Towards a Just Recovery
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Introduction

To face disaster is to face dispossession. This much is clear from four years of work in legal defense and social impact law around hurricanes, earthquakes, a pandemic, and the poverty and inequality crisis that Puerto Rico experiences. The arrival of recovery funds has not been able to halt the progressive loss of homes, lands, and communities. Neither has it alleviated the climate crisis that threatens our future in this archipelago. The recovery’s bottom line reflects a mounting debt to survivors of natural and political disasters. It also signals the necessity of auditing and denouncing those who must respond for such debt.

A just recovery demands the possibility of reclaiming the right to live in Puerto Rico, considering the future without neglecting the necessities of the present. We recognize the enduring presence of blue tarps, the still unrepaired homes after hurricanes Irma and Maria, the collapsed or fractured homes after the seismic sequence, the rise in the cost of rent, the vulnerability of those with mortgages, the communities at risk of displacement through speculation, disaster capitalism, and climate change. At the same time, we appreciate the communities, groups, and organizations seeking to satisfy their pressing needs with an understanding of their gender and racial underpinnings, thus sustaining feminist and racial justice perspectives, positioning themselves against every form of discrimination, and embodying the certainty that a Puerto Rico where accounts are settled in favor of the people is possible.

We believe that the path depends on the capacity we have, individually and collectively, to understand that a just recovery is the sum of housing, land, and environmental justice. Response to emergencies is important, but so is planning, respect, and protection of land and environment as they manifest themselves through prevention, mitigation, and equality strategies before, during, and after disasters. Beginning our work as part of the first response to emergency, we mobilized around the right to housing (derecho al techo) because we realized that housing was, and continues to be, the place where necessity converges with people’s desires and rights to remain (permanecer) and return (retornar). Because dignified housing (vivienda digna) extends beyond the four walls of a house, encompassing its communitarian dimension, land justice complements it. Land justice constitutes a front both against traditional forced evictions and those resulting from price increases, austerity, contamination, and speculation. Land justice is an objective for those seeking to preserve the lands where we live, sow, and participate in community. It is, also, a reparation strategy that returns and legitimates the ancestral, historical, and human right of families who have been deprived of their sustenance and surroundings.

Finally, and because housing and land do not exist in a vacuum, we promote climate justice as a vision and practice relating us with an environment harmed by humanity. Disasters, which have greater implications for impoverished populations, force us to reevaluate our relationship with the environment as a precondition for our own existence. Thus, home, land, and climate are key elements of the kind of recovery we wish to achieve. To facilitate the conversation, this third annual report is informed by human rights indicators that bring all these axes together. It also includes a glossary towards a common vocabulary.

These past years of work have made us confront contradictions and apparent tensions. While we defend the importance of returning land taken from the sea, we also demand the protection of historically marginalized communities who, for historical reasons related to oppression and
power, have made their homes on the coasts. Likewise, while we denounce the facts that, first, a formal property title (título de propiedad) is required in order to obtain assistance after disasters, and second, individual titles are promoted as the only alternative, we also recognize the right to reparations for communities who, as a result of systematic racism and discrimination, have been denied the possibility of acquiring a “legalized” property title. These tensions arise from the material reality of the people and groups we assist: the crisis does not affect everyone in the same way. A just recovery requires sensibility and the prioritization of the human right to a dignified life (vida digna). Moreover, it demands the recognition that the government has a primary responsibility, which, until now, it has fulfilled very partially, if at all. To begin from such intersections, and the tensions they produce, requires a frank and constant dialogue with and between communities. We hope that this Third Report Toward a Just Recovery promotes transformations and accountabilities in tandem with such a vision.

In solidarity,

Lcda. Ariadna Michelle Godreau Aubert
Lcda. María de Lourdes Vaello Calderón
Lcda. Verónica González Rodríguez
Lcda. Frances Marie Vega Carrasquillo
The Work of Ayuda Legal Puerto Rico: We Know How to Win!

Ayuda Legal Puerto Rico’s Program for a Just Recovery started on September 21, 2017. Since then, we have assisted over 8,000 individuals and communities in the defense of their homes and capacity to remain and return to their lands. During the last few years, we have had narrative, legal, public policy, and organizational achievements. To name our wins is important if we wish to maintain the just recovery efforts on track. In what follows we include some of our main victories after four years of work alongside organizations, groups, and communities across Puerto Rico’s archipelago.
Narrative Victories

We have a right to a just recovery.

We believe in the transversal incorporation of three strategic objectives within internal and allied platforms in the just recovery process: equitable access to funds, no forced evictions, and real and effective participation.

The property title is not a condition to receive assistance after disasters.

We have a right to the country we dream of and deserve.

Legal and Public Policy Victories

Demonstrate that a formal property title is not a requirement to apply for FEMA assistance. We created and presented the declaration under oath that allows people to demonstrate their ownership in alternative ways, without notarization. This model has been utilized in other jurisdictions in the USA while defending survivors without formal property titles.

Creation of the Citizen Advisory Committee on recovery funds. Although the Housing Department now insists on a debilitated version of it, in its original proposed form the Committee consists of advisory regional bodies with incidence capacity and ample community participation.

Publication of a platform with recovery data (Transparency Portal).

Recognize the right to mitigation for families who do not wish to be relocated as a first option.

Organizational Victories

Ayuda Legal Puerto Rico is an organization recognized in Puerto Rico, the USA and internationally as having expertise in themes related to just recovery, recovery funds, and dignified housing. This has allowed us to make multiple presentations in local and foreign media; to participate in panels and official forums; and to be summoned as expert witnesses on these topics.

Capacity development for numerous organizations, individuals, and lawyers to assume the defense of the three objectives for a just recovery: equitable access to recovery funds, no forced evictions, and continuous participation.

Creation and facilitation of the Conference for a Just Recovery, a space of education and participation independent of the government, from which we promote incidence, with a critical vision, in the management and distribution of recovery funds, as well as the organization of local entities and affiliated groups.

Co-development of the Campaign for a Just Recovery, which brought together ten organizations across the archipelago and achieved important victories related to agriculture and housing funds.
Map of Indicators: Our Human Rights and A Just Recovery

In our previous report, we included a list of human rights indicators to trace the recovery’s impact using international concepts of dignified life. As we did then, we continue to acknowledge that human rights discourses and practices have great relevance for Puerto Rico, a colony besieged by natural and political disasters. The year 2020 and the ongoing 2021 have allowed us to establish connections with greater intensity with groups and allied individuals in Spain, Brazil, Argentina, the USA, Chile, South Africa, Canada, and other countries united in our struggle for the right to housing. These discussions renovate our certainties that the impact of disaster capitalism is a common problem and that we are not alone in the defense of the alluded principles. Human rights do matter.

The human rights diagram below links the axes of housing justice, land justice, and climate justice. We put our faith in this model’s pertinence for our educational, legal, and power-building efforts.
<table>
<thead>
<tr>
<th>Advocacy Claims</th>
<th>Just Recovery</th>
<th>What Are We Looking For?</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Ensuring that the immediate response to a disaster includes guaranteeing dignified shelter for people who had to abandon their homes.</td>
<td>Affirmative actions to address the identified necessities, and adoption and implementation of politics that prioritize groups that have been historically made vulnerable</td>
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<td></td>
<td>Ensuring the reparation and reconstruction of safe, habitable, and dignified housing.</td>
<td>Impact of regulations and guidelines on marginalized communities, as well as on populations that have already experienced displacements</td>
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<tr>
<td>Human Rights</td>
<td>Right to non-discrimination</td>
<td>Transfer plans and guarantees for safe shelter</td>
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<td></td>
<td>Right to an adequate standard of living</td>
<td>Capacity to guarantee temporary or transitional housing for disaster survivors</td>
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<tr>
<td>Key Components</td>
<td>Disproportionate impact of disasters, including the climate crisis, and of the lack of adequate assistance to particular groups due to their social condition, race, functional diversity, age, or other identities</td>
<td>Response to assistance applications and average amount of the assistance</td>
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<td></td>
<td>Protections for historically marginalized populations</td>
<td>Time taken to complete the housing care process</td>
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<td></td>
<td>Habitability</td>
<td>Access to essential services after a disaster</td>
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<tr>
<td></td>
<td>Access to services</td>
<td>Actions or policies that do not discriminate against those without formal property titles</td>
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<td></td>
<td>Security of tenure</td>
<td></td>
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<td></td>
<td>Affordability</td>
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<th><strong>Advocacy Claims</strong></th>
<th><strong>Human Rights</strong></th>
<th><strong>What Are We Looking For?</strong></th>
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<tr>
<td>Real and effective participation</td>
<td>Right to participation&lt;sup&gt;2&lt;/sup&gt;</td>
<td>Norms and policies to create participation mechanisms in decision-making, so that individuals and communities most affected by disasters can participate in the recovery and fund allocation processes.</td>
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<tr>
<td>Establish mechanisms of real and effective participation in the decision-making process concerning recovery.</td>
<td>Access to information</td>
<td></td>
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<tr>
<td>Participation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inclusion of groups that have been systematically excluded from participation</td>
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<sup>2</sup>The right to participation has been amply and internationally recognized. It includes the recognition of the right to access information as a precondition for individuals, groups, and communities to participate in public policy matters. International Pact of Civil and Political Rights, Art, 25, December 16, 1966, S. Exec. Rep. 102–23, 999 U.N.T.S. 171.
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<th>Key Components</th>
<th>What Are We Looking For?</th>
</tr>
</thead>
<tbody>
<tr>
<td>No forced displacements</td>
<td>Right to housing</td>
<td>Protections against housing commodification</td>
<td>Creation and implementation of policies to minimize displacements</td>
</tr>
<tr>
<td>Choose mitigation before displacement.</td>
<td>Rights of displaced peoples</td>
<td>Shared responsibility between the State and third parties</td>
<td>Creation and implementation of adequate relocation plans with a human rights perspective</td>
</tr>
<tr>
<td></td>
<td>Right to return</td>
<td>Intergenerational equality</td>
<td>Actions or policies that promote lack of transparency concerning contracts related to housing projects</td>
</tr>
<tr>
<td></td>
<td>Right to free, prior, and informed consent</td>
<td>Protection of the social fabric</td>
<td>Actions or policies from the State or third parties that result in land speculation and threaten to increase housing costs</td>
</tr>
<tr>
<td></td>
<td>Right to equitable development</td>
<td></td>
<td>Policies that monitor and guarantee that funds will benefit low- and moderate-income individuals and communities</td>
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1. Id.

2. Humanitarian international law amply recognizes the rights of provisionally or temporarily displaced peoples. Although the corresponding legal frameworks have been developed primarily in the context of war conflicts, they can be translated to disaster contexts, even more so when historically disadvantaged communities and groups face the threat posed by climate change. Rule 131 establishes that, in the case of displacement, all measures should be taken to ensure conditions of proper hygiene, safe shelter, health, security, and nutrition, among others. Said frameworks also recognize the right to return and to protect one’s property. The Guiding Principles on Internal Displacement include and amplify these norms, emphasizing the right of displaced individuals not to suffer discrimination. Principle #25 includes the government’s responsibility in guaranteeing the rights of these populations. See the Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement. February 11, 1998. https://www.refworld.org/docid/5d4495e1a.html.

3. Humanitarian International Law Rule 132 recognizes the right of internally displaced peoples “to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.” The rule includes individuals who left their homes voluntarily or involuntarily.


<table>
<thead>
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<tr>
<td><strong>Climate Justice</strong></td>
<td>Consideration of climate change impacts when planning new, repaired, or reconstructed housing.</td>
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<td>All processes related to housing, especially those associated with post disaster recovery, must respond to a transversal perspective based on human rights, the right to housing, and climate justice.</td>
<td>Implementing equitable conditions for recovery.</td>
</tr>
<tr>
<td>Adoption of a national plan, produced with real and effective citizen participation, to evaluate and develop new strategies to live in the country with the new climatic reality.</td>
<td>Mitigation that favors real and effective alternatives that foment access, affordability, and energy, food, and water sovereignty.</td>
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<th>Human Rights</th>
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<tr>
<td>Right to health(^8)</td>
<td>Climate change mitigation</td>
</tr>
<tr>
<td>Right to food(^9)</td>
<td>Inter- and intragenerational equality</td>
</tr>
<tr>
<td>Right to safe drinking water and sanitation(^10)</td>
<td>Shared responsibility between the State and third parties</td>
</tr>
<tr>
<td>Right to life and physical integrity(^11)</td>
<td>Climate change adaptation</td>
</tr>
<tr>
<td>Precautionary Principle(^12)</td>
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<tr>
<td>Right to environmental information(^13)</td>
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<tr>
<td>Right to an adequate environment(^14)</td>
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\(^14\) Although the right to an adequate environment has not been codified through a universal, binding pact, it has been recognized within regional systems of human rights. Relevant in this context, within the inter-American system of human rights, the right to an adequate and safe environment is recognized in Article 11 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador), November 17, 1988, OEA/Ser.A/44. Moreover, over 150 countries have recognized this right, including Puerto Rico through its law on Environmental Public Policy. See Law 416–2004, 12 L.P.R.A. § 8001 (b) (2021) ("every person has a right and duty to enjoy a healthy environment").
In September 2017, Puerto Rico garnered global attention after the archipelago was hit consecu-
tively by hurricanes Irma and Maria. These phe-
nomena revealed multiple crises in areas such as housing, health, infrastructure, and migration. Estimates indicate that hurricane Maria caused over 3,000 deaths and significant damages to more than 70,000 homes. Consequen-
tly, FEMA received approximately 1.1 million assistance applications. The agency denied assistance to 58% of applicants and denied 3 out of 4 appeals. The average amount of assistance was $1,800.

Furthermore, at the federal level, an allocation of $9.7 million was approved through the Community Development Block Grant for Disaster Recovery in Puerto Rico (CDBG-DR), with the goal of covering the needs of 2017 disaster survivors. As the recipient of those funds, the local Housing Department (henceforth, “Department”) was expected to assign them to pro-
grams of planning, housing, infrastructure, and economic development, among others.

With these funds, the Department created the Program for Reparation, Reconstruction, and Relocation (R3), to help families whose homes had been affected by the hurricanes. This pro-
gram represented the last possible resource for individuals who were still waiting to have their right to a safe house guaranteed. With an allo-
cation of $3.2 billion, the most substantial among the programs funded by CDBG-DR, R3 had the means to address the needs of the 26,951 individuals who requested this source of assistance since it was made available on July 31, 2019, until January 7, 2020, the date R3 stopped accepting applications. Because necessities increase exponentially after a disas-
ter, it should be noted that these families are part of the thousands that did not receive ade-
quate assistance from FEMA or the Tu Hogar Renace program. They are sometimes the same families that were harmed by the earthquake sequence in Puerto Rico’s southern coast from December 2019 through January 2020, and that, subsequently, lost their income because of the pandemic. Dire housing needs are only increasing and intensifying.

In contrast, the state of reconstruction continues to be precarious. In July 2019, according to the then-governor Ricardo Rosselló, there were still nearly 30,000 homes with blue tarps in Puerto Rico. In August 2020, the then-governor Wanda Vázquez informed that this number had decreased to a little less than 3,000 but offered no explanation as to why or how such a substan-
tial change had taken place. Meanwhile, in other

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16 Benjamín Torres Gatay, Menos del 1% de los damnificados obtuvo la ayuda mayor de FEMA, El Nuevo Día (March 3, 2018) https://www.elhuyedoria.com/noticias/locales/notas/menos-del-1-de-los-damificados-obtuvo-la-ayuda-mayor-de-fema/.

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normative documents, the Department indicated that the number of houses with tarps oscillates between 15,000 and 18,000.\textsuperscript{17}

The housing situation only aggravated with the seismic sequence that began in December 2019. More than 600 houses were significantly damaged by the earthquakes. Over 40,000 individuals requested FEMA assistance. Up until July 2021, FEMA had approved 14,227 applications for individual assistance.\textsuperscript{18} On January 6, 2021, HUD announced the availability of $34 million in CDBG-DR funds for earthquake assistance. These funds, according to current guidelines, will only be available for residents of the municipalities of Guánica, Yauco, Guayanilla, and Ponce. On June 30, 2021, the Department published the draft of an action plan for the management of these funds.\textsuperscript{19} The draft is available for written comments, but the Department has not announced public hearings.

The government failed to continue to fail in its obligation to protect the right to dignified housing for disaster survivors. The lack of safe housing responds to the State’s failure in exercising its responsibility to provide opportune assistance; to its promotion of insecurity concerning property titles; to its implementation of onerous requirements for survivors with mortgages and for folks without a formal property title; and to its disregard of the public demand for effective action to prevent and minimize forced displacements.

**Recovery Status – Housing**

During the nearly six months that the R3 Program was open, starting in the summer of 2019, it received almost 27,000 applications.\textsuperscript{20} The Title Clearance Program (PAT, in its Spanish acronym), charged with obtaining recordable property titles for R3 Program participants and others with informal ownership claims, has been in function over the same period, although it currently continues receiving applications. Almost four years after hurricanes Irma and Maria, the following is the result of the housing programs financed with CDBG-DR funds.

**R3 Program**

The R3 Program has initiated processing applications. Cases that have not been evaluated already and determined ineligible, or that have become inactive,\textsuperscript{21} are considered active. Among active cases, close to 9,800 have received a reparation, reconstruction, or relocation determination.\textsuperscript{22} The reparation and reconstruction processes have completed a little more than 1,000 homes.

\textsuperscript{17} Housing Department, Puerto Rico Action Plan for the Community Development Block Grant–Mitigation (Plan de Acción de Mitigación de Puerto Rico para el Programa de Subvención en Bloque para el Desarrollo Comunitario de Mitigación (CDBG-MIT)), April 2021, on page 369. Available at: https://cdbg-dr.pr.gov/download/cdbg-mit-plan-de-accion-19-de-abril-de-2021/?id=1620742263&filename=CDBG_MIT_ACTION_PLAN_APPROVED_Apr%202021_Rev_ES.pdf&wpdmdl=18592&refresh=60f87ae0490dd626897888.

\textsuperscript{18} Federal Emergency Management Agency, Puerto Rico Earthquakes DR-4473-PR. Available at: https://www.fema.gov/disaster/4473.


\textsuperscript{20} Letter from Ruth López-Alsina, legal advisor to Ayuda Legal Puerto Rico on the CDBG-DR Program. Request for information: updated data on R3 Program, per municipality, July 12, 2021. Available at the Ayuda Legal Puerto Rico archives.

\textsuperscript{21} The Housing Department divides R3 applications as active and inactive cases, the latter of which are composed of eligible cases and duplicate applications that the Department later categorizes as inactive. The total number of applicants combines both categories.

\textsuperscript{22} The Department has only notified pre-eligibility to 9,804 applicants. The remaining number represents individuals who are still waiting for an initial determination concerning their applications.
**Title Clearance Program (PAT)**

PAT has received 7,321 applications, the majority of which were referred by the R3 Program. According to its Guides, the referral is made in all cases where the applicant presents an alternative method to prove ownership other than a formal property title.\(^{23}\) PAT’s goal is that every applicant obtains a registered or “perfect” title at the end of the process.

**Priority Groups**

We insist as much as is necessary that crises do not affect everyone in the same way. Thus, housing justice demands that we consider the impact of recovery on particular individuals and groups. These groups are composed of people who have been historically rendered vulnerable, such as women and non-binary folks, elderly people, and people with disability, who suffer the consequences of disasters much more directly and gravely, and who experience the recovery process much more slowly than other demographic groups. The R3 data derived from the latest publication received by the Department, which includes numbers up to July 12, 2021, reflect that most of the 27,000 applications received by the Program were submitted precisely by women, people with functional diversity and/or elderly adults, who, according to Law 121, are individuals of 60+ years of age.\(^{24}\)

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\(^{23}\) Alternative method to prove ownership refers to any document utilized to demonstrate ownership beyond a title registered in the country’s Property Register, which is also known as a “perfect” title. All individuals who apply to R3 and do not have a registered title will be referred to PAT to proceed with the inscription process. From ALPR, we insist that the “perfectioning” of a title should not be a precondition to receive any of the available forms of assistance available under the Program.

\(^{24}\) Letter from Ruth-López-Alsina, legal advisor to Ayuda Legal Puerto Rico on the CDBG-DR Program. Request for information: updated data on R3 Program, per municipality, July 12, 2021. Available at the Ayuda Legal Puerto Rico archives.
When the R3 Program launch was announced, the public was told the funds would go first to those with greater necessity. For this, a window of priority would be opened that would last 90 days, that is, until October 29, 2019. The first version of the CDBG-DR Irma and Maria Action Plan, and its corresponding guidelines, included elderly adults as a priority group, and relocation for families in at-risk zones.\textsuperscript{25} From that moment on, cases would be processed on a first come, first served basis.

Despite this language, the Department’s efforts to ensure greater access for these groups were scarce. ALPR denounced multiple issues that significantly limited access for these groups: digital access to the application was extremely onerous, and the document was excessively long; notarized statements were unnecessarily required, making the process more costly; the location of public centers for application completion were too distant, not open with flexible hours and even found to be closed at times when they were advertised as open. It was not until the seventh version of the R3 Program Guidelines, published on June 15, 2020, that a list of priority groups was included. The first group, where the following three instances converge, had the most priority according to said Guidelines: advanced age, significant harm, and impediments. The second group was characterized by two of these elements. The third group was composed by those who experienced significant harm, while elderly adults or those with functional diversity constitute the fourth group. The fifth group had no priority.\textsuperscript{26}

\textit{Ayuda Legal Puerto Rico} continues to receive a significant number of calls from applicants who have not been informed about how their application was processed if they qualified for more than one priority category. Despite the Department’s public statements, nothing suggests that R3 applicant families have been instructed about the priority group to which they qualify, or about the consequence of such classification for individuals whose eligibility was determined before the establishment of these groups.

\textbf{The Quest for Security of Tenure: Property Titles and Displacements}

We are still in need of demanding the total elimination of a formal property title as a requirement to obtain assistance after disasters. Our victory with FEMA in 2018, whereby the agency recognized people’s right to prove their ownership with a statement under oath, did not serve as an example for the Department. At the beginning of 2018, as part of the first CDBG-DR Action Plan, the Department self-imposed the requirement of a formal title, creating a significant barrier for thousands of families in Puerto Rico. It should be kept in mind that the Department itself estimates that half of the population does not have a formal property title. It took two years of indefatigable legal efforts to eliminate the property title requisite in reparation and reconstruction cases. This was achieved through an executive order\textsuperscript{27} and not through any action taken by the Department. There are still unanswered questions concerning the threat of future debt collections in those cases where Department officials end up concluding that they are not satisfied with alternate proofs of property ownership.

\textsuperscript{25} CDBG-DR Action Plan, p. 105; Guidelines V. 1, p. 14, Rule 5.3.

\textsuperscript{26} V. 7, pp. 16-17.

\textsuperscript{27} OE-2020-063, To establish special dispositions for the active legitimation of applicants using the Single Business Portal for activities related to eligible housing reconstruction under the R3 Program with CDBG-DR funds (August 20, 2020) (Para establecer disposiciones especiales para la legitimación activa de los solicitantes en trámites del Single Business Portal relacionados a la reconstrucción de viviendas elegibles bajo el Programa R3 asistido con fondos CDBG-DR (20 de agosto de 2020)). Available at: http://www.camarapr.org/TIC-2020/14-agosto-21/OE-2020-063.pdf.
At the end of July 2021, HUD published a list of frequently asked questions (FAQs) resulting from Ayuda Legal Puerto Rico’s legal efforts. These stipulate what we already knew:

01. There is no ownership requirement imposed by HUD.

02. The entity that receives the CDBG-DR funds—the Department, in Puerto Rico’s case—has full discretion in establishing the mechanisms of proof of ownership and, thus, can accept alternate proofs of ownership that are not property titles (escrituras, or “perfect titles” as the Department calls them). This can include receipts from essential services or other documentation.

03. The Department should have clarified the processes and requisites of proof of ownership early in the CDBG-DR process.

There is also the issue of relocation—even in emergency cases and for priority groups—for those who do not have their homes registered in Puerto Rico’s Property Register (Registro de Propiedad). The Department argues that it is juridically impossible that a person is relocated without presenting the “perfect” proof of ownership of their home. Although we recognize the importance of protecting public funds from instances of fraud, we stipulate that the Department is incorrect in this regard. There are viable alternatives, such as proof of ownership through other mechanisms, certifications of residence, and periodical inspections to ensure that the person uses the property as their main home, as well as the viability of relocation while the legal process to formalize a property title is completed. At this point of the process, the Department has no reason to hinder an application of an individual who is seeking and awaiting assistance.

Since as many as half of Puerto Rican residents might lack a formal property title on their homes, it is urgent that we look for concrete and real alternatives. The Title Clearance Program is not one of those options. More than eighteen months after its inauguration, the Program has barely recorded eighteen titles in the country’s Property Register. In the meantime, PAT has spent over a million dollars in costs taken from recovery funds that could have been destined to safe housing. We warned about this publicly: proof of ownership is not a matter than can be resolved case by case or through traditional legal services. Legal efforts must be directed toward promoting changes in public policy that seek to guarantee the housing tenure security without further obstacles in the already tortuous path confronted by those who survive a disaster.

The impact on Those Who Have Mortgages

In the ninth version of the R3 Program’s guidelines, the Department clarified that those applicants who have an unfulfilled mortgage lien

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volume-3-%28July%202021%29.pdf.

29 Housing Department, Grant P-17-DR-72-HIM1 January 1, 2021 thru March 31, 2021 Performance Report. July 2, 2021. Available at: https://cd-

bg-dr.pr.gov/download/2-apr-fy-2020-2021-reviewed-and-approved-03-31-2021?wpdmdl=20080&refresh=60f9c6c82532162698353. A total of $44 million in CDBG-DR funds were allocated to this Program. It bears repeating that this Program was not subjected to a process of public commentary, and that it made its appearance on the first Action Plan sent by the Department to HUD.
(gravamen) on the property affected by the 2017 hurricanes have to resolve the lien before receiving a relocation voucher.\textsuperscript{30} The guidelines designate a term of 180 calendar days after the Notification of Unsatisfied Lien (Notificación de Gravamen Insatisfecho) is sent to prove that the mortgage has been resolved or liquidated. If the applicant cannot meet this requirement, they become ineligible to receive the Program’s assistance. This restriction emerges in the context of a mortgage crisis that precedes the Irma and Maria hurricanes and that, between 2017 and 2020, dispossessed more than 12,080 families of their homes.\textsuperscript{31} Among applicants to the R3 Program, as of now, 6,864 individuals have been identified as having a lien on their affected property. The data received as of July 12, 2021, reveal that 3,120 (or 45\%) of these applications are from individuals who are 60+ years old.\textsuperscript{32}

This requirement constitutes an insurmountable barrier for disaster survivors with proven needs. Further, the policy disproportionately affects individuals who have lost their income after the disasters—a panorama that continues to repeat itself—as well as older adults. We should take into account, also, that relocation, in principle, is the alternative for people whose homes suffered severe damages and who live in at-risk spaces for which no mitigation is viable. That is, faced with critical cases, the government is de facto denying these individuals and families the assistance they sorely need to solve an emergency situation. As an applicant manifested to us, if those who survive a disaster had the resources to pay off their mortgages, they would not wait years to be relocated and to finally have a safe roof over their heads. Older adults with reverse mortgages confront even greater impoverishment, as they would lose a source of income that is necessary to cover essential expenses such as food, medicines, and more.\textsuperscript{33} It should be kept in mind that, in reverse mortgages, the debt keeps increasing rather than decreasing. It is virtually impossible that these older adults can ever pay off their property.

The Department offers no response to our demands concerning the development of guides that include real alternatives for these families. We find no obstacle for utilizing part of the funds allocation to repay the mortgage debt. We recommend that the Department hold meetings with the main mortgage institutions—including HUD itself—to explore strategies that assist people with mortgages.

**Displacement of Older, Black and Racialized, and Impoverished Communities**

Maintaining the property title requirement and the requisite to pay off mortgage debts in favor of financial institutions are tied to something else: the housing dispossession that disproportionately affects those who are elderly, black or racialized, and impoverished.

The construction and acquisition of a home represents the greatest investment for many Puerto Rican families. The impact of a disaster on this main active has serious repercussions for the economic stability of the household and

\textsuperscript{30} Guidelines for the Repeation, Reconstruction or Relocation Program, Sec. 13.4.1 Liens, on page 67 (V.9) (Guía del Programa de Reparación, Reconstrucción o Reubicación, Gravámenes).
\textsuperscript{31} Data compiled by Ayuda Legal Puerto Rico from an analysis of court records conducted by the Right to Your House program (Derecho a Tu Casa). For more information, visit: www.derechoatucasa.org.
\textsuperscript{32} Letter from Ruth–López–Alsina, legal advisor to Ayuda Legal Puerto Rico on the CDBG–DR Program. Request for information: updated data on R3 Program, per municipality, July 12, 2021. Available at the Ayuda Legal Puerto Rico archives.
community. Federal and local reconstruction standards provoke a substantial loss of capital for these individuals. The habitability standard is based on the minimal conditions families need to live, without consideration of the economic investment that housing represents. Where there used to be a three-bedroom home and now only a mother with her child lives, only a two-bedroom house will be built. For older adults who lost a three-bedroom and two-bathroom home, the government will only consider relocation to a one-bedroom and one-bathroom house. In the case of families that do not have a formal property title and that need to be relocated, their only option is to “perfect” their title. To these requirements, we must add the exigency of flood insurance as a precondition to receive assistance. These insurances are not only onerous, but they also require proof of ownership, which prevents impoverished groups from safeguarding their infrastructure and receiving support for future disasters. In addition to forcing evictions, these measures impoverish our historically marginalized populations and will have a domino effect on these sectors’ economy.

**Calls to Action:**

The human rights indicators remind us that dignified housing is not guaranteed if homes are not characterized by safety, affordability, and tenure security. We need access to information and participation to ensure people’s access to remedies and accountability. In the face of the next stage of housing reconstruction, we reiterate the following calls to action:

1. **Immediate response:** 100% of applications must be answered immediately. No survivor should wait years for a determination. Now that federal barriers such as the influence of While Trump’s administration in the systematic denial of assistance to non-white individuals – preventing quick access to recovery funds have been resolved, Puerto Rico’s government has the obligation to respond and address each assistance request.

2. **Adequate access to assistance:** Four years after Irma and Maria, official actions must be directed with greater emphasis to revising the obstacles that deprive surviving families from accessing recovery funds. The programs’ adequate dissemination, the establishment of clear and simple application processes, the revision of guidelines to ensure that meeting eligibility criteria is possible, and general coherence and effectiveness, are all necessary components of this process.

3. **Mitigation of forced evictions:** We insist that the prohibition of reconstruction in “flood zones” (zonas inundables) without prior consideration of mitigation, as well as the insistence on property titles and the “solving” of mortgage liens, end up displacing impoverished individuals, with a disproportionate effect on older, black and racialized adults. In addition to reiterating the call for the adoption of an anti-displacement guide with a human rights and participation perspective, from Ayuda Legal Puerto Rico we also request the transformation of policies that displace through population exclusion, through the delay in allocating assistance, and through the denegation of assistance to families who own the property but lack the formal property title.

4. **Monitoring:** Accountability measures are urgent to determine whether the use of public funds is adequate and effective. In recent years, we ascertained that poor monitoring of recovery funds is linked to impunity for corporations.

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54 See the reports by HUD’s Inspector General concerning post-Maria FEMA performance and the disbursement of CDBG–MIT mitigation funds.
that fail to fulfill the terms of their contracts, that do not adequately aid applicants, and that declare themselves incapable of dealing with “complex” situations, such as informal proof of ownership and reverse mortgages. The Department must conduct public monitoring and auditing processes on the uses of CDBG-DR funds and, particularly, R3 funds, to strategize toward the future.

Land Justice

Land justice is a combination of narratives and practices that claim the right of individuals, groups, and communities to demand their right to remain, enjoy, nourish from, and return to their spaces. In the context of disasters, land justice demands us to consider housing beyond four walls and a roof, in order to discuss the possibility of living a dignified life in a specific place. The enjoyment of agricultural lands, the access to essential services, and the opposition to speculation, are main components of this dimension for a just recovery.

Food Security and the Community’s Present and Future Possibility

On August 14, 2020, the Department published the guidelines for Re-grow Puerto Rico Urban–Rural Agriculture Program, to which $92.5 million was allocated to assist farmers concerning the industry’s problems after hurricanes Irma and Maria. The Notice of Allocation likens local agricultural projects with the farming operation standards established by the federal Department of Agriculture, ignoring the necessities of most of our islands’ farmers, as the agricultural scale of production is much smaller in our archipelago. The definition ignores the great precarity and isolation experienced by farmers who produce on a small scale. The Program’s guidelines themselves note that 75% of farmers in Puerto Rico have annual sales of less than $10,000. Moreover, utilizing the standard chosen by the Department of Agriculture disproportionately affects women. Close to 64% of women farmers have a production valued at less than $2,500 per year. Furthermore, the application criteria disregard the material realities that characterize farming practices in Puerto Rico, as they require evidence of the farmer’s capacity for agriculture management and limit such evidence to formal academic and labor scenarios. Despite a clause suggesting alternative forms of agricultural experience and knowledge, such as “having been raised on a farm,” the language is so ample that it is unclear how a person could satisfy said requirement. The Program has barely allocated assistance to 39 agriculture projects, despite having received over 3,800 applications. As Puerto Rican organizations working directly with farmers, such as Fundación Bucarabón, CAM Bartolo and the Instituto para la Investigación y Acción en Agroecología, denounced, the projects that first benefitted from the assistance funds were those in the highest economic levels of eligibility. The mobilization of these allied organizations achieved important changes in the norms for the allocation of funds for agriculture, such as eliminating the requirement for a minimal credit score, finding alternatives to the ownership requirement for fishermen and itself.


37 Housing Department, Transparency Portal, Re-Grow PR Urban and Rural Agriculture (Portal de Transparencia, Re-Grow PR Agricultura Urbana y Rural), Available at: https://cdbg-dr.pr.gov/portal-de-transparencia/reportes-de-transparencia/reportes-de-economia/re-grow-dashboard/.
women, and the expansion of support centers for the application process, among others.38

Another initiative that mentions the strengthening of farming practices is the —Lifeline Mitigation Program, which was created to boost mitigation efforts through the development of a series of projects to foment investment on the improvement of lifelines, such as communication towers, hospitals, private transportation infrastructure, agriculture, etc. Among the Program’s objectives, the CDBG–MIT Action Plan includes the support of “food security through infrastructure for the agriculture and livestock industry that facilitates the development and farming of autochthonous crops that are resilient to disasters and important in satisfying the necessities of food distribution at a local level.”39 The Department must establish guides to define the course of action that it will take in times of disasters and the ways in which it will foster mechanisms of adequate access and accountability for our archipelago’s farmers.

**Dignified Housing Demands Accessible Essential Services**

The collapse and privatization of essential services after disasters are not accidental. Nor is it accidental that groups, entities, and communities identify energy and water as areas of struggle to guarantee their right to remain in their spaces. There is no dignified housing without access to energy, drinking water, and appropriate sewage and sanitation.

The vulnerability and precarity of Puerto Rico’s energy system became more than evident in the aftermath of hurricanes Irma and Maria. Our archipelago was left in the dark. The lack of electricity was one of the main causes of deaths after Maria.40 When the hurricanes hit, the power system was fragile and antiquated due to lack of necessary maintenance, as well as inadequate planning and administration.41 The devastation of the country’s power system showed the urgency of evaluating alternatives that reduce our dependency on the burning of fossil fuels for the production of energy, a very expensive and highly contaminating process.42 At present, 97% of Puerto Rico’s energy is produced with derivatives of petroleum, carbon, and natural gas, all of which are direct contributors to climate change and causes for degrading health for people who are exposed to their emissions. Although some sectors believe privatization is the solution for improving the system, we know that over 30% of Puerto Rico’s electricity generation is, indeed, already private, through corporations such as AES and EcoEléctrica.43 Energy transmission is also in private hands now, with the recent imposition of the LUMA Energy corporation.

The privatization of essential services is another

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38 Metro Puerto Rico, Panen en marcha mejoras al programa de ayuda “Re-Grow Puerto Rico”, metro.pr, (May 11, 2021), https://www.metro.pr/pr/noticias/2021/05/11/panen-en-marcha-mejoras-al-programa-de-ayuda-re-grow-puerto-rico.html?fbclid=IwAR0ZyR502NWwghoKQgDSldidQdUhxHCZoONdALofCzV_7TGC2SO9h0DU

39 CDBG–MIT Action Plan, on page 397


In terms of safe drinking water and adequate sanitation and sewage systems, Puerto Rico confronts serious problems, especially with water quality and management. Over 58% of the water produced by Puerto Rico’s Water and Sewer Authority (Autoridad de Acueductos y Alcantarillados – AAA) is not recorded, mainly due to leaks and seepages in the distribution system. More than half of the population lacks a proper sewage system. In May 2017, a report revealed that the water supplied to 99.5% of Puerto Rico’s population came from aqueduct systems that did not comply with the standards of the Safe Drinking Water federal law. Furthermore, it is estimated that there are around 247 county aqueduct systems (acueductos comunitarios) in Puerto Rico operating outside of the AAA network, and that most of them were severely affected after the 2017 hurricanes. Nearly 100,000 individuals consume water from these aqueducts.

In the aftermath of hurricane Maria, almost half of the population served by AAA was left without water. Finding water—even for people with enough economic resources to buy it—became an immense challenge. Some were forced to resort to insecure sources of water, such as rivers, streams, and even water wells that had been closed due to contamination. As the system’s reestablishment was underway, access to drinking water reflected a clear division. A month after the hurricane, 80% of residents in the metropolitan area of San Juan had drinking water service, while only 45% of residents in the western region and 32% in the northern region had it.

Hurricane Maria had severe and long-term impacts on the water and sanitation infrastructure. AAA estimates that the improvements ests

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47 INESI, Community Aqueducts (Acueductos Comunitarios). Available at: https://inesi.upr.edu/acueductos-comunitarios/


required for the system to return to its state prior to Maria would cost approximately $769 million.\textsuperscript{51} Likewise, the 2017 hurricane season showed that our hydric system is not resilient to atmospheric events. This will only worsen as the climate crisis deepens. We should remember that even before the hurricanes Irma and Maria, Puerto Rico was experiencing a serious period of drought that had already adversely impacted agriculture and threatened the availability of drinking water.

The CDBG funds offer the possibility of repairing the damages, and even to improve the country’s energy and hydric systems. Among the CDBG funds, those related to mitigation seem to address more closely the needs associated with our water and energy systems. At the scale of individual housing, among the mitigation programs, the Community Energy and Water Resilience Installations Program (CEWRI) contemplated the strengthening of the power network through the installation of a system of solar panels and reserve batteries for critical electrical charges, as well as systems of water storage, among other measures. However, only individuals with a pending application to the R3 Program, the Social Interest Housing Program, or the Small Business Incubators and Accelerators Program, are eligible. Because the CEWRI has a complementary role with respect to the other existing housing programs, a person who resides in a single-family home and who did not apply to one of the assistance programs with CDBG-funds, will not be able to apply for CEWRI assistance.

The Lifeline Mitigation Program makes available up to $100 million to government entities, non-profit organizations, and private companies that will be part of the public-private alliances for vital lines projects. Lifelines refer to structures and services that are essential to address post-disaster needs. These lines include transportation, energy, communications, water and residual waters, food, health and medications, solid waste, security and protection. In terms of energy, this program promotes “large scale investments in projects of renewable energy that capitalize on Puerto Rico’s natural resources and reduce the dependence on fossil fuels to produce energy.” It also seeks to “strengthen, modernize, replace, or build water/residual waters infrastructure that can resist high-risk dangerous activities that threaten the stability of resources in a disaster.”\textsuperscript{52}

Finally, we highlight the most recent allocation of CDBG-DR funds that precisely addresses the country’s power system. On June 22, 2021, HUD published a Notice of Allocation concerning the approximately $1.9 billion that had been reserved for the electrical system. These funds must be used to repair or improve the electrical infrastructure.

This historical conjuncture could make viable our transition to another systemic model, financed, in part, by funds destined to the country’s recovery. Public policy, in principle, already establishes the basis for such transition in terms of energy. Puerto Rico’s Energy Public Policy Law, enacted two years after the hurricanes, stipulates that, in 2025, Puerto Rico should generate 40% of its energy from renewable sources, and that, in 2050, 100% of its production of energy should come from renewables.\textsuperscript{53} The achievement of such a goal, however, hinges on the prioritization of adequate alternatives, both in terms of scale and investment, to ensure the power system’s

\textsuperscript{51} PRASA, Strategic Plan 2020–2025, on page 11. Available at: https://www.acueductospr.com/documents/20142/0/PRASA+Strategic+Plan+2020–2025.pdf/10be96d7-e44f-1af7-7d6a-eefac8daa6c?1=1608758718246.

\textsuperscript{52} CDBG–MIT Action Plan, on page 397.

\textsuperscript{53} Ley de Política Pública Energética de Puerto Rico, Ley Núm. 17 de 11 de abril de 2019, 22 LPRA 56 1141–1141r.
just transition to a less polluting and much more resilient one. Likewise, faced with the hydric system’s fragility and insecurity, it is imperative that recovery funds allocated to it are used adequately and urgently. Strategies to address the necessary changes in this system could be implemented at different scales, according to the needs of participants, to installations on individual homes, and to resilient communitarian installations.

Puerto Rico for Sale

There is no land justice if the soil is sold without control or oversight. In advancing and favoring private investment, the State has failed to assume its responsibility to ensure the enjoyment of dignified housing to all individuals residing in Puerto Rico. These public policies that administer Puerto Rico as though it were an open business, promote speculation on land and displaces people, families, and communities. To private investment practices with no accountability, we must add other related ills, such as gentrification, rent increases, a high number of evictions, the real estate bubble, the impossibility of buying and selling property, and the rise in the cost of life for Puerto Rico residents.

An example of this is the designation of 98% of the archipelago as “opportunity zones.” An opportunity zone is a census–determined sector designated as a low-income community over which investment is promoted by announcing preferential tax treatment. Since a great number of people in Puerto Rico experience limited economic levels —44.5% of the population lives in poverty—, impoverished and affluent sectors have been equally designated as opportunity zones. Moreover, in contrast to the situation in other countries, where impoverished communities are more markedly segregated in geographical terms, in Puerto Rico, many of these communities are found between, or near, high income sectors. This means that the room of investment and speculation on land is almost absolute.

The scheme allows investors to enjoy multiple tax exemptions and credits, both on a federal and state level, with minimal monitoring. They are not required to register their opportunity funds—which refers to a society or corporation solely created to invest on opportunity zones— or to solicit the decrees issued by the Department of Economic and Commercial Development (DDEC, in its Spanish acronym). They also have access to quick processes of permits approval, which has a direct, adverse impact on environmental protections and public participation. Thus, they indisputably receive preferential treatment over community investors or small businesses. Some of the very few limitations these sectors experience have to do with ensuring that the projects proposed are proprietary. According to the Incentives Code, this includes development activities for the sale or rental of: (1) affordable housing, (2) properties

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54 Department of Economic and Commercial Development (Departamento de Desarrollo Económico y Comercio), Opportunity Zones. Available at: https://www.ddec.pr.gov/zzonas-de-opportunidad/.


56 Red State Data Center of Puerto Rico (SDC-PR), In poverty 50% or more of the population in 36 Puerto Rico municipalities (En pobreza el 50% o más de la población en 36 municipios de Puerto Rico), Statistical Institute of Puerto Rico (December 19, 2019), https://censo.estadisticas.pr/Comunicado-de-prensa/2019-12-19t145558.
for residential or commercial use, (3) properties for industrial use, and (4) substantial upgrades to existing projects for commercial use.\textsuperscript{57}

Recently, the DDEC Secretary, Manuel Cidre Miranda, explained that, although these kinds of investments were expected to generate close to $600 million in new jobs and income, they had so far only produced close to $33 million.\textsuperscript{58} For Cidre, “opportunity zones are the investors’ IRAs,” though the savings account for these investors’ retirement feeds off the displacement of communities.

The Opportunity Zones Program has been described as unique, promoting economic growth, contributing to Puerto Rico’s socioeconomic recovery, and fostering the positive diversification and transformation of the communities it will affect.\textsuperscript{59} However, the government does not have enough information, nor the necessary accountability indicators, to anticipate such lofty achievements. To judge from the multiple controversies surrounding the Program’s implementation, the resulting scenario advertised by the State will not be the case. When comparing this tax benefit program with others that have already been launched—such as the tax incentives from Laws 20 and 22, respectively—,\textsuperscript{60} it is clear that this Program will only further the conversion of the country into a fiscal paradise for millionaires, with no place for the Puerto Rican people who actually inhabit it. Such panorama—community displacement, continuing increase in property costs, and speculation—has already been registered in other jurisdictions.

The Opportunity Zones Program established no requirement to force investments on projects that, effectively, assist low-income communities.\textsuperscript{61} Other jurisdictions have warned that a vague definition of a low-income community implies that many opportunity zones include areas of quick development, which are in themselves attractive for investors due to their rate of return.\textsuperscript{62} This has caused a gradual disappearance of affordable housing in those areas.\textsuperscript{63} The framework of Puerto Rico’s reconstruction and recovery is built upon the premise that communities, and especially those that do not reproduce the fiscal paradise image that our archipelago is presumed to be, can be excluded. It is assumed that such communities occupy spaces that might be exploited for many other industries and that, because their permanence is not profitable, then it is inadmissible. Under the pretext of reconstruction, the creation of a Puerto Rico without its impoverished populations—almost half of its residents, as we have seen—is shaping up.

\textsuperscript{57} Puerto Rico Incentive Code (Código de Incentivos de Puerto Rico), Ley Núm. 60-2019, 13 LPRA secs. 45001 et seq.


\textsuperscript{59} Supra on note 33.

\textsuperscript{60} The IRS is currently investigating beneficiaries from Law 22 decrees, as serious questions were raised concerning the incentive’s granting and use. See Antonio Gómez, Coapaera el DDEC con pesquisa que desarrolla el IRS sobre decretos de Ley 22, noticel.com, February 16, 2021, https://www.noti- cel.com/gobierno/ahora/top-stories/20210216/coapaera-el-ddec-con-pesquisa-que-desarrolla-el-irs-sobre-decretos-de-ley-22/. See, also, Contributor, CPI Investigates: Puerto Rico Act 22 tax incentive fails, newsismybusiness.com, June 25, 2021, https://newsismybusiness.com/cpi-investiga- tion-puerto-rico-act-22-tax-incentive-fails/.


\textsuperscript{63} Id.
Calls to Action

Land justice implies recognizing and addressing inequalities in relation to land as property and to the social, racial, and economic struggles associated with it. In the specific circumstance of a country ravaged by multiple natural disasters, land justice implies returning their agency to communities so that they can actively participate in the recovery and reconstruction processes taking place in their spaces.

1. **Food justice:** It is urgent that we incentivize local agricultural production, while respecting the knowledge, traditions, desires, and needs of farmers. This includes promoting that small scale farming enterprises have ample access to financial and technical assistance; reserving funds for low-income farmers; and avoiding the displacement of local farms.

2. **Effective essential services:** Recovery funds can be directed toward community-based collective solutions and public administration to give a strong impulse to the power transition to renewable sources. Moreover, we must modernize our drinking and sanitation systems, prioritizing their accessibility and affordability, as much as the safety and reliability of the infrastructure for all communities, as we anticipate greater pressure on this precious resource due to climate change.

3. **Register of assets, needs, and desires:** Those who live in any given space must have access to means of participation and incidence from where to amplify their socioeconomic development needs and priorities. The market—including foreign investors—cannot dictate urban planning and the way in which people will live in their spaces.

4. **Restraints, accountability, and participation against speculation:** Housing speculation is real and sponsored by the tax benefits offered by the government. These tax benefit programs, which result in housing projects and the development of businesses in communities historically rendered vulnerable, are executed without a concrete analysis of their effects. Such model has proven to be ineffective. Community participation is essential in all stages of planning and implementation. If not, real estate speculation is fostered, and gentrification, community displacement, and lesser access to housing are promoted. Moreover, the planning of these projects must include a strong accountability component.

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Climate Justice

Climate change is a slowly developing disaster and a propulsor of other disasters. It affects and will continue to affect people’s lives around the world on the short-, medium-, and long-term. In our archipelago, specifically, changes in climate will be reflected in temperature rises, loss of coastal land, reduction and change in rain patterns—which impact water supply both for residential and agricultural use— and, of course, increase and prevalence of more intense and rapidly-developing hurricanes.

Our recent experience with hurricanes Irma and Maria showed us that the expansion and change of susceptible and at-risk zones expose a great part of the population to losing their lives and housing. Here, the relationship between disasters and previous inequalities is evident. The climate crisis does not affect everyone the same way, and even more so when it comes to its impact on fundamental rights, such as housing.
Disaster survivors are exposed to exclusions that deprive them from getting assistance to repair their homes. Living in an at-risk zone, having an informal title, or a mortgage in a zone designated as dangerous, activates dispositions that deny people assistance, including that of relocation with the help of recovery funds. When the latter is allowed, because the person has or can obtain a formal property title, for instance, mitigation is not seriously considered. This process ignores various essential issues: the impact that such relocation will have on the communities’ social fabric; the very possibility of finding an alternate and adequate home; and the fact that this forced displacement rarely maintains an insecure area uninhabited. Despite all this, the prevailing policies force displacement as the only “safe alternative” for impoverished groups.

In contrast, when it comes to affluent communities who live in flood or at-risk zones, State actions tend to ensure the preservation and permanence of such groups in their original places, maximizing mitigation possibilities regardless of their possible adverse effects on impoverished groups or the environment. Relocation, for people with money, is always a last resort.

For all these reasons, experts recognize the climate crisis as the greatest threat to human rights in the future. Climate justice is the response to said reality. The climate justice we aspire to considers the impact of climate change while addressing the social, economic, and racial inequalities that put people in vulnerable positions to begin with.

**CDBG–MIT Action Plan and Contemplated Strategies**

In our first and second reports, we identified mitigation measures as an affirmative response for a just recovery. We thought we had an opportunity to reconcile climate change with the right to housing using funds that would allow us to analyze risks, promote the participation of communities at risk of displacement, and offer safe homes. Our perspective has changed. Mitigation is important, but we need much more: commitment with the communities’ households and voices, agility in the reconstruction, an ample public policy to face climate change, and significant political will.

In 2020, we celebrated the news that HUD allocated $8.2 billion in mitigation funds (CDBG-MIT). These funds, in principle, seek to promote measures to reduce risks that might cause harm to life or property in a future event. Unlike the CDBG-DR funds, which sought to repair damages caused by the hurricanes, CDBG-MIT funds serve to develop measures that would enable us to be better prepared in the event of a future disaster. Among its related processes, the Department launched the website Puerto Rico Hazard and Risks (Portal de Riesgos para Puerto Rico), which summarizes its evaluation of what the agency considers the greatest risks confronted by the archipelago, with floods being the most pronounced.

On April 19, 2021, HUD approved the Mitigation Grant Program’s Action Plan for Mitigation in Puerto Rico with funds from the Community Development Block Grant for Mitigation (CDBG-MIT). Through this Action Plan, CDBG-MIT creates mitigation programs in four thematic areas: housing, infrastructure, economic development, and planning. These programs can have direct impacts on the short- and medium-term on the security and permanence of communities in their spaces. Additionally, the

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64 5 F.R. 4677 (January 27, 2020).

65 Supra on note 3.
process to make funds available for the repair and improvement of the power system was initiated. Below we summarize the status of the relevant mitigation and energy programs:

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<tr>
<th>Thematic Area</th>
<th>Program(s)</th>
<th>Status</th>
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<tbody>
<tr>
<td>Housing (CDBG-MIT)</td>
<td>Single Family Housing Mitigation Program</td>
<td>Action Plan</td>
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<td></td>
<td>Social Interest Housing Mitigation Program</td>
<td>Action Plan</td>
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<td>Multi-Sector Community Housing Program</td>
<td>Action Plan</td>
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<tr>
<td>Infrastructure (CDBG-MIT)</td>
<td>Infrastructure Mitigation Program</td>
<td>Action Plan</td>
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<td>Economy (CDBG-MIT)</td>
<td>Lifeline Mitigation Program</td>
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<td></td>
<td>Community Energy and Water Resilience Installations Program (CEWRI)</td>
<td>Program Guide</td>
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<tr>
<td>Energy (CDBG-DR)</td>
<td>$1.9 billion allocation for power system</td>
<td>Allocation Notice</td>
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There are three main programs concerned with mitigation and housing. First, the Social Interest Housing Mitigation Program considers disaster risk factors that transcend geophysical ones. This program finances the construction or substantial rehabilitation of multifamily unit buildings that serve socially vulnerable populations. The latter refers to individuals without homes, older folks, domestic violence survivors, individuals with intellectual, physical, or developmental diversity, people who live with HIV/AIDS, those who are recovering from addiction, and individuals with other functional or access needs.

On its part, the Single-Family Housing Mitigation Program focuses on addressing individual housing needs in at-risk areas, prioritizing R3 Program participants who are only eligible for relocation, which, through buying or buyout, constitutes a mitigation alternative in this Program. Although mitigation though infrastructure might be a mechanism to make communities safe, it is unclear from the CDBG-MIT Action Plan how this goal will be achieved. Addressed to government entities and NGOs, this Program will finance mitigation infrastructure projects with up to $100 million. These projects must be considered viable in accordance with the cost–benefit analysis adopted by the Department. The CDBG-MIT Action Plan is unclear in establishing how these projects will be incorporated to the R3 Program, particularly in the case of people in at-risk zones who might be displaced. However, the Plan highlights that R3, the Citizen Advisory Committee, and applicants will be part of a planning process to “identify projects and discuss” alternatives that minimize the displacement of the Single-Family Hous-
ing Programs’ participants.\textsuperscript{66} This Program also includes a reserve of $1,000 million as matching funds for the Hazard Mitigation Grant Program (HMGP) program.\textsuperscript{67}

Only one of the programs contemplates mitigation as a community process with all its components: the Multi-Sector Community Program. In this Program, the Department, finally, recognizes that displacement is usually a collective issue, “consider[ing] the mitigation needs that families who live in at-risk zones have, but from an integral community perspective, to minimize the impact of risk-reduction activities that, otherwise, would displace individuals or would alter life in the communities.”\textsuperscript{68} Under this Program, a community can evaluate its mitigation alternatives on a communitarian scale, including collective relocation of households, businesses, and similar enterprises in the community.

However, this Program is extremely limited, as it seems to apply only to displacements caused by mitigation activities. Moreover, the Program has been assigned $300 million, allowing a maximum allocation of $100 million per community. This suggests that the Program is available only for a few communities facing displacement because of the implementation of other mitigation measures, such as infrastructure projects. In this sense, it is unsurprising that $50 million were reserved for the Caño Martín Peña communities, whose residents might be displaced by one of the most ambitious mitigation projects in Puerto Rico, that is, dredging the Caño.

Mitigation As a Necessary, But Insufficient, Element

Mitigation could and should be a viable alternative to forced displacements. In recent years, we have insisted that, if used well, the CDBG-MIT funds could aid in turning housing and common spaces more resilient to natural events, such as hurricanes or earthquakes, and even to climate change. Mitigation measures, especially those based on nature, could allow people to remain in their communities, which, thus, also become safer. We alerted, however, that this was only possible if said measures were adjusted to the needs and wishes of affected communities. More than a year after the Notice of Allocation for the CDBG-MIT funds, and with the Action Plan approved, it has become clear that, for the government, the main mitigation strategy—and to address flood risks in particular—is relocation.

Within the spectrum of adaptation and mitigation possibilities, relocation of people and communities is a strategy frequently considered when confronting threats such as climate change. The concept of planned or managed retreat refers to “the purposeful, coordinated movement of people and assets out of harm’s way,”\textsuperscript{69} and is more frequently applied on coastal areas. This is different to what the Department is proposing. The agency insists on an individual process, performed and undergone in patches, that does not address the community as an integrated whole. This kind of individual process does not work as a mitigation measure in the context of climate change.\textsuperscript{70}

Once again, we call attention to the fact that the government continues to authorize new constructions, expanding the built-up footprint in zones prone to flooding and near the coasts.

\textsuperscript{66} Plan de Acción CDBG–MIT, en la pág. 364.

\textsuperscript{67} CDBG–MIT Action Plan, on page 360.

\textsuperscript{68} CDBG–MIT Action Plan, on page 390.

\textsuperscript{69} John Carey, Core Concept: Managed retreat increasingly seen as necessary in response to climate change’s fury, PNAS (June 16, 2020). Available at: https://www.pnas.org/content/117/24/13162.

\textsuperscript{70} Id.
The government is even willing to finance such constructions. These actions are incompatible with adapting to climate change, protecting people, nature, and public resources, managed retreat, or even displacement as a possible mitigation measure. The moratorium on the expansion of the built-up footprint cannot be put off.

There is no contradiction in claiming the right of people to remain in at-risk zones and in opposing other, new constructions. This is so, first, because constructions in at-risk zones affect and transform the behavior of runoffs and erosion, to the point of expanding the built-up footprint on the coastal zone, and/or on flood zones, which puts more people at risk. This is not necessarily the case with reconstructions of homes damaged by disasters, since their footprint does not necessarily change with reconstruction. Second, we need to recognize and distinguish the socioeconomic reasons that have historically led certain populations to insecure areas, as well as the mobility of individuals whose main home is in such areas. Finally, the relocation process designed in the context of recovery is discriminatory because it does not respond to a unified evacuation plan of an at-risk area, but rather, to the exclusive fact that the person in the at-risk area needs help to recover from a disaster.

We are still waiting for a national plan to address climate change impacts from and for people in the archipelago who have been rendered vulnerable. This is an integral part of a strategy for minimizing displacements with a human rights perspective.

### Calls to Action

1. **We need a policy of minimizing displacements:** The right to dignified housing includes choosing where one lives without experiencing unnecessary interferences on the part of the State. Only when there is no better alternative, could one justify that the government interferes with the right to housing, fomenting the displacement of individuals and families. The climate crisis, which is a threat at a global scale, challenges us to address this human right demand in a changing world. We need to adopt measures that minimize displacements in a participatory way, which consider viable adaptation and mitigation measures before displacing a community due to climate change impacts.

2. **The government must adopt a comprehensive action plan to minimize the onslaught of the climate crisis:** Housing, as well as access to fundamental services and rights, such as water and sewage, food, work, and health, is intimately linked to the inhabited space and to the impact that climate changes may have. The climate crisis intensifies conflicts over the uses of land, which require us to accommodate, in our limited territorial extension, spaces for housing needs, as well as for food, water, and resource conservation necessities. It is urgent that we immediately stop new constructions that only expand the built-up footprint in zones that are vulnerable to climate change impacts, while we reevaluate the action plan for at-risk zones.

3. **We need a climate crisis national plan:** This plan must be produced with real and effective

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71 What is more, the Social Interest Housing Program allows for new constructions on flood zones if mitigation measures are implemented. Housing Department, Guidelines for the CDBG-DR Program: Social Interest Housing Program, Sec 9.6, on page 26. (“Projects located on a Special Flood Hazard Area (SFHA) (also known as 100-year alluvial plain) that receive assistance from the CDBG-DR Program must obtain and maintain a flood insurance for the amount and duration indicated on the FEMA National Flood Insurance Program”). See: https://cdbg-dr.pr.gov/download/programa-de-vivienda-social-ordinaria/162653819510&filename=SOCIAL%20INTEREST%20HOUSING%20PROGRAM%20PROGRAM%20GUIDELINES%20(ES)%20(V2).pdf?wpdmdl=6540&refresh=60f8f99e14751626929558.

72 See, Guidelines for the R3 Program, on page 49, which indicates that houses will be reconstructed on the same footprint. Moreover, the Rules and Regulations allow for reconstructions even on the main channel of a body of water, so long as the structure is not expanded. See, Rules and Regulations on Special Hazard Areas or Special Flood Hazard Areas (Reglamento sobre Áreas Especiales de Peligro a Inundación), (Reglamento de Planificación Núm. 13), Regulation 9268, January 9, 2010 (Approved by Junta de Planificación), Sec. 6.01.
citizen participation, to evaluate and develop possible strategies that enable us to live in the country within this new reality. The plan should include adequate and accessible measures to reduce greenhouse gas emissions, such as roof solar energy. It should also promote and facilitate practices to ensure that communities can benefit from such measures. Likewise, the plan should require the adoption of satisfactory measures to adapt to the effects of climate change, guaranteeing adequate life standards for the entire population.

Toward the Future

Four years of disasters have painfully revealed the government’s incapacity to respond to moments of crisis. Corruption, mismanagement of disaster assistance and supplies, delays in the disbursement of assistance funds, imposition of obstacles both at the federal and local levels, criminalization of surviving populations, and poor oversight and monitoring of those who benefit materially from such processes are some of the ways in which such incapacity mani-

recovery is a transitory process that should direct us to a safer and more resilient Puerto Rico, it has been treated as a period of stagnation in which impoverished communities have been forgotten. The acts of writing, reading, and sharing this Third Report Toward a Just Recovery have as their main objective to center the conversation around the lives of these surviving families, who still wait for a safe roof over their heads. Moreover, we seek to name and denounce the paths through which critical funds are lost to enact housing, land, and climate justice.

The work of legal empowerment toward the future seeks answers and concrete actions through education, legal assistance, and social impact advocacy. It is, also, a way to demand accountability and fair account settling. From this space, those of us who constitute Ayuda Legal Puerto Rico, continue demanding action from the local government, which holds the primary responsibility to its people and the power to transform public policies, and, thus, to ensure a just and equitable future for our archipelago.
01. housing justice

Housing justice means exercising the right to a home. Dignified housing includes the right to safe, adequate, accessible, and affordable structures, as much as access to a healthy social fabric.

02. climate justice

Climate justice is the recognition, in political terms, that climate change is not caused by, nor does it equally affect, everyone. Climate justice is the demand to take affirmative, concrete steps to contain a climate crisis that impacts the population unequally. This is only possible while paying attention to the needs, desires, and human rights of individuals and communities who experience the adverse effects of a changing climate more acutely.

03. land justice

The right to establish yourself in a space that allows you to responsibly enjoy and use the land and its resources. It is the basis for housing access, food security, and the sustainable development of communities.

04. just recovery

This is the right that people have for a recovery processes that addresses their needs, desires, and human rights.
05. **forced displacements**

To make individuals, families, or communities abandon a space involuntarily, be it temporarily or permanently, without a just cause, effective participation, and/or consideration of alternatives that would protect people’s needs, as well as their social or community fabric.

06. **opportunity zones**

Areas that contain economically depressed communities, which can be included in tax benefit schemes with the purpose of promoting investment.

07. **climate change**

Variations in climate patterns caused by human activity. Such changes surpass the natural viability.

08. **mitigation**

Actions that increase resiliency to disasters and that, by reducing the impact of future disasters, also decrease or eliminate the long-term risks of losing lives and of experiencing significant damage— or loss— of property.
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