



**AYUDA
LEGAL**
PUERTO RICO



**AYUDA LEGAL PR
RECUPERACIÓN
JUSTA**

Fourth Annual Report for a
Just Recovery



**THE STRUGGLE AGAINST
DISPLACEMENT BY DESIGN**

September 2022



This work was created by *Ayuda Legal Puerto Rico* to promote just recovery and dignified housing in Puerto Rico. It can be freely shared without modification, giving credit to the organization. It cannot be used for profit.

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01.

INTRODUCTION

Puerto Rico is facing a model of displacement by design.

As we approach Hurricane Maria's fifth anniversary, Puerto Rico's impoverished populations still live closely with the social and economic devastation left in the wake of the disaster. Austerity policies, as well as the government's incapacity to recognize and respond to the crisis, frame years of hurricanes, earthquakes, floods, and a pandemic. **The challenge today is staying on our islands. The main threat is displacement by design.**

Over the last five years, the government closed over four hundred schools.¹ Creditors and the government agreed on a restructuring of the public debt with few guarantees for pensioners. The government has slashed essential services becoming increasingly precarious. The distribution and transmission service of the Puerto Rico Power Authority was privatized; in less than a year, seven energy bill increases have been approved at the hands of LUMA Energy;² and we experienced an 8.6% inflation that aggressively affects the country's food security.³ While the government celebrates a historic decrease in unemployment rates, the reality of small and big businesses lacking manpower,

¹ Over the course of the first two years of Julia Keleher as Secretary of Education, she ordered the closure of 438 schools. See Laura M. Quintero, *El cierre de sobre 600 escuelas públicas no ha resultado en un ahorro para el gobierno (The Closure of over 600 Schools Has Not Resulted in Savings for the Government)*, *elnuevodia.com* (September 2, 2020), available at: <https://www.elnuevodia.com/noticias/gobierno/notas/el-cierre-de-sobre-600-escuelas-publicas-no-ha-resultado-en-un-ahorro-para-el-gobierno/>.

² *El Negociado de Energía aprueba el séptimo aumento consecutivo a la factura de la luz (The Energy Bureau Approves the Seventh Consecutive Increase in the Electricity Bill)* *elnuevodia.com* (June 29, 2022), available at: <https://www.elnuevodia.com/noticias/gobierno/notas/el-negociado-de-energia-aprueba-el-septimo-aumento-consecutivo-a-la-factura-de-la-luz/>.

³ This represents an increase of .3% in a month. See AP, *Inflación en Estados Unidos llega a 8.6%, lo más alto desde el 1981 (Inflation in the United States Reaches 8.6%, the Highest since 1981)*, *metro.pr* (June 10, 2022), available at: <https://www.metro.pr/noticias/2022/06/10/inflacion-en-estados-unidos-llega-a-86-lo-mas-alto-desde-el-1981/>.

as well as the scarcity of quality jobs, aggravates the employment crisis in Puerto Rico.⁴ Over the last ten years, we have experienced the drain of almost half of our medical professionals across all fields, who abandon the country mainly because insurance companies are doing business at the expense of people's health in total impunity.

The sustained population decrease speaks for itself. Out of 3.4 million people living in Puerto Rico in 2017, the estimates for 2021 closed at 3.263 million.⁵ The population that remains is more vulnerable. From 18% of the population over 65 in 2017, in 2021 this average rose to 21.3%. In similar fashion, and while the number of children decreased in Puerto Rico during the past years, the economic insecurity of the 65+ population and their family units remained the same.⁶

Multimillion dollar fund allocations for the recovery do not overcome the local government's incapacity to respond with agility, efficiency, and perspective to the needs of families that survive disasters. As we reflect in this report, the slow disbursement of assistance reveals a more acute crisis tied to lack of transparency and oversight. The intermittent blue tarps' crisis –which we named thus due to the public officials' erratic interest in responding to it– is a symptom of said reality. The impact on surviving families takes place at several levels: the impossibility of obtaining a safe roof, the confrontation with a predatory and unregulated housing market, and the practice of relocation without effective participation or planning.

The displacement by design is made to order by government agencies and through policies that profit specific sectors.

Disaster capitalism in Puerto Rico does not originate with Hurricane Maria, but rather, with the unsustainable public debt debacle contracted by the government. Alongside policies to incentivize foreign investment and speculation over real estate and infrastructure, the lack of oversight by the government, as well as



⁴ Departamento del Trabajo y Recursos Humanos, Empleo y Desempleo en Puerto Rico: Encuesta del Grupo Trabajador (Department of Labor and Human Resources; Employment and Unemployment in Puerto Rico: Working Group Survey), (May 2022), available at: <https://www.mercadolab-oral.pr.gov/lmi/pdf/Default/G-rupo%20Trabajador/EMPLEO%20Y%20DESEMPLERO%20EN%20PUERTO%20RICO.pdf>.

⁵ Quick Facts, US Census, Puerto Rico Population Estimates, (July 1, 2021), available at: <https://www.census.gov/quickfacts/PR>.

⁶ For the period of 2015–2019, data estimates show that 52.5% of families with minors under 18 years of age were living in poverty. We recommend consulting the data published by the Instituto de Desarrollo de la Juventud (Institute for Youth Development), available at: <https://www.juventudpr.org>.

the implementation of essential services' privatization –from energy to reconstruction–, jeopardize equitable development and just recovery.

Without immediate action, and lacking safe and accessible housing, the risk of Puerto Rico's population increases when facing future disasters and the climate crisis with a greater level of inequality. None of the outcomes are unpredictable or inevitable.



In light of this, what do we ought to do?



At Ayuda Legal Puerto Rico, we know that taking on the defense of dignified housing and just recovery means defending the possibility of remaining in our country. We do it with the awareness that applying climate justice perspectives and practices to our work in defense of human rights is urgent. We position ourselves in defense of these rights while moved and invited by groups, organizations, and communities that, for decades, have actively made efforts towards and sustained campaigns for the rights to remain, rebuild, and participate in the struggle for just recovery and Puerto Rico's self-determination.

We devote this fourth report to the intersection between housing and climate justice, crucial elements to remain or return to this island space we call home.⁷ The report is composed of four sections. The first section offers an alternative design proposal, anchored in the rights to remain, and return from a human rights perspective. The second section offers an updated panorama on the use of federal recovery funds, particularly those assigned to CDBG-DR for Hurricanes Irma and Maria, CDBG-DR for the 2020 earthquakes, and the CDBG-MIT mitigation funds, among other aid packages. The third part, central to this report, addresses the right to remain in direct relation with the current housing situation in Puerto Rico and the impact of the climate crisis. Finally, a fourth and last section, considers specific public policy strategies promoted by **Ayuda Legal Puerto Rico** to guarantee our country's just recovery.



As usual, this report gathers analyses, recommendations, triumphs, and challenges in the processes associated with the practice of social impact advocacy that our organization promotes. Among these, we highlight as an achievement that the advocacy work and the creation of tools to promote equitable access to FEMA assistance for owners without formal property titles, as designed by Ayuda Legal Puerto Rico, recently became public policy for all jurisdictions in the United States. This initiative started while producing documents and public policy expressions, such as this report, we have shared in forums in Puerto Rico, the United States, and with international allies. **Advocacy works. We trust that our legal empowerment and support work will continue to result in transformations toward the country that we want and deserve.**

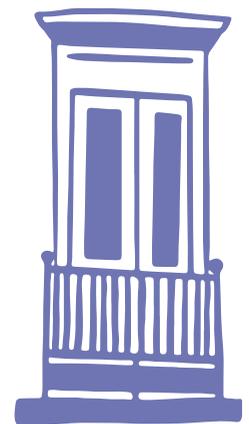
That is the path.

⁷ Interested parties may visit our institutional webpage to download the first three reports. See www.ayudalegal-puertorico.org/publicaciones.

02.

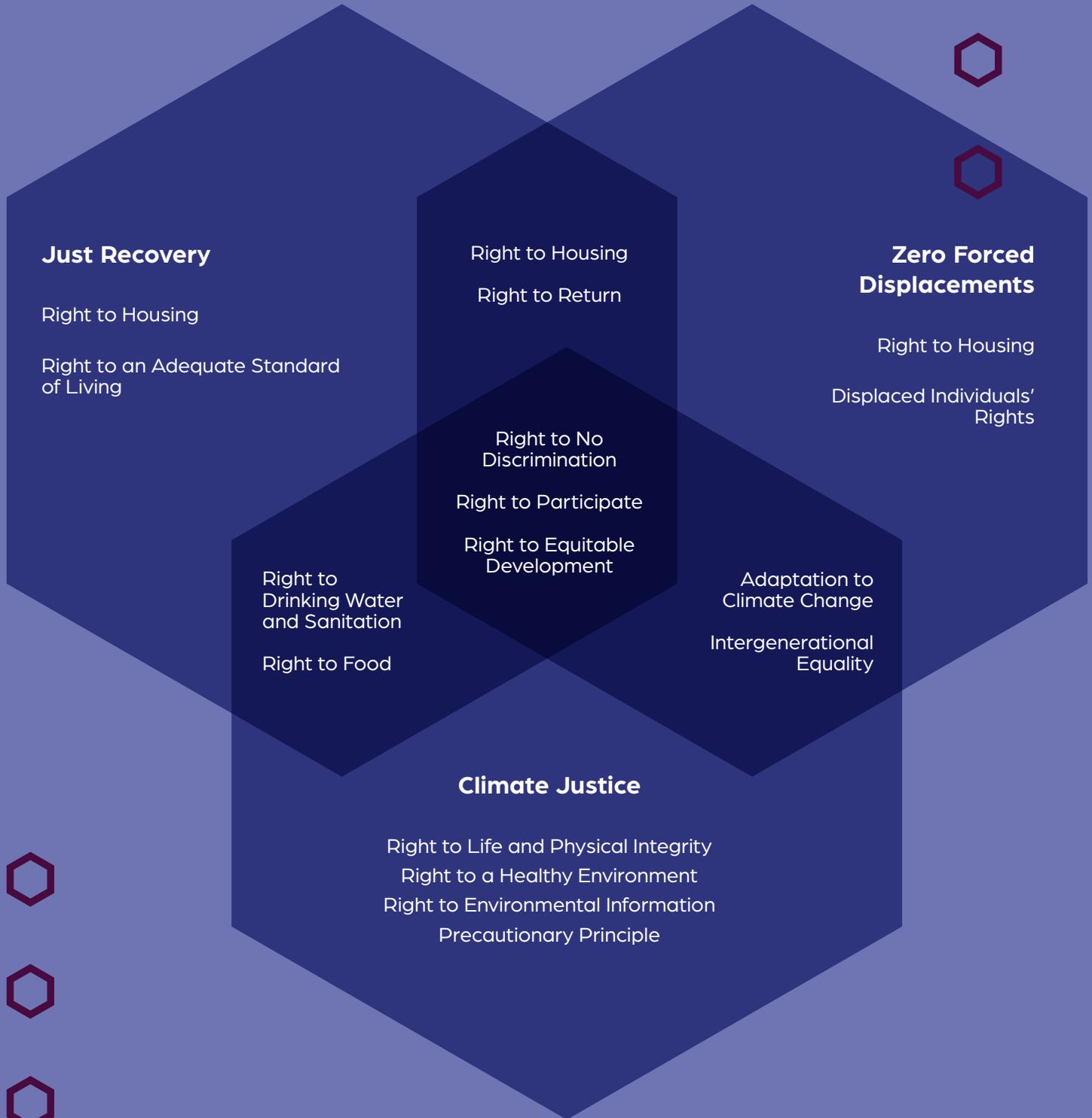
HUMAN RIGHTS ARE PART OF AN ALTERNATIVE DESIGN THAT ENSURES A JUST RECOVERY AND THE RIGHT TO REMAIN

We are advocates and defenders of human rights. **Ayuda Legal Puerto Rico** believes in and advocates for guarantees to a dignified life. For the last two years, through the Encuentro “**El Techo es un derecho**” (“**The Roof is a Right**” Gathering), we have come together with organizations and community groups with international impact to jointly understand how displacements can be resisted. **We are part of this global community that trusts human rights to be key factors in the design of strategies of denouncement, resistance, and struggle.** In this report, we include the conceptual map we designed on human rights, which shows the intersections between the guarantees to a dignified life, climate, and housing justice.



**GRINGO GO
HOME**

Human Rights Indicators



03.

STATUS REPORT



Just recovery is a process, not an event. In the case of Puerto Rico, five years after Maria, overseeing the recovery and mitigation process requires constant advocacy efforts. At **Ayuda Legal Puerto Rico** we continue to make progress on the objectives we set forth in 2017: equal access to recovery aid, the minimization of displacements, and the requirement of participation and accountability. **Taking stock thoroughly and clearly of the multiple disasters our country has experienced implies the intention of naming the crisis that has not ended, and which must be addressed without leaving anyone behind.**

Hurricanes Irma and Maria

The estimate of lives taken by Maria is over 3,000; and of significant damages to homes is 70,000.⁸ The Federal Emergency Management Agency (FEMA) received 1.1 million aid applications, and denied 58% of them, as well as 3 out of every 4 appeals.⁹ The average aid amount granted was \$2,812.¹⁰ To date,

⁸ Adriana de Jesús Salamán, *Cerca de 3,000 viviendas siguen con toldos azules en medio del paso de la tormenta Laura* (Close to 3K Homes Continue with Blue Tarps amid Storm Laura), Noticel (August 22, 2020), available at: <https://www.noticel.com/a-hora/20200822/cerca-de-3000-viviendas-siguen-con-toldos-azules-en-medio-del-paso-de-la-tormenta-laura/>.

⁹ Benjamín Torres Gotay, *Menos del 1% de los damnificados obtuvo la ayuda mayor de FEMA* (Less than 1% of Those Affected Obtained FEMA's Greatest Aid), El Nuevo Día (March 3, 2018), available at: <https://www.elnuevodia.com/noticias/locales/notas/menos-del-1-de-los-damnificados-obtuvo-la-ayuda-mayor-de-fema/>.

¹⁰ See Graph 2.

we have attended to scores of queries from people who are facing recoupment actions by FEMA for lack of formal property titles. These families who own housing and lack a formal property title, are unjustly rejected anew.¹¹ The scarce attention paid to these cases beyond our work at Ayuda Legal Puerto Rico aggravates the situation.

Recent analyses, such as the one we were able to conduct in collaboration with organizations like Texas AppleSeed, Home Coalition, and Fair Share Housing Center, among others, continue revealing the inequity in the aid approval process after Hurricane Maria.

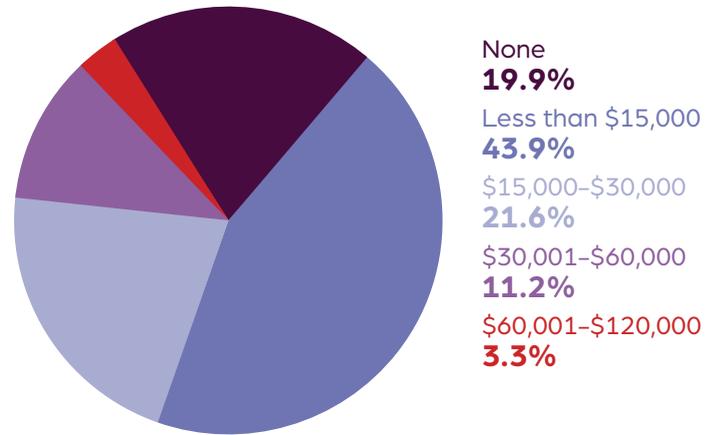
From said work, we highlight two important images here. The first graph shows the diversity of earnings in the process of applying to FEMA. Note that more than 60% of applicants are families with an annual income of less than \$15,000. In the second graph, representing the assistance assigned to family groups in relation to their annual income, we see how lower income groups received assistance comparable to that obtained by those with greater economic capacity. For example, in the no income group, the average assistance was \$1,274.43, while in the segments of \$15,000–\$30,000 and of \$120,000 or more, it was \$1,823.08 and \$1,215.47, respectively. Although in all cases the aid was insufficient, it is evident that the economic capacity of the first group to replace and repair personal property and housing was significantly more compromised than that of families with more resources.



¹¹ As we amply covered in previous reports, estimates show that FEMA denied around 70,000 families assistance to fix their homes. The language and instrument developed by Ayuda Legal Puerto Rico in 2018 for the agency to recognize the right of these families without formal property titles to receive assistance became, in 2021, an applicable rule to all United States jurisdictions. See Memorandum FEMA Amendment to FP 104-009-03, Individual Assistance Program and Policy Guide, Version 1.1: “Research indicates that where there are administrative burdens, they do not fall equally on all entities and individuals, leading to disproportionate underutilization of critical services and programs, as well as unequal costs of access, often by the people and communities that need them the most.” However, we continue attending to collection action cases by FEMA for lack of property titles.

Applicants by Level of Income as Approved by FEMA after Hurricane Maria

(Graph 1)



Assistance per Income as Approved by FEMA after Hurricane Maria

(Graph 2)



While FEMA is meant to be a first response after disasters, the Community Development Block Grants Program for Disaster Recovery in Puerto Rico (CD-BG-DR) is supposed to offer long-term recovery. The 9.7 billion dollars assigned to Puerto Rico and distributed through the local Housing Department (from now on, Department) were meant to prioritize housing, while strengthening infrastructure and economic development.

At Ayuda Legal Puerto Rico we support applicants and take on advocacy efforts related to the Repair, Reconstruction, and Relocation Program (henceforth, R3). After the failure of Tu Hogar Renace, R3 represented the last available resource for survivors without a roof. The program currently has a budget of \$2,945,280,619, an amount that the Department has been reducing from an original allocation that reached the sum

of \$3.2 billion.¹² Between July 31, 2019, and January 7, 2020 –closing date of the Program–, around 27,004 individuals and families applied to R3. Below, we offer an illustration showing the most important data of R3’s progress.

Data on Completed Repair and Reconstruction Projects

(Graph 3)



3,502 completed projects out of **17,330** active applications

2,715
completed
repairs

787
completed
reconstructions ¹³

The following graph illustrates the profile of applicants according to their vulnerability group. The data presents the number of applicants who are women, the total amount of applicants who are older adults, the number of applicants with disabilities, and the total amount of people who indicated having suffered significant damages or living under blue tarps. Out of the 27,004 applications, 67% were women. Elderly adults represent 58% of the applicants. Functionally diverse individuals represent 46% of applicants. Considering that there could be overlaps among these groups, elderly adults with disabilities make up 60% of the completed repairs and reconstructions projects, and 55% of achieved relocations. Only thirty percent of people who reported having suffered significant damages to their properties have seen their houses repair or rebuilt by the Program

¹² The Department reassigned R3 funds to other CDBG programs, including the CDBG-DR *Programa Brecha de los Créditos Contributivos de Vivienda por Ingresos Bajos* (Low-Income Housing Tax Gap Program), which received a greater allocation, and the *Programa de Reparación de Techos Azules* (Blue Roofs Repair Program), which was created through the 11th amendment to the CDBG-DR Action Plan.

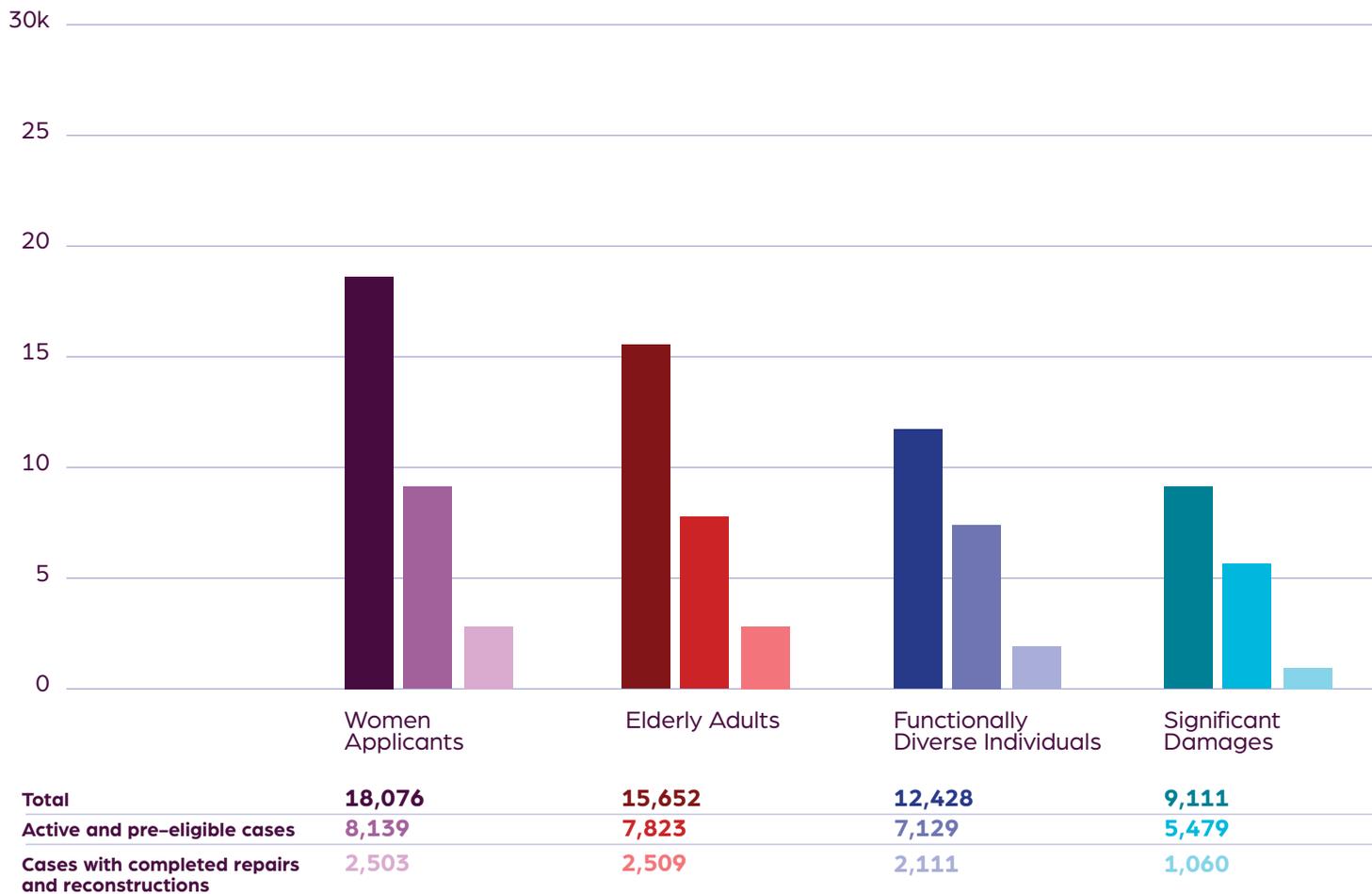
¹³ Letter of the CDBG-DR Division to Ayuda Legal Puerto Rico, Request for Public Information: Updated Data on the R3 Program to June 15, 2022. On file with Ayuda Legal Puerto Rico.

Profile of R3 Program Applicants

(Graph 4)



Profile of R3 Applicants Total: 27,004 applications



We want to give special attention to the issue of relocations. This alternative exists in the R3 program for people whose houses are in flood or landslide zones, and who have suffered damages that surpass 50% of their property value. **The program fails in attending to the need of establishing clear procedures, in addressing the scant availability of adequate and accessible housing, to enforce guidelines that prohibit discrimination against families with a purchase voucher, and to monitor the lack of housing inventory.** As a result, it is a long and tortuous process for the 2,109 families that have received relocation adjudications to date. Many simply cannot comply with the 180-days term –extendable only for the same amount of time– imposed by the Department for them to find a home.

The process, which we monitor closely, takes place very slowly. Although it recently started to move with more agility, we estimate that the Program is managing to relocate about twenty families per month. While we advocate for the approval of a local Fair Housing Law impeding discrimination against families that use income sources, such as R3 vouchers, to purchase a home, we insist on the Department's responsibility to make said housing inventory available and to advocate, at the Federal Housing Department (henceforth, HUD) level, for a flexibilization of the criteria to determine what structures are eligible under the program.



Data on Relocation under R3

(Graph 5)



Individuals who received a relocation voucher who have purchased a property

2,109
Relocation
Adjudications

116
Homes acquired with
relocation vouchers¹⁴

Although we celebrate the progress for families that finally obtained assistance, we recognize that obstacles have plagued the process with a greater impact on historically vulnerable groups, which are meant to be protected by antidiscrimination laws at the federal level. Transforming the R3 Program Guidelines, as well as others, has been a priority for us. We have had remark-

¹⁴ Letter from the CDBG-DR Legal Division to Ayuda Legal Puerto Rico, Request for Public Information: Updated Data on the R3 Program to June 15, 2022. On file with Ayuda Legal Puerto Rico.

able success, which allows speeding up the disbursement of assistance. In this report, we celebrate the eleventh amendment to the R3 Program Guidelines,¹⁵ which incorporated many of our recommendations concerning the management of applications and the equitable access for individuals without formal property titles. Reproducing an email that we sent to collaborators within and beyond Puerto Rico, we include below some of the victories of this new guide.¹⁶



¹⁵ Repair, Reconstruction, or Relocation Program Guidelines (v.11), February 8, 2022.

¹⁶ Email from Ayuda Legal Puerto Rico to subscribers, March 7, 2022.



CELEBRATING OUR VICTORIES!

New Changes to the R3 Program Guidelines Promote Equitable Access to Funds!

The publication of the most recent R3 Program Guidelines, subsidized with CDBG-DR funds, reiterates the importance of advocacy for just recovery. This document demonstrates **that we know how to win, and that continuing to demand transformation for the just Puerto Rico we want and deserve is urgent.**

1. Justice for families without formal property titles:¹⁷ Finally, the Department recognizes the proprietary interest of families that, despite not having a legal document crediting them as owners, are the owners of their homes. No longer must families wait months and years for the Department to credit their ownership or “perfect” their property title to be able to relocate and find a safe roof. As we repeatedly advised, this was never a requirement of the Federal Housing Department (HUD), nor of any federal law. While we celebrate this step, we denounce as arbitrary the long years that families have had to undergo living in precarity and with housing insecurity. The government of Puerto Rico always had this alternative available, and we brought it to its consideration more than once.

2. People with mortgages in affected houses have a right to just recovery: After two years fighting for the accessibility of people with mortgages, the Department finally approved our recommendation in simple and accessible language. In the Guidelines’ tenth version, the Program had already eliminated the absurd requirement and impossible mandate to solve the mortgage in 180 days. The recent changes are clear in stating that families with mortgages will have the option to relocate. If the house appraises at a value higher than the mortgage balance, the Department will contribute the difference without reducing the amount the family has a right to for relocation. If the appraisal is less than the mortgage owed, the person can use part of their voucher to pay it off and look for another house. When the applicant cannot pay off the mortgage, they can relocate title clearance program takes care of the property title issue.¹⁸

¹⁷ Sec. 13.4.2, p. 79, R3 Program Guidelines.

¹⁸ Sec. 13.4.1, pp. 77-78, R3 Program Guidelines.

3. R3 eliminated the absolute prohibition of rebuilding or relocating in a floodplain:

This means that individuals who had flood insurance at the time of the disaster and continue facing unmet needs, or families with an income that is less than 120% of the national average, will have the right to this assistance. Newly built houses must comply with resiliency parameters, including that of elevation. This is a victory for impoverished communities that would not have had the opportunity to relocate.

4. Recognition of the lack of accessible and adequate housing: With this in mind, the Department increased the maximum amount of the relocation voucher to \$200,000.

There is still work to do. The changes in the Guidelines favor relocation without allowing greater opportunities for mitigation, while the threat of recoupment actions against people with informal titles remains. The Guidelines also validate tools that community groups and municipalities have rejected or invalidated, as is the case with the FEMA flood maps. Likewise, the Program neglected the participation and importance of the communitarian social fabric, since the Guidelines' disposition is to approach assistance only at the individual, rather than the collective, level. We wonder whether the Department has considered the aggregated impact of relocations in particular municipalities, in fundamental decisions toward resiliency and economic development, such as the location of schools or health services, as well as in racial equality analyses concerning housing.



Finally, we cannot close this Status Report on the hurricanes without addressing the blue tarps. In July 2019, the official estimate was thirty thousand homes, but in August 2020, the number came down to 3,000, without an explanation or details on how the government achieved said drop. Afterwards, in April 2021, through the publication of the Community Development Block Grants for Mitigation Projects (CDBG-MIT), it became known that, in fact, the amount fluctuates between 15 and 18 thousand structures. More recently, on May 30, 2022, Governor Pedro Pierluisi divulged that the total amount of homes under blue tarps is 3,646.¹⁹ We question these numbers. The government's indifference concerning this topic is a great part of the reason. More than a year after the Blue Tarp Repair Program was approved, with a \$475 million dollar assignment in CDBG-DR funds, and the announcement of a program of the Office of Community Socio-Economic Development (ODSEC) to that effect, made operational in part by funds from the American Rescue Plan Act (ARPA), we still do not know the data about its results. In fact, the first of these programs has not even begun.



Earthquakes

The housing situation worsened with the earthquake sequence that began at the end of December 2019. The sequence significantly damaged over six hundred houses, while more than 40,000 people requested FEMA assistance. FEMA approved 14,239 individual aid applications, disbursing \$77 million in housing assistance and needs.²⁰ On January 6, 2021, HUD announced the availability of \$34 million dollars in CDBG-DR funds for assistance due to damages caused by the earthquakes, which at the time would only be available for residents of the municipalities of Guánica, Yauco, Guayanilla, and Ponce. The Department designed the Puerto Rico Disaster Recovery Action Plan for the use of CDBG-DR Funds in response to 2019-2020 Earthquakes, approved by HUD on September 23, 2021. The

¹⁹ Gloria Ruiz Kuilan, *Aún quedan 3,646 estructuras con toldos azules a casi cinco años del azote del huracán María* (There Are Still 2,646 Structures with Blue Tarps almost Five Years after Hurricane Maria Hit), *elnuevodia.com* (May 30, 2022), available at: <https://www.elnuevodia.com/noticias/gobierno/no-no-tas/aun-quedan-3646-estructuras-con-toldos-azules-a-casi-cinco-anos-del-azote-del-huracan-maria/?r=88939>.

²⁰ FEMA, Puerto Rico Earthquakes DR-4473-PR, <https://www.fema.gov/disaster/4473>.

Action Plan included the Seismic Rehabilitation and Reconstruction of Homes Program to help families whose houses suffered damages. On January 31, 2022, HUD increased the amount of funds to \$184 million to address the impact of the earthquakes and the storm Isaias.

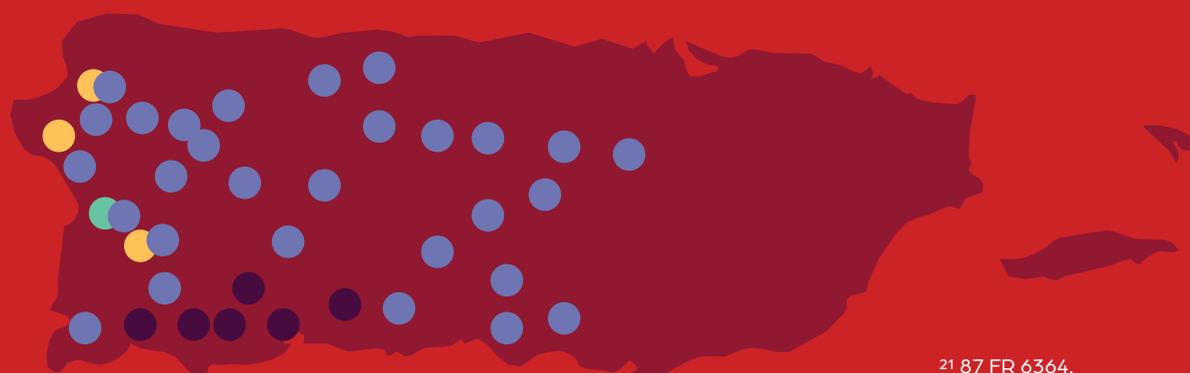
Furthermore, HUD allocated an additional \$29 million to mitigation activities or actions that “increase resiliency when faced by disasters and reduce or eliminate long term risk of loss of life, injuries, damages, and loss of property, suffering, and hardships, lessening the impact of future disasters.” In this notice, HUD also included the municipalities of Lajas and Peñuelas as the areas most impacted and distressed (MID) by earthquakes, and Mayagüez due to storm Isaias.²¹ At least 80% of the funds must be used in the MID-designated areas. In June 2022, HUD approved the Action Plan for Administrative Costs of the CDBG-DR Allocation for Earthquakes and Storms, which establishes administrative parameters for the use of nine million dollars for administrative expenses. To date, the Department has not amended the Earthquakes Action Plan to incorporate the budget changes, nor has it published its Guidelines. Eighteen months after the approval of these funds, this urgent Program for affected families has not opened.

Data on Relocations under R3 Program

(Graph 6)

Legend

- Municipalities declared disaster zones for FEMA individual assistance and MIDs for CDBG-DR earthquake assistance: **Guánica, Ponce, Yauco, Peñuelas, Guayanilla, and Lajas.**
- Municipalities declared disaster zones for FEMA individual assistance and MIDs for CDBG-DR assistance for Storm Isaias: **Mayagüez.**
- Municipalities declared disaster zones for FEMA individual assistance, but not MIDs for CDBG-DR assistance for Storm Isaias: **Aguada, Hormigueros, and Rincón.**
- Municipalities declared disaster zones for FEMA individual assistance, but not MIDs for CDBG-DR earthquake assistance: **Adjuntas, Aguada, Añasco, Arecibo, Barceloneta, Cabo Rojo, Ciales, Coamo, Corozal, Hormigueros, Jayuya, Juana Díaz, Lares, Las Marías, Maricao, Mayagüez, Moca, Morovis, Naranjito, Orocovis, Rincón, Sabana Grande, Salinas, San Germán, San Sebastián, Santa Isabel, Utuado, and Villalba.**



²¹ 87 FR 6364.

COVID-19

As we approach the dangerous number of 5,000 deaths due to the pandemic in Puerto Rico, we recognize the impact of this disaster in the economic and social security of these families. With respect to housing, the last two years reveal great vulnerability in terms of foreclosures and default evictions. **Ayuda Legal Puerto Rico** gathered the following data as part of its institutional advocacy work. The information comes from the Judicial Branch's electronic files.

	2021	2022 (up to May)
Eviction lawsuits due to defaults	755	694
Foreclosures	2,493	904

In January 2022, a 15% increase in the price of housing was registered, coinciding in time with an increase of granting of decrees under the auspices of Law 22, particularly in areas where there is higher activity of short term rentals, job opportunities, and natural attractions.²² To date, and after numerous difficulties, the Department has managed to disburse 51% of the \$325 million funds for emergency rental assistance (ERA) for the pandemic. The government projects to close the Program in September of this year. In the case of Homeowner Assistance Funds (HAF), which are destined to mortgages, utilities, and other expenses, these are meant to benefit 5,771 families with close to \$75 million funds.²³ The Program has already closed, and the Housing Finance Authority is in the process of evaluation and disbursements.

The impact of the sustained increases in electricity costs and its direct relation with people's incapacity to afford rented housing



²² Sharon Minelli Pérez, *Alza en precios de vivienda coincide con aumento en decretos por Ley 22 (Increase in Housing Prices Coincides with Increase in Granting of Law 22 Decrees)*, *elnuevodia.com* (January 4, 2022), <https://www.elnuevodia.com/negocios/economia/notas/alza-en-precios-de-vivienda-coincide-con-aumento-en-decretos-por-ley-22/>

²³ Programa de Asistencia para Dueños de Hogar en Puerto Rico, Plan HAF (Assistance to Homeowners in Puerto Rico Program, HAF Plan) (v.4), on p. 40, available at: <https://covidhipotecas.com/wp-content/uploads/2022/01/20211201-PR-HAF-Plan-v4-ES.pdf>.

or mortgages is of utmost importance. This is evident in the fact that many aid packages approved during the pandemic were requested to cover the cost of energy. Of the ERA funds, 18% were invested in electricity payments. In the case of HAF, a surprising fact is that, by June 10, 2022, of the 11,352 applications submitted, 4,945 (or 43.6%) requested assistance to cover their electricity bills in total or in part.²⁴

February 2022 Floods

In addition to hurricanes, earthquakes, and a pandemic, we must add the impact of sudden disasters, which, as they tend to have a lesser magnitude, slip under the radar. During the days between February 4–6, 2022, over sixteen inches of rain were registered in the municipalities of Toa Baja, Cataño, Vega Baja, Vega Alta, and Dorado, provoking a chain of floods, mudslides, and the overflow of various rivers, which in turn caused damages in public roadways, structures, and homes. On March 8, 2022, a month after the event, governor Pierluisi requested an emergency declaration to the federal government, to activate FEMA assistance for the damages caused by this chain of sudden disasters. On March 29, the federal government published the major disaster declaration for said municipalities. By July 14, 2022, FEMA had approved 490 applications for assistance. These applications amount to \$772,697 in assistance related to housing and \$603,481 for other needs.²⁵ Affected people could make their claims to the federal agency until May 31st.



²⁴ Answer from the Housing Financing Authority to Ayuda Legal Puerto Rico, Request for Public Information: Updated Data on PADH Assistance Applications to May 31, 2022. On file with Ayuda Legal Puerto Rico.

²⁵ FEMA, Puerto Rico Earthquakes DR-4649-PR Puerto Rico Severe Storm, Flooding, and Landslides, Declaration Date, Mar. 29, 2022, available at: <https://www.fema.gov/disaster/4649>.

Facing Future Disasters

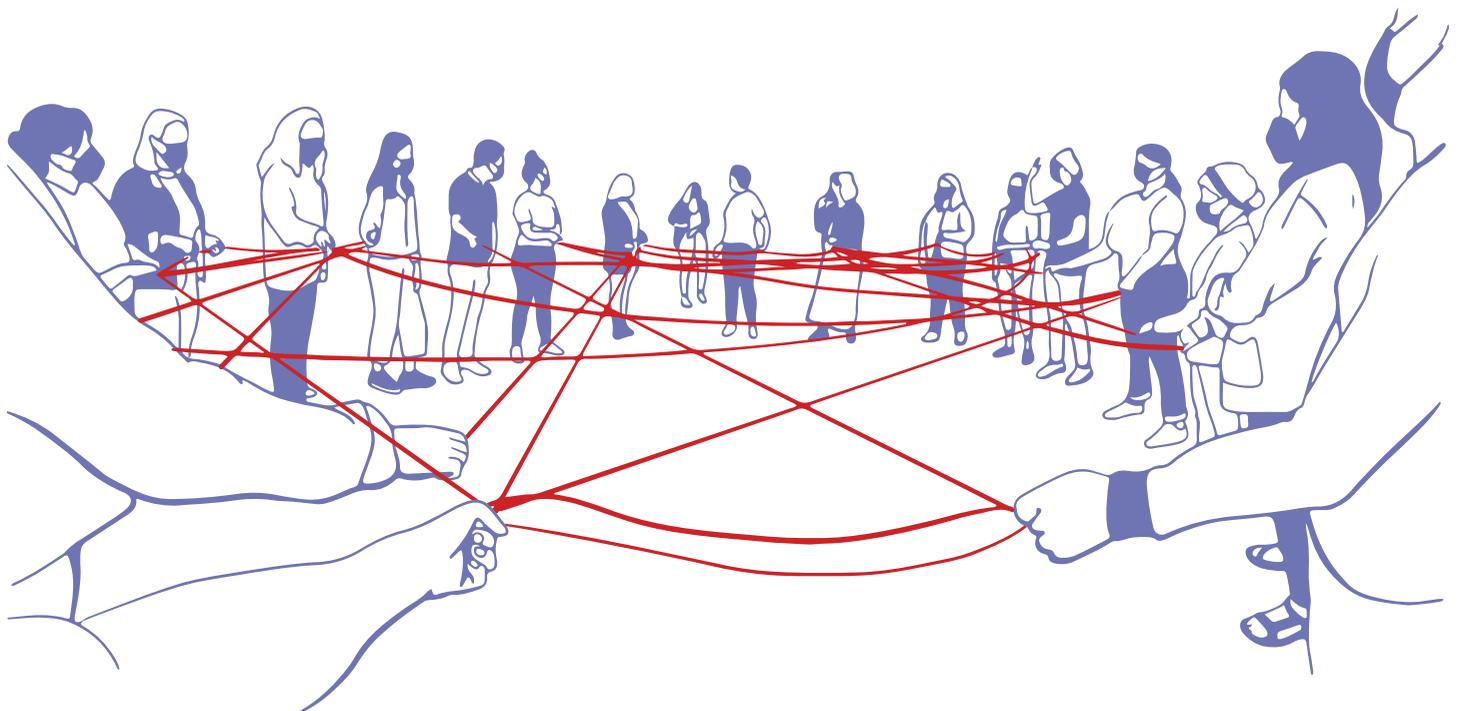
The purpose of both mitigation funds and those related with energy is guaranteeing resilience when facing future disasters. Per the approval of the Community Development Block Grant-Mitigation (CDBG-MIT) Action Plan in April 2021, the Department should invest \$8.2 billion in mitigation activities. These activities encompass both those that increase resilience in the face of disasters and those that reduce or eliminate the long-term risk of loss of life and the damage to and loss of property. On July 11, 2022, the Department opened the period for public comments to draft a substantial amendment to this Plan. To date, they have not divulged the Guidelines on housing programs nor have they opened the Programs to begin accepting applications. Only the Community Energy and Water Resilience Installations Program, which attends to R3 participants, is currently operating. Previously, we visualized these programs as an affirmative response to just recovery. However, the unjustified delay forces us to doubt the effectiveness of such strategies.

Additionally, in terms of funds devoted to energy, the government has already received funding allocations to put mechanisms in place that would bring us closer to a clean, safe, and accessible energy system. On June 22, 2021, HUD published an Allocation Notice announcing the allocation of \$1,900 million in CDBG-DR funds for the energy system's repair and improvement. With this assistance, purchases, constructions, or reparations can be made to increase and improve the system's reliability, resistance, stability, and cost-effectiveness when facing future disasters, and to confront the impacts stemming from the climate crisis.



On April 25, 2022, the CDBG-DR's Electrical Systems Enhancements Action Plan was submitted. The Department originally proposed two programs for the administration of these funds, yet HUD approved one of them. The first Program, the Energy Grid Rehabilitation and Reconstruction (ER1) Cost Share Program, destined \$500 million (26% of the total budget) to match other federal allocations for the energy system, such as FEMA funds. HUD did not approve the program, although it may do so in the future. As a result of advocacy actions on the part of Ayuda Legal Puerto Rico and other organizations concerned with this issue, HUD clarified that it did not approve ER1 because the proposed program did not comply with the Allocation Notice requirements. Specifically, HUD explained that the Department should evaluate:

“how the use of the CDBG-DR funds and its planning decisions will impact vulnerable populations, protected classes under fair housing and civil rights laws, and underserved communities that were economically distressed prior to the disaster; and to indicate whether its proposed programs and projects under this activity will provide electrical power system improvements to said populations and communities.”²⁷



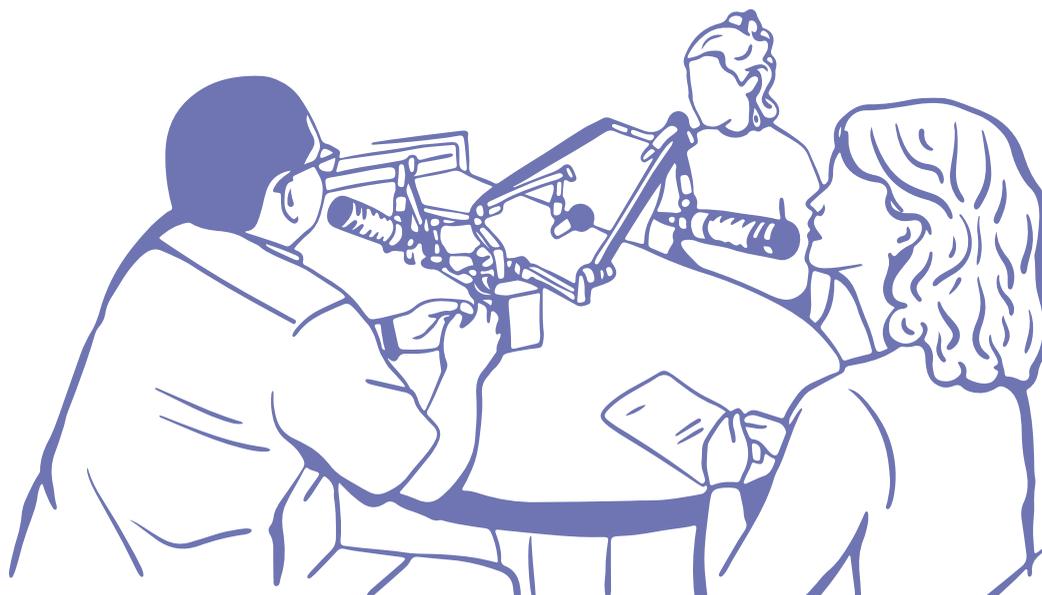
The analysis of the benefitted communities should include rural areas, as well as zones with high concentrations of impoverished and racialized individuals.

²⁷ Letter from Jemine A. Bryon, Acting General Deputy Assistant Secretary for Community Planning and Development, HUD (July 18, 2022). On file with Ayuda Legal.

The second program, which HUD approved, is the Electrical Power Reliability and Resilience Program (ER2). This program is meant to cover costs of improvements to the energy system. In this case, the improvements considered include: “acquisition, construction, reconstruction, rehabilitation, or installation of centers, improvements or other components performed to amplify, update, or improve in any other way the system’s rentability, reliability, efficiency, sustainability, or financial viability in the long run.” The Plan allocates \$1,316 million (68% of the total budget) to ER2. Funds may go to agencies and other entities of the Puerto Rican government, to public private alliances, to for-profit businesses that complete projects in support of the energy system’s improvements, to health systems and public hospitals, and to non-profit entities that comply with the requirements. The Guidelines have not been approved yet.



Lastly, and amid a hurricane season that is not yet in its peak, we want to highlight the lack of emergency plans made public and accessible. At **Ayuda Legal Puerto Rico** we have made copious and thorough requests for information to the State Agency for Emergency Management and Disaster Administration (AEMEAD for its Spanish acronym), and to disaster management offices at the municipal level. While AEMEAD has not answered any of our requests, only a handful of municipalities was able to offer an updated list of shelters and an updated emergency plan.



04.

THE RIGHT TO REMAIN IN THE FACE OF CLIMATE CRISIS



The discussion on the right to a just recovery needs to position itself in relation to an unprecedented climate crisis. The risk of living in zones susceptible to floodings or mudslides, as well as the conditions of historically vulnerable populations in the face of extreme heat, floods, and hurricanes, are some of the reasons why we must take the intersection of just recovery and climate justice seriously. **At Ayuda Legal Puerto Rico, we know that neglecting climate change means displacement. We are also aware that attending to this global phenomenon from a perspective that fails to integrate human rights, particularly the right to a roof, and that disregards social inequalities, is also displacement.** In simple terms: the climate crisis should be an opportunity to mitigate and prevent, but it cannot justify dispossessing impoverished communities from real alternatives to be able to live on their islands.

Climatic migrations are an integral part of human history. The search for more favorable conditions for life has provoked the movement of groups to more adequate geographies. However, the climate crisis the world confronts today is violent and unique



in its dimensions and impacts. High-risk levels of global warming dramatically threaten food security and access to water, hinder the capacity to confront heat, result in atmospheric events of greater magnitude and force, and cause sea level rise.

According to a recent report by the Intergovernmental Panel on Climate Change, it is estimated that, by the year 2100, hundreds of millions of individuals will have abandoned coastal zones due to sea level rise.²⁸ The same report calculates that at least 112 million individuals have been internally displaced due to disasters between 2017 and 2021.²⁹ Displacement in the context of disaster and climate change is a human rights issue.³⁰ It shows the impact that this global phenomenon has on historically vulnerable groups, such as black communities, elderly adults, functionally diverse individuals, impoverished populations, among others.

For the year 2060, it is estimated that the sea level surrounding Puerto Rico will have risen by 22 inches.³¹ This increase may cause beach erosion, loss of coastal structures, and an increase in floodings, all issues that have been already on the rise.³² Likewise, in Puerto Rico, climate change means more heat, more copious rainfall events, more droughts, and hurricanes of greater intensity. The rise in copious rainfall events does not mean, however, that we will have better water resources or improved sources of drinking water. Rainfall, on average, will decrease, and the level of water evaporation will increase. Climate change, together with sedimentation problems in our dams and poor water management, may adversely affect the availability of drinking water for human consumption, including for agriculture. Let us be reminded that one of hurricane Maria's significant aftereffects was sedimentation, which increases the risk of drinking water shortages. To this we must add the inefficiency of our drinking water distribution system, in which up to 60% of water goes unrecorded. We may have longer and more frequent water rationing periods.



²⁸ Globally, population change in low-lying cities and settlements will lead to approximately a billion people projected to be at risk from coastal-specific climate hazards in the mid-term under all scenarios, including in Small Islands (high confidence).” See Intergovernmental Panel on Climate Change, IPCC, 2022: Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (April 2022), on p. 17, available at: <https://www.ipcc.ch/report/sixth-assessment-report-working-group-ii/>.

²⁹ Internal Displacement Monitoring Centre (IDMC), Global Internal Displacement Database, available at: <https://www.internal-displacement.org/database/displacement-data> (last visit: July 10, 2022).

³⁰ Although the concept “climatic refugees” is met with resistance in international spheres, there is consensus on the adverse impact that both disasters and the climate crisis have on the continuing presence of human settlements and communities in their lands and homes.

³¹ Danica Coto, Report: Puerto Rico Unprepared for Climate Change, *phys.org* (August 24, 2013), available at: <https://phys.org/news/2013-08-puerto-rico-unprepared-climate.html>.

³² EPA, What Climate Change Means for Puerto Rico (August 2016), available at: <https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-pr.pdf>.

Naming the unequal impact is important. At **Ayuda Legal Puerto Rico**, we celebrate the vulnerability analysis developed by the Department as part of the CDBG-MIT Action Plan and the CDBG-DR Energy System Action Plan. Still, and for example, we are concerned that the sum of “vulnerability” factors (such as the Hispanic identity of 98% of the population) ends up obscuring the racialized impact that the climate crisis has and, therefore, the State’s sensible actions to mitigate its consequences on the population. Note, for instance, what happened with the plan related to energy funds. Faced with the question of who will benefit from the plan, they disregarded the analysis of the extent economic and social inequality impacts communities. The conclusion was that, since the plan covers Puerto Rico entirely, “it will also address vulnerable populations, protected groups, and unattended communities in other parts of the Island.”³³ This is not enough.

The Constant Risk of Floodings

According to the Portal on Dangers and Risks in Puerto Rico, created by the Department for the management of CDBG-MIT funds, floods are the main risk confronted in Puerto Rico.³⁴ It is estimated that 24% of our population lives in high- or medium/high-risk areas, and that close to 245,586 homes are located in flooding zones.³⁵ Moreover, floods are not limited to the coasts; rather, they happen throughout the country. Among all US jurisdictions affected by disasters, Puerto Rico’s flooding risk is the costliest vulnerability. In such scenario, the strategies encompassed by current recovery processes and plans fall short.

On the one hand, estimates show that only 4% of homes have flood insurance.³⁶ Individuals and families who have it do so in response to mortgage requirements. In the case of families who are property owners, FEMA demands them to buy flood insur-

³³ Housing Department, Plan de Acción CDBG-DR para la Optimización de la Red Eléctrica, Anejo H: Análisis Reforzado sobre Poblaciones Vulnerables y las Clases Protegidas (CDBG-DR Energy System Action Plan, Annex H: Reinforced Analysis on Vulnerable Populations and Protected Classes) (March 2022), on p. 34, available at: https://cdbg-dr.pr.gov/download/plan-de-accion-cdbg-dr-para-la-optimizacion-de-la-red-elctrica-efectivo-el-25-de-marzo-de-2022/?ind=1648753790173&filename=ADM_POLI_Report_Energy%20Action%20Plan_Apendix%20H_ES_.pdf&wpdmdl=25441&refresh=62cdb687c947f1657648775.

³⁴ Housing Department, Portal de Peligros y Riesgos de Puerto Rico (Portal on Dangers and Risks in Puerto Rico), available at: <https://cdbg-dr.pr.gov/iframes/PRpeligrosyriesgosIFRM.html>.

³⁵ Estimates from the Housing Department based on FEMA applications for structures located on the 100-year plain. Housing Department, CDBG-DR Action Plan, 8th substantial amendment (February 18, 2022), on p. 55, available at: https://cdbg-dr.pr.gov/download/8va-enmienda-al-plan-de-accion-enmienda-no-sustancial-efectiva-el-25-de-febrero-de-2022/?ind=1645816298866&filename=1-ADM_POLI_Action%20Plan_Amendment%208%20-%20Nonsubstantial_ES.pdf&wpdmdl=25027&refresh=62d99fb10c3341658429361.

³⁶ According to a study conducted by the University of Pennsylvania in March 2018, 90% of this universe is composed of individuals with private flood insurance, and only 4% belong to the National Flood Insurance Program. Carolyn Kousky and Brett Lingle, Issue Brief: Residential Flood Insurance In Puerto Rico (March 2018), available at: https://riskcenter.wharton.upenn.edu/wp-content/uploads/2018/03/WRCib2018_Flood-Insurance-in-Puerto-Rico.pdf.

ance upon receiving disaster assistance.³⁷ Failing to meet this policy might result in the rejection of assistance applications. For impoverished families, and especially for those who lack a formal property title, obtaining flood insurance is an onerous and complicated process. **We believe that promoting educational campaigns, overseeing private insurance companies,³⁸ and providing a tax incentive to families who obtain this insurance, are essential actions to take.**

On the other hand, mitigation and adaptation policies related to floods must accommodate not only the flood risk, but also the right to housing. Relocations cannot be the first mitigation measure, as they frequently become forced displacements and end up undoing the community's social fabric without guarantees that the new space will have access to education, health, job opportunities, or safety. As we pointed out in previous reports **Towards a Just Recovery**, the Department's ambition, through the R3 program, of prohibiting reconstructions in flooding zones was the strictest among all US jurisdictions. Moreover, it represented a particular threat for Black and impoverished communities. Although, for almost two years, we were able to amend this policy to guarantee the right to remain and decide, in recent versions of the Action Plan, the language establishing that eligible relocation applicants could wait to consider mitigation as an alternative was eliminated.³⁹ Despite the Department's claim that this change is due to elevation being included in the Single Family Homes Mitigation Program, removing said sentence eliminates the guarantees of community participation in decisions involving mitigation, and does away with the applicant's preference, who might opt to mitigate rather than relocate, or vice versa. Such crucial decision is now taken only in response to the agency's cost analysis.

Furthermore, we are concerned that, lacking a participation and transparency plan on relocations and flood mitigation measures, a panorama of discrimination against historically



³⁷ FEMA, Fact Sheet: Flood Insurance, What to Know (October 12, 2017), available at: <https://www.fema.gov/press-release/20220214/fact-sheet-flood-insurance-what-know>.

³⁸ On February 3, 2022, Puerto Rico's Supreme Court resolved to apply recently approved public policy to hold insurance companies responsible for failing to fulfill their duty of responding after hurricanes Irma and Maria, and most especially, for actions in bad faith and disloyal practices. This case is essential to reestablish the people's trust in an effective insurance system. See Consejo de Titulares del Condominio Balcones de San Juan v. Mapfre (Homeowners Board of the Balcones de San Juan Condominium v. Mapfre), 2022 TSPR 15, 208 DPR ___ (2022).

³⁹ See Housing Department, Borrador de la Primera Enmienda Sustancial al Plan de Acción CDBG-MIT Plan de Mitigación para Puerto Rico (Draft of the First Substantial Amendment on the CDBG-MIT Action Plan, Mitigation Plan for Puerto Rico) (July 12, 2022), on p. 379, available at: <https://cdbg-dr.pr.gov/download/plan-de-accion-cdbg-mit-enmienda-1-sustancial-borrador-para-comentarios-publicos-12-de-julio-de-2022/>

vulnerable populations repeats itself. Recent studies show that FEMA's elevation policies tend to favor white or rich communities.⁴⁰ We want to insist that this disparity is also evident in Puerto Rico's case. While data related to race and relocations is minimal and insufficient, when confronting disasters in our country we witness constantly how affluent sectors have greater access to mitigation, while the rest are ignored.

The Stifling Heat

A less discussed climate crisis effect is rising temperatures. Although global warming is climate change's paradigmatic impact, and carries by now significant scientific certainty, many impact-centered discussions revolve around rising sea levels and the incidence of extreme weather events. However, scientific studies suggest that, in San Juan, episodes of prolonged heat are already more frequent. Such exposure to elevated temperatures has adverse effects on people's health, especially among vulnerable populations such as girls, elderly adults, and impoverished individuals. These sectors are at a higher risk of suffering heat strokes, cerebrovascular accidents, and cardiovascular conditions.⁴¹

The rise in temperatures also affects the right to housing. Heat can even force people to spend less time in their homes, especially during the warmest periods of the day, a phenomenon that might have a negative impact on their right to safe housing, and even on the family itself.⁴² A common response is to resort to cooling systems, such as fans and air conditioners, which depend on electricity.

On the one hand, said dependency, and the ensuing increase in consumption as temperatures rise, has environmental implications. Without underestimating the multiple environmental and



⁴⁰ Thomas Frank, How FEMA Helps White and Rich Americans Escape Floods, Politico.com (May 27, 2022), available at: <https://www.politico.com/news/2022/05/27/unfair-fema-climate-program-floods-00032080>

⁴¹ Pablo Méndez-Lázaro, PhD et al., Climate Change, Heat, and Mortality in the Tropical Urban Area of San Juan, Puerto Rico, International Journal of Biometeorology 62(5) (December 2016), available at: https://www.researchgate.net/publication/311704322_Climate_change_heat_and_mortality_in_the_tropical_urban_area_of_San_Juan_Puerto_Rico.

⁴² See López Ostra v España, Méritos y satisfacción (Merits and Satisfaction), App no 16798/90, A/303-C (December 9, 1994), Corte Europea de Derechos Humanos (European Human Rights Court), Interpretando que la contaminación ambiental constituye violación al derecho a la familia reconocido en el Artículo 8 de la Convención Europea de Derechos Humanos (Interpreting that Environmental Pollution Constitutes a Violation on the Family Right Recognized in Article 8 of the European Convention on Human Rights).

public health impacts of fossil fuel energy production, we must also remember that energy is among the sectors producing the greatest amounts of greenhouse gas emissions. Air conditioners, specifically, consume great quantities of energy, and contribute to climate change through the emission of hydrofluorocarbons. Failing to transform the ways in which we produce energy and cool our spaces means remaining stuck in the vicious cycle. We consume more energy because it is hotter, and it is hotter because we consume more energy.

On the other hand, cooling our homes traverses social class considerations. Being able to maintain acceptable temperatures within our homes depends on our economic capacity to afford them. After the seventh increase in the electricity bill requested by LUMA, we urgently need to defend an affordable rate. Despite the clear threat posed by heat, the Department's Portal on Dangers and Risks assigned hot temperatures a risk score of zero (0).⁴³ Thus, it is reasonable to conclude that CDBG-MIT programs will not include assistance specifically directed at mitigating the impact of extreme heat in Puerto Rican homes.



⁴³ Housing Department, Portal de Peligros y Riesgos de Puerto Rico (Portal on Dangers and Risks in Puerto Rico), available at: <https://cdbg-dr.pr.gov/iframes/PRpeligrosyriesgosIFRM.html>

05.



STAYING OR LEAVING? STRATEGIES TO PROTECT THE RIGHTS TO REMAIN, RETURN, AND DECIDE

The just recovery question, as we approach hurricane Maria's fifth anniversary, is how to avoid displacements promoted by natural, economic, and political disasters. We denounce the displacement by design model. We oppose policies and actions that consider effective mitigation strategies the denial of assistance to overcome disasters, relocation, and the prohibition of housing in zones that, for some communities, are deemed at high risk of flooding, but suddenly become available for touristic projects. We do so because we know that land and home dispossession target Black and impoverished communities. Lacking a public plan promoted by the government, as well as a coherent investment of recovery funds, we must develop and support strategies that guarantee our right to remain, return, and decide. In what follows, we include proposals we have been working on or supporting. We do so in recognition of the fact that directly affected communities must have the primary role in strategy development.



Streamlining Reparation, Reconstruction, and Relocation

1. One of the main ways to displace those who survive a disaster is through unjustified delays in the development of recovery plans and in funds disbursement. The Department, as much as all relevant federal and local agencies, must ensure that qualified personnel oversee and manage said processes. Doing so would promote the plans' timely publication, the establishment of good practices to prevent incorrect or illicit actions on the part of contractors, the creation of truly effective spaces for community participation, and the constant oversight to ensure that the plans' execution aligns with defined objectives.

2. Concerning eligibility, we make a call to avoid insisting on past errors. The formal property title requirement is anachronistic, and clashes with the social reality of a country where 50% of people do not have formal documentation to prove that they own their homes. Like in the case of FEMA, guidelines are needed to guarantee that the local government will not continue insisting on this kind of documentation. While we advocate with HUD for the publication of universal CDBG-DR Guidelines that eliminate access barriers preventing jurisdictions from enforcing them, we trust that the local government is still on time to act. Moreover, it is urgent that Puerto Rico's government launches an educational campaign to raise civic awareness that individuals lacking a formal property title have a right to receive disaster assistance.

3. It is ever more pressing for the Department to have and divulge inventories of available housing for rent and purchase. This would streamline the temporary or permanent relocation process and would allow people to choose properties close to their current community social fabric, with access to health, education, and jobs. These homes must be adequate and safe, along with efforts for HUD to modify its housing quality standards, which are sometimes impracticable and onerous. Like-



wise, we support efforts for HUD to increase the Fair Market Rent indexes for Puerto Rico, as these metrics decide the maximum federal funds' allocations as assistance subsidy for rent.



4. We need a local Fair Housing Law that recognizes discrimination due to source of income, with the objective of preventing individuals with vouchers –such as those who must relocate or who have subsidized rent– from being rejected by landlords, real estate agents, and homeowners. This kind of discrimination not only tramples with the effective use of recovery funds, but also has a disproportionately adverse impact on local and impoverished populations.



Toward a Displacement Minimization Policy

1. We advocate for the discussion and transversal implementation of principles to minimize forced displacements in the context of just recovery and climate justice. These principles are the result of years advocating for survivors from multiple disasters, particularly in terms of defending their roofs.

Principles for the Minimization of Forced Displacements and Toward a Just Recovery

1. Dignified housing is a fundamental human right. This right encompasses having secure tenancy and the existence of protections against forced displacements.

2. Forced displacements cannot be the only or first risk mitigation option. They should only be considered when risk factors are present that cannot be attenuated and that actively impede continuance in the structure or locality.

3. The government has the obligation of establishing transparent and equitable participation mechanisms to analyze, develop, and implement evacuation plans, including those related to planned retreat from at-risk zones, and to individual and communitari-

an relocation after catastrophic events. These participation processes should include public officials, members of the scientific community, and the participation of communities directly affected by said processes. The participation of historically marginalized groups, such as women, elderly adults, functionally diverse individuals, Black and immigrant communities, among others, must be ensured and attended to.

4. Every development, investment, and assistance plan after disasters should include an analysis of populations facing the potential risk of being displaced, as well as a clear mitigation plan concerning said risk. This shall apply to public or private enterprises making developments or investments in infrastructure, housing, and tourism sectors, among others. Infrastructure projects led by the government or by private firms cannot be a justification for indiscriminate relocations.

5. The government should promote the existence of transitory housing to temporarily accommodate families who need it while their homes are undergoing mitigation or reconstruction processes.

6. In cases where the original housing's risk conditions can be mitigated, the right to a voluntary return based on a free and informed decision on the part of displaced individuals must be guaranteed, thus avoiding the original population's replacement.



7. Individuals and communities potentially affected by a forced displacement have the right to be previously informed and to participate freely and effectively in the decision-making process. If establishing consensus among the community or securing the consent from the individual to be displaced, is impossible, there should be access-to-justice guarantees in place to safeguard their rights. In all cases, the state should proactively act to assist displaced families in the search for alternative and affordable housing.



8. The relocation process should be voluntary. Relocation cannot be a condition to receive recovery assistance after disasters.

9. Relocation should be fair. The government cannot promote that individuals or families lose their homes, in worse conditions, or at greater risk of suffering other violations to their human rights. Rather, the government must guarantee social, economic, environmental, and infrastructural conditions that are equal or better to those of the original settlement. These include access to employment and education opportunities, to health and medical services, to essential services of electricity and drinking water, to public transportation and general safety.

2. The Department, as well as every local and federal agency that attends to recovery issues, must conduct periodical analyses of the uses of recovery funds to assess population movements. Thus, the ways in which communities and municipalities are impacted because of relocation policies, and the effect that recovery policies have on the emigration

3. Displacement minimization requires transparency and agility guarantees. Scarcely participatory and unduly slow processes, unmet promises, and disappointing results abound. We have seen how relocation processes take years to materialize, leaving individuals in a limbo concerning the very possibility of returning to their community or obtaining a safe home. The relocation process of the Las Gladiolas public housing complex shall serve as an example here. The complex's buildings were imploded in 2011. At that

point, 412 housing units were occupied. The Public Housing Department subscribed with concerned families a non-displacement agreement in which it ensured that their relocation was temporary and guaranteed them priority in the occupation process of the substitute project. Eight years later, only ten of the affected families returned to the now-named *Renaissance Square*.⁴⁴

4. Available, safe, and accessible electric energy, as part of the right to dignified housing, is a fundamental aspect of the recovery process. Funds allocated for recovery, both from CDBG and FEMA, offer a historical opportunity to transform the public system into a cleaner, safer, and more resilient one, both in terms of confronting specific and sudden disasters and those characterized by a “slower” development associated with climate change. The substantial integration of distributed energy generation, especially by means of solar panels on roofs, presents a real alternative to replace fossil fuels and offer stable power to the most vulnerable individuals, such as those who were without power for the longest period of time after hurricane Maria.⁴⁵ Even more so, using disaster recovery funds to achieve said change would allow Puerto Rico to produce, by 2035, 75% of the energy we consume by means of distributed renewable energy systems, with a lower cost than what we now pay.⁴⁶



⁴⁴ See R. del S. 964, Segundo Informe Final Conjunto (Second Joint Final Report) (September 26, 2019); Yaritza Rivera Clemente, Residentes de Las Gladiolas luchan por recuperar su vivienda (Las Gladiolas' Residents Struggle to Recover their Homes), *El Vocero* (February 13, 2019), available at:

https://www.elvocero.com/gobierno/residentes-de-las-gladiolas-luchan-por-recuperar-su-vivienda/article_a8328c5a-2fce-11e9-8e11-27aa4ca46ca4.html.

⁴⁵ Marcel Castro-Sitiriche, PhD., et als., *The Longest Power Blackout in History and Energy Poverty*, in Housing Department, CDBG-DR Energy System Action Plan, Annex G.1 (April 2021), available at: https://cdbg-dr.pr.gov/download/plan-de-accion-cdbg-dr-para-la-optimizacion-de-la-red-elctrica-efectivo-el-25-de-marzo-de-2022/?ind=1643314064364&filename=1643314064wpdm_G.1-Castro%20Sitiriche.pdf&wpdmdl=25441&refresh=62d99ad72ebb01658428119.

⁴⁶ Ingrid M. Vilá Biaggi and Cathy Kunkel, *Implementation Roadmap to 75% Distributed Renewable Energy by 2035 in Puerto Rico*, *Cambio PR* (January 2022), available at: https://cambio.pr.org/wp-content/uploads/2022/01/CAMBIO-DER-Implementation-Roadmap-Report-01_22.pdf?fbclid=IwAR1xXMQWNJD4vTPmeFJS6ftp5BwiDTiQdPhMgqBifmQm4Be8JbT9Htz8S2s.

The Right to Return

1. The Department should reestablish the guarantee for community participation and selection on the part of the applicant in those cases where both mitigation and relocation are on the table. When mitigation is possible, and the surviving family so desires it, the process should unfold while preserving the integrity of the community's social fabric in its own space.

2. The sale, cession, or transfer of local lands and properties to investors with little or no guarantees of sustainable and equitable development threaten the right of communities in Puerto Rico and the diaspora to return. The government must ensure the elimination or restriction of incentives promoting speculation and resulting in the hoarding of lands and roofs.



Planned Retreats

1. We should approach the issue of planned (or managed) retreats with sensibility. The relocation of individuals and communities is part of a strategy frequently considered as an adaptation measure to climate change. The concept of planned retreats refers to "the purposeful, coordinated movement of people and assets out of harm's way,"⁴⁷ more frequently in coastal areas. It is a conscious and concerted effort to adapt to a risk by evacuating spaces that are not safe or that can become unsafe. This may well be a last resort when there are no other adaptation and mitigation options available, and it may be preferable to intermittently performed relocations or to individual moves.⁴⁸

2. The design and implementation of planned retreats entail many questions in terms of their effectiveness and permanence, but even more so, in terms of the protection of people's rights. Planned retreats should guarantee an antiracist, anti-classist perspective that also protects communities' right to self-determi-

⁴⁷ 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/117/24/13182>.

⁴⁸ See Siders ARR, *Social Justice Implications of US Managed Retreat Buyout Programs*, 152 *Climatic Change* 239 (2019).

nation. It cannot be a strategy to remove impoverished populations from their homes.

3. Community participation must be guaranteed in efforts such as the recently announced “Study on the Human Dimensions’ Considerations as part of Planned Retreats, Habitat Restorations, and the Adaptation to Climate Change” (*Estudio sobre consideraciones de las dimensiones humanas como parte de los retiros planificados, la restauración de hábitats y la adaptación al cambio climático*), by the Puerto Rican Department of Natural and Environmental Resources (DRNA for its Spanish acronym).⁴⁹ The retreat from coasts and at-risk areas is a strategy being considered as adaptation to climate change in Puerto Rico. The Committee of Experts and Advisors on Climate Change in Puerto Rico recommended defining a retreat line on the coasts to guide planned retreat processes.⁵⁰

4. In order to retreat in a planned manner, there must be guarantees of dignified life in the new location. We insist on the need of inventories and oversight of those who would manage such processes. Participation must be a cornerstone.

Participation is the Cornerstone of Recovery

1. The Department must always guarantee the recovery process’ accountability, transparency, and oversight.

2. The creation and recognition of participatory mechanisms in the recovery process for civil society sectors cannot be limited to structures managed and controlled by the Department, as has regrettably been the case with the Community Advisory Board (Comité Asesor Ciudadano). Rather, spaces for regional participation, incidence, and oversight, and with robust community representation, especially on the part of those affected by the risk of displacement, must be fomented, and ensured.



⁴⁹ DRNA, RFP – Estudio sobre dimensiones humanas (Study on Human Dimensions) (June 21, 2022), available at: <https://www.drna.pr.gov/avisos/sdp-rfp/dimensiones-humanas/>

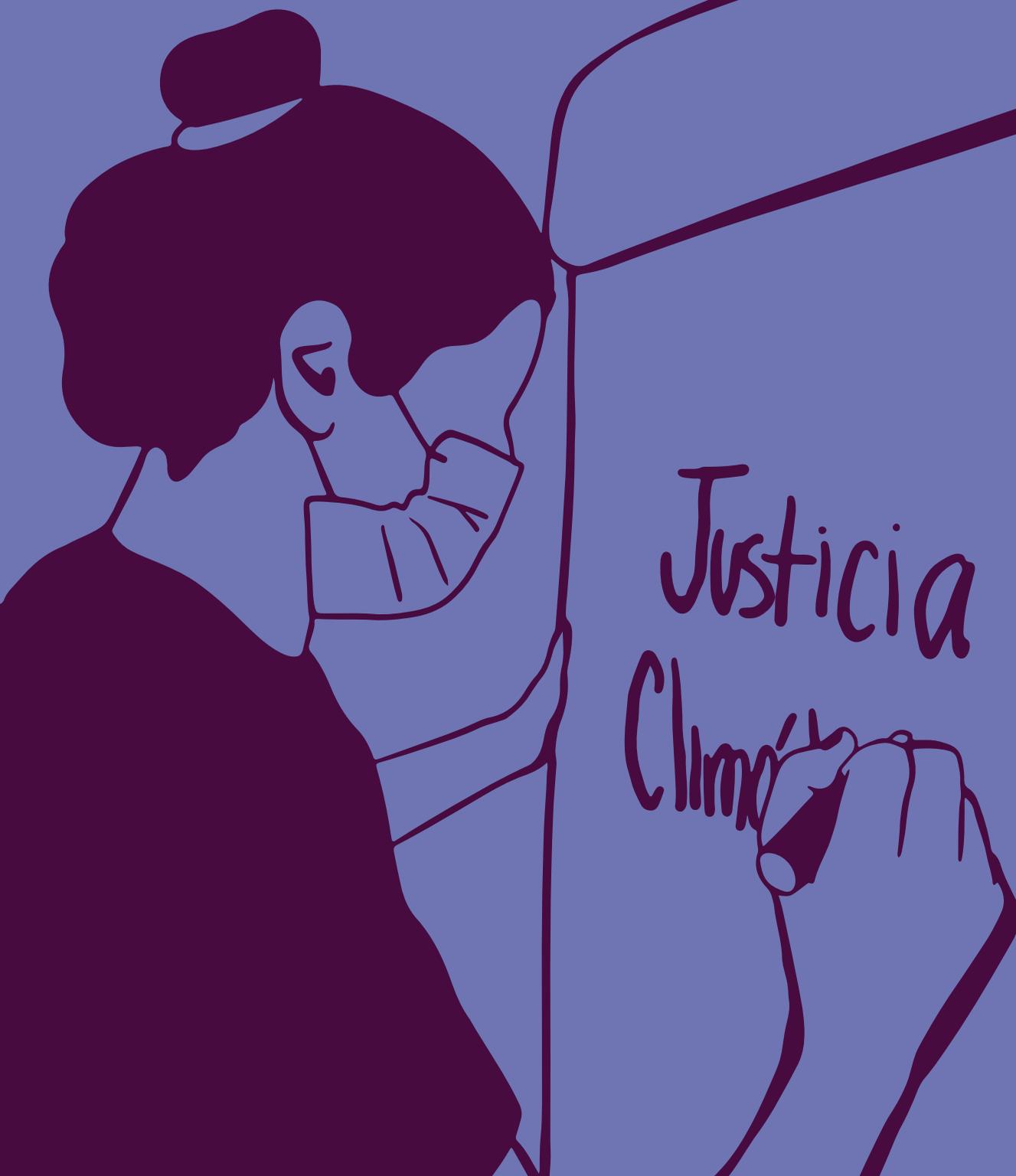
⁵⁰ Comité de Expertos y Asesores de Cambio Climático de Puerto Rico (Experts and Advisors Committee on Climate Change in Puerto Rico), Cursos de acción para corregir, mitigar y prevenir los efectos del cambio climático de la Zona Costanera de Puerto Rico, PUNTO 38 (Courses of Action to Correct, Mitigate, and Prevent Climate Changes’ Effects on Puerto Rico’s Coastal Zone, POINT 38), available at: https://drive.google.com/file/d/1MIZKJ8trBcjbGwTTJ4YzFhmUtCkK0hvk/view?fbclid=IwAR15iwlMAe117UwY9m2wDmcOCGOh4hKq1dQJ2UxH0MxBA2S_Tv7d797MDU.

3. Participation is a fundamental right, and it extends beyond federally funded recovery and reconstruction processes. Equitable development, as much as the guaranteeing of the right to remain and return, demand that the voices and power of communities have a leading role in the country's present and future.



06.

TOWARD A COMMON VOCABULARY



Energy Justice



Energy justice refers to the objective of achieving equality in the production and access to energy. It seeks to remedy inequalities in the social, environmental, economic, and health-related burdens that have traditionally fell on historically vulnerable communities and those most impacted by climate change.

Climate Justice



Climate justice is the recognition, in political terms, that climate change is not caused equally by everyone, nor is everyone affected in the same ways and degrees. Climate justice is the claim for affirmative steps to be taken to contain a climate crisis that inequitably affects the population. This is only possible if the needs, wants, and human rights of people who experience more crudely the adverse effects of a changing climate are attended to.

Planned (or managed) retreat



Planned retreat is a coordinated and intentional relocation of individuals, communities, services, and infrastructure out of at-risk areas.

Just Recovery



Just recovery is the right that individuals have for recovery processes to attend to their needs, wants, and human rights.

Secure Tenancy



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

Informal Ownership



Refers to the situation of individuals who have a proprietary interest over their home but lack a document proving that they are owners.

Dignified Housing



Housing justice is the exercise of the right to a roof. Dignified housing includes the right to safe, adequate, accessible, and affordable housing, as well as its ties with a healthy social fabric.

Land Justice



The right to settle on a space to enjoy and use the land and its resources. Land justice is a fundamental base for access to housing, food security, and the sustainable development of communities.



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