence decisions that affect their communities, neighborhoods, and way of life.”¹³ According to this requirement, the Puerto Rico Department of Housing should actively encourage general participation but in specific that of groups such as low to moderate income individuals, residents of slums,

¹² 24 CFR 91.115

¹³ Citizen Participation Consultation Guide. <https://www.hudexchange.info/onecpd/assets/File/eCon-Planning-Suite-Citizen-Participation-Toolkit.pdf>

deteriorated areas and predominantly low and moderate income areas, non-English speaking people, people with functional diversity, residents of public housing and other low-income residents of specific revitalization areas.

In its Citizen Participation Plan, the Puerto Rico Department of Housing does not specifically describe how it will involve the same population that will be most affected by the implementation of these funds. The participation of the vulnerable communities and their local governments were also necessary for the adoption of the Citizen Participation Plan. The Department only offered the opportunity to comment on the Citizen Participation Plan through its web page, following a link at the bottom of the portal. This does not meet the "reasonable opportunity to comment" requirement.¹⁴

We need to act now!

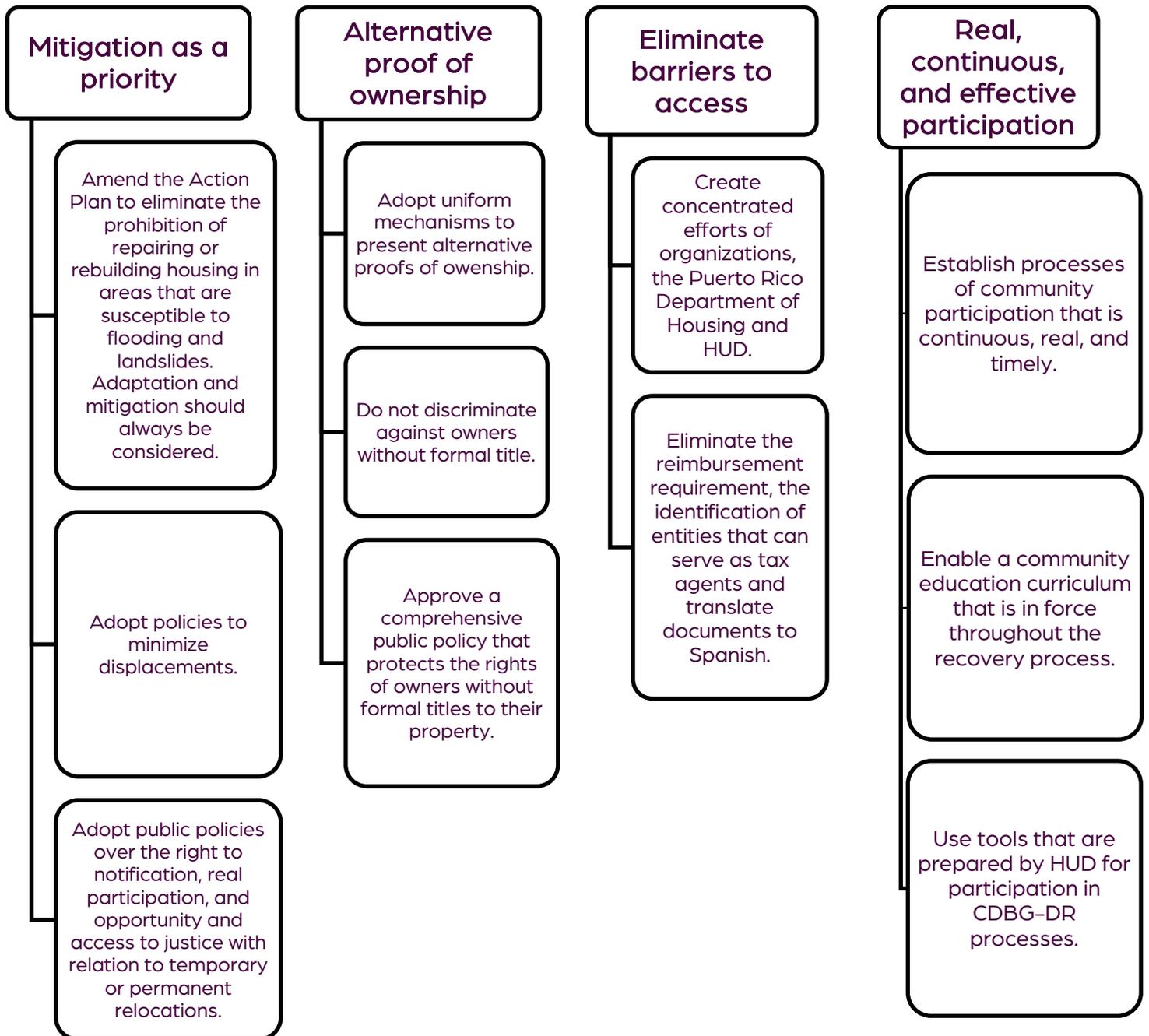
Real participation guarantees a just recovery, success, and equality

- ⇒ The **Puerto Rico Department of Housing** must establish ongoing, real and timely community participation processes. This includes the holding of adequate public hearings at different stages of the recovery processes and the recognition of a community advisory board that can provide input and amplify the voices of communities on the path to recovery.
- ⇒ The **Puerto Rico Department of Housing** must enable a community education curriculum that is in effect throughout the recovery process. This includes training on CDBG-DR funds, programs, eligibility criteria, and basic tools to promote transparency and accountability. It must be made available digitally but also in physical formats to address the digital divide.
- ⇒ The federal **Department of Housing and Urban Development (HUD)** claims that conducting community outreach activities is critical to the success of the Action Plan. The agency offers tools to increase citizen participation. These tools should serve as a guide for CDBG-DR processes in Puerto Rico.

¹⁴ 24 CFR 91.115 (a) (3).

VI. Recommendations

A. Graphic summary of recommendations



B. Towards adequate implementation guides

Implementation guides are an essential document. They mean defining and guiding the processes on how the programs in the Action Plan will operate. They must detail the objectives, selection and eligibility criteria, the document required to apply, the deadlines for commitment and expenditure, the disbursement of funds, the corrective actions and the criteria of accountability and transparency. The guides set the parameters to know if a program is being handled properly. It is essential to have specific guides since not all the programs are the same.

Almost a year after the approval of the first allocation, in Puerto Rico we still do not have proper implementation guides. On February 9, 2019, the Puerto Rico Department of Housing published an "intersectoral" guide. These are general rules that apply to all the programs of the Action Plan equally. They are extremely vague and do not address the criteria and specificities of each project.

It is the Government's responsibility to ensure that each program has its guidelines set. Ayuda Legal Puerto Rico and the CDBG-DR Community Participation Campaign (Jornada de Participación Comunitaria CDBG-DR) prepared some minimum principles that must be integrated.

Right to decent housing

- The right to decent housing is a human right. It is the obligation of the State to guarantee one's access and enjoyment in the equality of conditions. This includes having a safe, accessible roof with adequate access to essential services in a community.

Right to remain

- People affected by disasters have the right to remain or return to their communities as long as they are safe and habitable. Mitigation and adaptation should always be considered. If relocation is necessary, the Government must protect the integrity of the community, respective geographical proximity, social ties, and special needs that may exist.

Right to not suffer discrimination

- Reconstruction and recovery must take into account the diversity and needs of historically marginalized people, groups and communities. This includes impoverished communities, blacks, LGBTTIQ, survivors of gender-based violence, homeless, those with functional diversity and the elderly, among others. Poor people have the same right to a decent life. Class, race, or other privileges may not condition social justice.

Right to decide

- The right of people and communities to decide where they want to live must be respected. The Government and developers have to respect people's rights. The real and informed participation of the communities should be sought before proposals for relocation and evictions. Communities have the right to decide on their future.

Right to a healthy environment

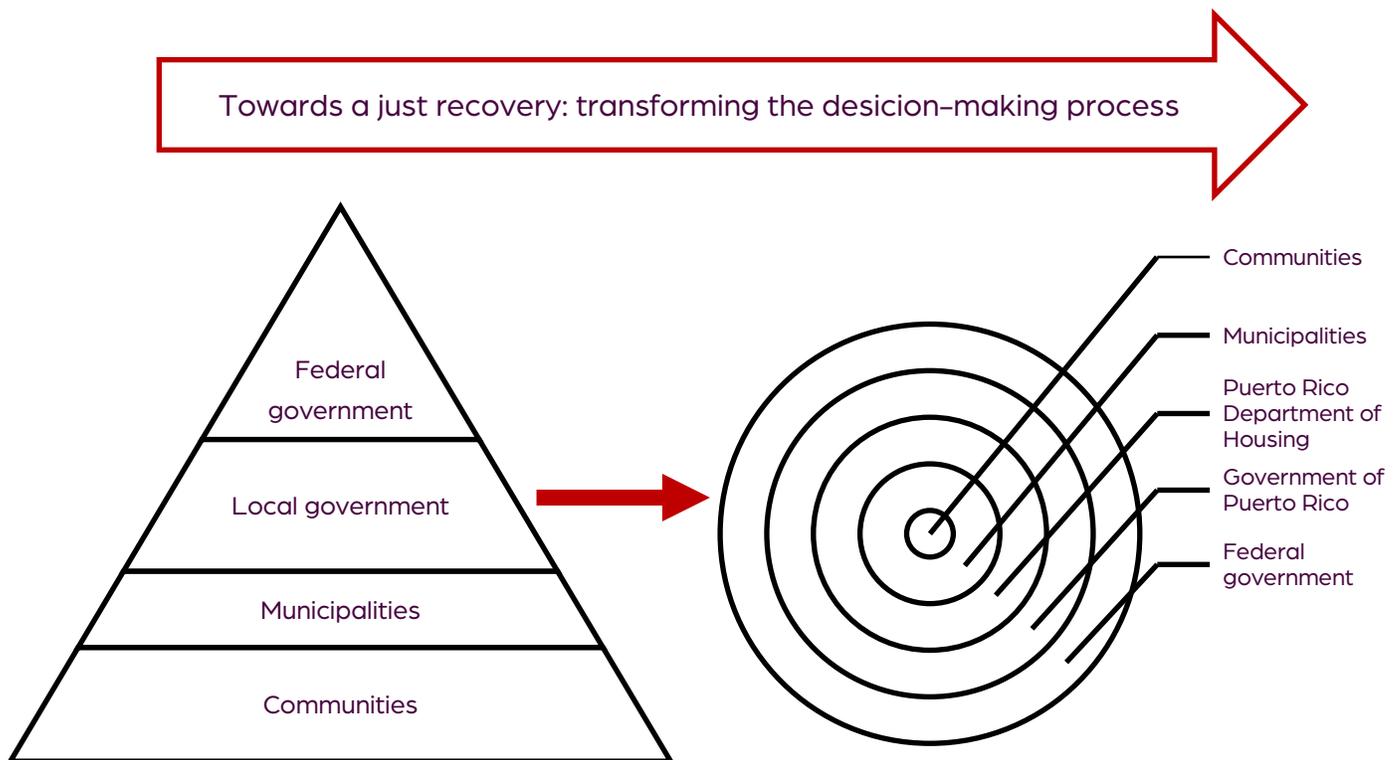
- Reconstruction and recovery should minimize environmental impact and become aware of climate change. This progress must improve the quality of life of the most vulnerable communities, promoting their economic, social, cultural and political recovery. For this, healthy and clean natural spaces are required.

Right to real and effective participation

- Communities have the right to participate in this long-term recovery in a direct, real and effective way. The Government has an obligation to consult people so that they can influence the country's recovery processes. Participation must be continuous, real and accessible to different groups, identities and communities.

VII. Towards a just recovery

Building a strong resilient Puerto Rico requires commitment to equitable development. The country we want is one where people enjoy their human rights, including decent housing. The proposals we present serve as a starting point for a dialogue that will take years, and which requires the intention of grouping and amplifying the voices of the most vulnerable communities. We invite people and institutions that take on recovery public policies to transform decision-making. Communities must be at the heart of the process. A just recovery is attainable.



VIII. Supporting Materials

A. Glossary

⇒ Action Plan

The Action Plan is a document created by the PRDOH. It establishes the strategy on how CDBG-DR funds will be utilized. It includes eligibility criteria and how the use of these funds serves the recovery and restoration, in the long run, of infrastructure, housing and economic revitalization in the areas most impacted by the disaster. The draft of this document should be open to community participation. Once these comments are considered, it is submitted to the federal Department of Housing and Urban Development (HUD) for review and approval. After its approval, the Action Plan can be modified when a substantial amendment is made.

⇒ Allocation Notice

A document created and adopted by the United States Congress that includes the rules of the game on federal fund allocations after a disaster. It includes information on the purpose of the assignment, how funds should be distributed, eligibility criteria, and need for participation, among others. This notice should be accessible to the people, which—in the case of Puerto Rico—includes its publication in Spanish.

⇒ CDBG-DR funds

The federal CDBG-DR (Community Development Block Grant for Disaster Relief) funds are allocated to those states or jurisdictions affected by disasters. They require the authorization of the Congress and an Allocation Notice. This money must be used for needs that were discovered or not served by other assistance programs. The use of these funds must ensure the long-term recovery of communities, specifically in areas of housing, infrastructure restoration, and economic revitalization.

⇒ Central Office of Recovery, Reconstruction and Resilience (COR3)

This local agency has the obligation of overseeing compliance with the use of all funds allocated for disaster recovery, such as FEMA and CDBG-DR. The PRDOH, as well as the central and municipal governments, must work in coordination with the Central Office of Recovery, Reconstruction and Resilience (COR3) to create coherent and effective Action Plans for long-term recovery of the country. This office is attached to the Puerto Rico Public-Private Partnerships Authority.

⇒ Constructions/Homes/Settlements

This concept has been used in a confusing way and can give way to an unequal or discriminatory treatment of impoverished or historically vulnerable communities. In the context of CDBG-DR funds, it has been used to describe structures at risk, built without

professional advice, permits and no title of property. In some cases, it is used to designate homes located on public grounds.

⇒ **Decent housing**

The right to decent housing is a human right. It is the obligation of the State to guarantee its access and to enjoy equal conditions. It includes having a safe, accessible roof with adequate access to essential services and within a community.

⇒ **Discovered or Unmet Needs**

CDBG-DR funds can only be used to meet the need that were not addressed by other assistance programs such as FEMA or SBA. For example, if a structure has already been repaired with funds from FEMA, SBA, private insurance or other assistance, the CDBG-DR funds cannot be used. The discovered or unmet needs are those that after the disaster have not been addressed by other resources.

⇒ **Displacement/Relocation**

It refers to actions taken so that a person, group or community, in flood zones, involuntarily or voluntarily leave the place where they live. It is assumed that activities financed by CDBG-DR should eliminate or minimize displacement. The PRDOH has said that it will help displaced persons or entities as a result of the implementation of a CDBG-DR funded project. The PRDOH will use the Uniform Relocation Assistance and Real Property Acquisition Act (URA) for relocating people in flood zones.

⇒ **Informal Housing**

This concept has been used in a confusing way and can give way to unequal or discriminatory treatment of impoverished or historically vulnerable communities. In the context of CDBG-DR in Puerto Rico, it has been used to describe structures constructed without professional design, permits and even without titles to property. In some cases, it is used to designate homes located on public grounds.

⇒ **Just recovery**

It is the claim that recovery plans address the unmet needs of impoverished sectors, ensure the real participation and respect of human rights, mainly that of decent housing.

⇒ **Low to Moderate Income (LMI)**

Federal regulations require that no less than 70% of allocated CDBG-DR funds be used for the benefit of people with low to moderate income. This is income that is equal to or less than 80% of the average income in the area.

⇒ **Puerto Rico Department of Housing (PRDOH)**

It has the responsibility to manage, implement, and comply with the laws, regulations, and processes related to programs financed by CDBG-DR funds. It is accountable to the Federal Department of Housing and Urban Development (HUD). It is also the one who develop the Action Plan.

⇒ Real Participation

The right to real participation includes people influencing decision-making affective their lives, communities and the country. For there to be real participation, a policy of transparency is necessary, one where information is shared in a free and accessible way and where spaces in which dialogues can be made available on the issues that concern us are provided.

⇒ Substantial Amendment

Large or significant changes made by the PRDOH to the Action Plan after the draft was published. This includes changes in eligibility criteria or benefits of a program, adding or eliminating any activity, or allocating or reallocating more than 10% of the CDBG-DR funds.

⇒ Tenancy

The right to enjoy a space—a home or land—with the assurance that one will not suffer removal or forced displacement.

⇒ Using the best data available

HUD is required to use the “best available data” to identify and calculate unmet needs after disasters. Data from FEMA, SBA, and other sources are used to calculate the unmet housing needs. This data is not always reliable and does not reflect the real need of communities. This makes community participation more urgent, as the public has the opportunity to analyze this data and provide information that clarifies or corrects the information used.

⇒ Vulnerable populations

This refers to people who are at risk of being homeless after a disaster, due to economic, social or health circumstances. Some groups are elderly, disabled, those with substance abuse problems, people with HIV/AIDS, undocumented workers, and others in precarious economic circumstances. The definition of HUD of this term is broad and is used in relation to the theme discussed in the Action Plan.

B. CDBG-DR Timeline

2018	
February 9th	First allocation notice is published in which Puerto Rico is assigned \$1.5 billion in CDBG-DR funds.
March 5th to March 10th	The Puerto Rico Department of Housing (PRDOH) carried out public hearings to comment on the draft of the Action Plan. There was no adequate notification for these public hearings. The lack of notification resulted in little participation.
May 4th	The PRDOH and HUD were asked to extend the terms to submit comments to the draft of the Action Plan and to properly notify and celebrate public hearings.
May 8th	The PRDOH denies the request.
May 10th	Action Plan is published.
May 10th to May 24th	Public comment period for the published Action Plan.
June 14th	The PRDOH submits the Action Plan to HUD.
July 29th	HUD approves the presented Action Plan.
August 3rd	Ben Carson, Secretary of HUD, announces the allocation of an additional \$8.2 billion in CDBG-DR funds for Puerto Rico.
August 14th	Second allocation notice in which the \$8.2 billion additional CDBG-DR funds for Puerto Rico is published.
September 20th	Agreement signed for the disbursement of the first \$1.5 million.
September 21st	Substantial Amendment to the Action Plan is published for the second allocation of \$8.2 billion. Comment period for this Substantial Amendment begins
September 27th	ALPR and the Jornada de Participación Comunitaria demand real participation and transparency in the plans for using CDBG-DR funds.

October 7th	PRDOH claims that it will establish an Advisory Board to educate over the benefits of CDBG-DR.
October 21st	Comment period for the Substantial Amendment ends.
November 16th	PRDOH publishes and submits to HUD the Substantial Amendment to the Action Plan.
December 16th	PRDOH Secretary admits that the implementation of the Plan of Action could be delayed until February or March 2019
December 20th	PRDOH Secretary ensures that one of the Department's objectives is to deliver 48,000 property titles before the fourth year.
2019	
January 13th	PRDOH and the Foundation for Puerto Rico reach agreement to administer the Community Resilience Planning Program.
January 15th	ALPR calls on the PRDOH to adopt protocols that allow people without formal property title to benefit from the CDBG-DR programs.
February 2nd	HUD disburses the first \$1.5 million of CDBG-DR funds.
February 19th	HUD approves exceptions requested by PRDOH to use CDBG-DR for tourism and marketing.
February 27th	Foundation for Puerto Rico obtained the largest CDBG-DR money contract without even submitting a proposal.
February 28th	HUD approves the substantial amendments to the Plan of Action.
March 25th	GAO establishes that the CDBG-DR program needs a permanent structure.
April 6th	The federal government says that Puerto Rico, out of the money disbursed under CDBG-DR, has only used \$ 42,000.
May 10th	It is announced that 30,000 families will have to wait until August to be able to remove blue tarps from roofs.

May 14th	Rosselló announces in Puerto Rico: A Paradise of Opportunities that \$400 million in CDBG-DR funds will be used for Opportunity Zones
May 25th	Director of ENLACE Caño Martín Peña says the federal government allows CDBG-DR funds to be used to rebuild homes in floodable areas as long as they rise two feet from the flood level. However, the PRDOH will amend the Action Plan to adopt this measure.
May 28th	Rosselló signs law to avoid foreclosures on the island and announces that it will prevent foreclosures with CDBG-DR funds. This activity was not approved by HUD.
May 29th	Senate approved measure to use CDBG-DR funds for Caño Martín Peña. Consultants and liaisons take the first recovery contracts with CDBG-DR funds.
June 3rd	Congress approves project that assigns about \$1.4 million in aid for the island.
June 6th	Government celebrates grants of \$2.9 billion for risk mitigation. President Trump signs disaster fund project.
June 11th	Puerto Rico will have to wait until October to access \$331 million additional funds from the Community Disaster Recovery Block Grant Program (CDBG-DR) approved in the new disaster relief package signed on Thursday by President Donald Trump.

C. Comparative Table: Participation in the recovery processes of other jurisdictions

Jurisdiction	Citizen Participation Plan (CPP)	Calls to Action for the PRDOH
<p>Louisiana</p> <ul style="list-style-type: none"> • Great Floods of 2016 	<p><i>Great Floods CPP</i>¹⁵:</p> <ul style="list-style-type: none"> • Required subrecipients to have their own citizen participation plans with certain components • Public notices were published in out-of-state newspapers where evacuees were living. • Louisiana Disaster Housing Task Force • Restore Louisiana Task Force • Louisiana Symposium on Recovery and Resilience 	<ul style="list-style-type: none"> • Many Puerto Ricans have been forced to leave the island after the hurricanes and, as a result, cannot know about the ways they can participate and how they can contribute to the planning and use of CDBG-DR funds. <ul style="list-style-type: none"> • The PRDOH must implement outreach efforts to those communities that are out-of-state. The PRDOH can also hold symposiums with community leaders and create task forces to both educate and gather feedback from communities.
<p>New Jersey</p> <ul style="list-style-type: none"> • Superstorm Sandy (2013) 	<p><i>Sandy CPP</i>¹⁶:</p> <ul style="list-style-type: none"> • Required subrecipients to have their own citizen participation plans with certain components 	<ul style="list-style-type: none"> • The PRDOH must include a clause in its Action Plan that requires subrecipients managing different programs to create their own citizen participation plans with specific components as to how communities will be engaged.

¹⁵ State of Louisiana Proposed Master Action Plan For the Utilization of Community Development Block Grant Funds in Response to the Great Floods of 2016. https://www.doa.la.gov/OCDDRU/Action%20Plan%20Amendments/Great_Floods_2016/Floods%20Master%20Action%20Plan_clean_06Jan17.pdf.

¹⁶ New Jersey Community Development Block Grant Disaster Recovery Action Plan. <https://www.renewjerseystronger.org/wp-content/uploads/2019/04/Final-Consolidated-Action-Plan.pdf>.

<p>Texas</p> <ul style="list-style-type: none"> • Hurricane Harvey (2017) 	<p><i>Harvey CPP</i>¹⁷:</p> <ul style="list-style-type: none"> • Required subrecipients to have their own citizen participation plans with certain components 	<ul style="list-style-type: none"> • The PRDOH must include a clause in its Action Plan that requires subrecipients managing different programs to create their own citizen participation plans with specific components as to how communities will be engaged.
<p>Florida</p> <ul style="list-style-type: none"> • Hurricane Irma (2017) 	<p><i>Irma CPP</i>¹⁸:</p> <ul style="list-style-type: none"> • Webinars for stakeholders • Survey • Mailing list • 14 hearings in the most impacted and distressed areas. 	<ul style="list-style-type: none"> • The PRDOH should hold webinars to be able to reach a wider audience of communities and it should provide communities with the technology to access these webinars. • The PRDOH can also conduct surveys of the most impacted communities for their needs. • Future public hearings should be held in the most impacted and distressed areas.

¹⁷ State of Texas Plan for Disaster Recovery: Amendment 2. <http://recovery.texas.gov/files/hud-requirements-reports/hurricane-harvey/harvey-5b-sap-amend2.pdf>.

¹⁸ State of Florida Action Plan for Disaster Recovery. <http://www.floridajobs.org/docs/default-source/2015-community-development/community-revitalization/dr/stateofflactionplanfordr.pdf?sfvrsn=2>.

D. Comparative Table: Minimization of forced displacements in the recovery processes of other jurisdictions

Jurisdiction	Minimization of Displacement Policies	Calls to Action for PRDOH
<p>Louisiana</p> <ul style="list-style-type: none"> Hurricane Katrina (2005) Great Floods of 2016 	<p>The <i>Road Home</i> Program (Katrina) ¹⁹</p> <ul style="list-style-type: none"> "The compensation grant for homeowners who did not carry hazard insurance and/or homeowners who were living in the flood zone and did not carry flood insurance will be reduced by thirty percent." <p>Restore Louisiana Homeowner Rehabilitation, Reconstruction and Reimbursement Program (Great Floods) ²⁰</p> <ul style="list-style-type: none"> Gives priority to homeowners that are outside floodplain and did not have flood insurance. 	<p>Instead of totally denying assistance to those that don't have flood insurance or have homes in floodplains or landslides, the PRDOH can just reduce compensation by an amount like thirty percent (30%).</p> <p>The PRDOH can set a system of priorities.</p>
<p>New Jersey</p> <ul style="list-style-type: none"> Superstorm Sandy (2013) 	<p>Homeowner Reconstruction, Rehabilitation, Elevation and Mitigation (RREM) Program ²¹</p> <ul style="list-style-type: none"> Gives priority to homeowners that have "substantial damage" regardless of zones. "The program prioritizes homeowners within the nine most impacted counties as determined by HUD. Priorities include: <ul style="list-style-type: none"> Priority 1: Homes with "substantial damage," as determined by New Jersey floodplain Priority 2: (if demand and funds remain after Priority 1) Severe/major 	<p>The PRDOH should set a priority system similar to New Jersey's.</p> <p>For instance:</p> <ul style="list-style-type: none"> Priority 1: Homes with substantial damage as determined by Puerto Rico floodplain Priority 2: Severe/major damage in Special Flood Hazard zones Priority 3: Severe/major damage in all other zones

¹⁹ Road Home Homeowner Compensation Plan. https://www.doa.la.gov/OCDDRU/Action%20Plan%20Amendments/Katrina-Rita%20First/APA14_Approved.pdf.

²⁰ State of Louisiana Proposed Master Action Plan For the Utilization of Community Development Block Grant Funds in Response to the Great Floods of 2016. https://www.doa.la.gov/OCDDRU/Action%20Plan%20Amendments/Great_Floods_2016/Floods%20Master%20Action%20Plan_clean_06Jan17.pdf.

²¹ New Jersey Community Development Block Grant Disaster Recovery Action Plan. <https://www.renewjerseystronger.org/wp-content/uploads/2019/04/Final-Consolidated-Action-Plan.pdf>.

	<p>damage only in Special Flood Hazard zones</p> <ul style="list-style-type: none"> • Priority 3: (if demand and funds remain after Priority 2) Severe/major damage in all other zones. 	
<p>Texas</p> <ul style="list-style-type: none"> • Hurricane Harvey (2017) • 2016 floods 	<p>Homeowner Assistance Program (Harvey) ²²</p> <ul style="list-style-type: none"> • HUD Allocation Notice Requirements: CDBG-DR funds cannot be used for homes in flood zones. <p>2016 Floods ²³</p> <ul style="list-style-type: none"> • "The grantee certifies that it will not use CDBG-DR funds for any activity in an area identified as flood prone for land use or hazard mitigation planning purposes by the state, local, or tribal government or delineated as a Special Flood Hazard Area in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55." 	<p>PRDOH is subject to these same requirements. However, they can work around the bolded phrase by implementing the recommendations in this chart or other creative solutions.</p>
<p>Mississippi</p> <ul style="list-style-type: none"> • Hurricane Katrina (2005) 	<p>Homeowner Assistance Program ²⁴</p> <ul style="list-style-type: none"> • Same requirements as PR but then transitioned to accepting applications from those without insurance and inside a flood zone. 	<p>The PRDOH should also transition into accepting applications from people without flood insurance and inside a flood zone.</p>

²² State of Texas Plan for Disaster Recovery: Amendment 2. <http://recovery.texas.gov/files/hud-requirements-reports/hurricane-harvey/harvey-5b-sap-amend2.pdf>.

²³ State of Texas Plan of Disaster Recovery. <https://recovery.texas.gov/files/hud-requirements-reports/2016-floods/16-comprehensive-sap.pdf>.

²⁴ "Action Plans." Mississippi Development Authority, <https://www.msdisasterrecovery.com/action-plans>.