



**AYUDA
LEGAL**
PUERTO RICO



**AYUDA LEGAL PR
RECUPERACIÓN
JUSTA**

SECOND REPORT

Towards a Just Recovery

The response in the face of disasters
and the Puerto Rico that is possible

Public Policy Recommendations Regarding
CDBG-DR and CDBG-MIT Funds

September 2020



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.



Table of Contents

I. Introduction	4	E. We need to act now!	22
II. The work of Ayuda Legal Puerto Rico	7	F. Buying homes and the threat of forced displacement	23
III. Guidelines on how to read this report	8	VII. A threat that affects a large part of the population	23
A. Rights do matter: Human Rights Indicators to Assess Government Response to Disasters	8	A. What the regulation establishes	24
IV. Brief Background: Disasters of the last three years and the assistance received	12	B. We need to act now!	25
A. Hurricanes Irma and María	12	VIII. And meanwhile, the Country for whom? Investment and speculation about housing	26
B. 2020 earthquakes	13	A. Unfair Recovery and Opportunity zones	26
C. COVID-19	13	B. Authorized speculation is not a new story	27
D. Who is left out of recovery?	14	C. Investment as part of a disaster recovery strategy	29
V. CDBG-DR Home Repair, Reconstruction and Relocation Program: Are three years of waiting enough?	15	E. We need to act now!	29
A. About the program and its eligibility criteria	15	IX. Affirmative steps: Participatory mitigation as a response	30
B. The official data	15	A. FEMA funding and its relationship with CDBG-MIT	30
C. Obstacles to receive assistance	16	1. Before, during and after a disaster	30
1. The process was very onerous	16	2. The case of Puerto Rico and what we do not know about letters of intent	31
2. Requirement of formal ownership	16	B. An analysis of the needs in the face of mitigation processes	31
3. Policies punish those who decided to repair on their own	17	C. CDBG-MIT funds are a chance for a Just Recovery	31
4. There is no temporary or transitory housing plan for those who wait for a response from R3 for many months.	18	1. Mitigation must address the needs of the people	31
5. We need to act now!	18	2. Participate so that this plan is adequate	32
VI. Title as a condition: Exclusion policies against people without legal documents	19	3. We need to act now!	32
A. We won, but the government did not do its part	19	X. The spaces for participation that we want and deserve	33
B. History repeats itself, several times	20	A. In light of the CDBG-DR process	33
C. According to the Department of Housing: without title, nothing will be possible	20	B. The duty of the Department of Housing	34
D. Authorization of titles: a justified investment or an unnecessary maze?	21	C. We need to act now!	35
		XI. We know and we can win: Some achievements in the process	35

Just Recovery is the right of people and communities to recovery plans and processes that address their needs, desires and human rights.



Introduction

When we began developing a strategy of legal support and advocacy due to disasters in 2017, we barely imagined the barriers we would encounter along the way. Government inaction, corruption related to essential supplies and indispensable resources, unequal treatment against poor and black people without formal title deeds, the lack of transparency regarding the state of the recovery and violent resistance to count our deaths, the upsurge of colonial policies, austerity, and racial discrimination, are just some of these. We also did not anticipate that the impact of Hurricane Irma and María would be followed by months of earthquakes and a pandemic, events that would leave the housing structures and economic capacity of the already impoverished people, even more fragile.

A little over a year has passed since the publication of our report *Towards a Just Recovery*. At that time, we published a guide with recommendations for public policy aimed at promoting equitable access to recovery funds, protection against forced displacement and the guarantee of real and effective participation in these processes. The suggested amendments were directed to the regulations of the local and federal Housing Departments, as well as the Action Plan and the CDBG-DR Fund Implementation Guidelines. The main recommendations can be summarized in three points:

- Eliminate the formal title requirement as a condition for receiving assistance for disaster.
- Eliminate the prohibition of reconstruction and relocation in flood zones and landslide-prone areas to allow space for mitigation when it is possible and responds to the wishes of the people.
- Guarantee continuous and effective participation through the creation of community councils.

These demands were ratified at the *First Summit Towards a Just Recovery*, held in August 2019. This summit offered a space for gathering, education, strategy, and action, and brought together about 80 organizations, grassroots groups and activists around Puerto Rico willing to work for a dignified recovery. The consensus achieved on the claims, allowed us to validate the findings of our report and establish an advocacy path. A year later, we resumed these commitments at the *Second Summit Towards a Just Recovery*, in which more than 200 organizations, groups and leaders from Puerto Rico, the United States and the Caribbean participated.

Despite the efforts of Ayuda Legal Puerto Rico, organizations, communities and experts in Puerto Rico and the United States, the local

Department of Housing has resisted incorporating changes that promote an agile and equitable recovery. This has clear consequences for the lives of people who continue to wait for assistance after the hurricanes in 2017.

Thousands of families in flood zones who suffered substantial damage to their property have relocation as their only alternative. This is regardless of the possibility of mitigation. If those same families do not have a formal title or are unable to acquire it through a complex Title Authorization Program administered by the Department, they are not eligible for any assistance. Similar exclusions were designed for those who, tired of waiting, repaired their homes on their own, as and with what they could.

Along the way we have accomplished important things that could remove some of these obstacles. We won an executive order that recognizes that the title should not be a requirement to request money destined to rebuild or repair homes in the CDBG-DR¹ context and amendments to the Action Plan that involve delimiting the repair and reconstruction programs from the relocation program. However, time passes without people receiving adequate notification of these changes, their possibility to appeal or move their cases or that changes happened to the guidelines and processes of implementation.

This failure is not a surprise. There is \$ 9.7 billion of CDBG-DR funds allocated to Puerto Rico. Of these funds, approximately 39% should go directly to the need for safe housing that

remains uncovered after the hurricanes in 2017.² However, from the beginning, it was clear that the promotion of these funds did not contemplate the right to the recovery of families and communities, but it was directed towards consolidating a visitor's economy based on investment and speculation on Puerto Rican land.³

Other injections of local and federal funds that were intended to mitigate the impact of the earthquakes and the pandemic on the right to housing have also not yielded results. The catastrophic conjunctures have fueled a violent disaster capitalism capable of eradicating all hope of equitable development. If people are not a priority in recovery plans, money will decide what Puerto Rico will look like in 5 or 10 years from now. The future, from there, envisions a Country with less space for impoverished people.

Therefore, our hope is in the people and in the Country-with-them. This report summarizes recommendations for public policies and findings around the rights to stay, decide, and return, focused on CDBG-DR funds. We incorporated information on how the challenges related to penalizing people without formal titles, marginalized populations, and insufficient assistance were replicated in the face of the earthquakes and COVID-19. We direct a large part of the narrative and advocacy to claim participation and effectiveness in mitigation processes, which could represent a unique opportunity for a Puerto Rico that is truly on track towards a just recovery.

¹ OE-2020-063, To establish special provisions for the active legitimization of applicants in Single Business Portal procedures related to the reconstruction of eligible homes under the R3 Program, Assisted with CDBG-DR funds (August 20, 2020), available at: <http://www.camarapr.org/T-CI-2020/14-agosto-21/OE-2020-063.pdf>

² The other areas are economic recovery, planning, infrastructure, and multisectoral efforts.

³ Joel Cintrón Arbasetti, *Paradise Performs: el gobierno proyecta a Puerto Rico como paraíso para la contratación después del huracán María*, *periodismoinvestigativo.com*, November, 19 2017, <https://periodismoinvestigativo.com/2017/11/paradise-performs-el-gobierno-proyecta-a-puerto-rico-como-paraíso-para-la-contratacion-despues-del-huracan-maria/> (Reviewing the activities aimed at investors, sponsored by the Department of Economic Development and Commerce that were held in the following months, on the dates of June 2018).

In organizing this report, we decided to incorporate a human rights and international law perspective more clearly into our analysis. This includes the integration of indicators on dignified housing, disasters and forced displacement. Addressing issues of dignified housing, and just recovery from a colonial space plagued by inequality and displacement imposes on us a greater task to claim the right to land. Narratives, analysis, and practices with a human rights perspective link us to a broader community of countries, nations, and groups. In addition, they link us to the hope that a better Country is possible and that we are part of those who are building it. For that collective recovery to which we aspire and for which we fight, we are still here.

In solidarity and love,

Lcda. Ariadna Michelle Godreau Aubert
Founder and CEO
Ayuda Legal Puerto Rico

Lcda. Paula Fournier del Valle
Community Lawyer

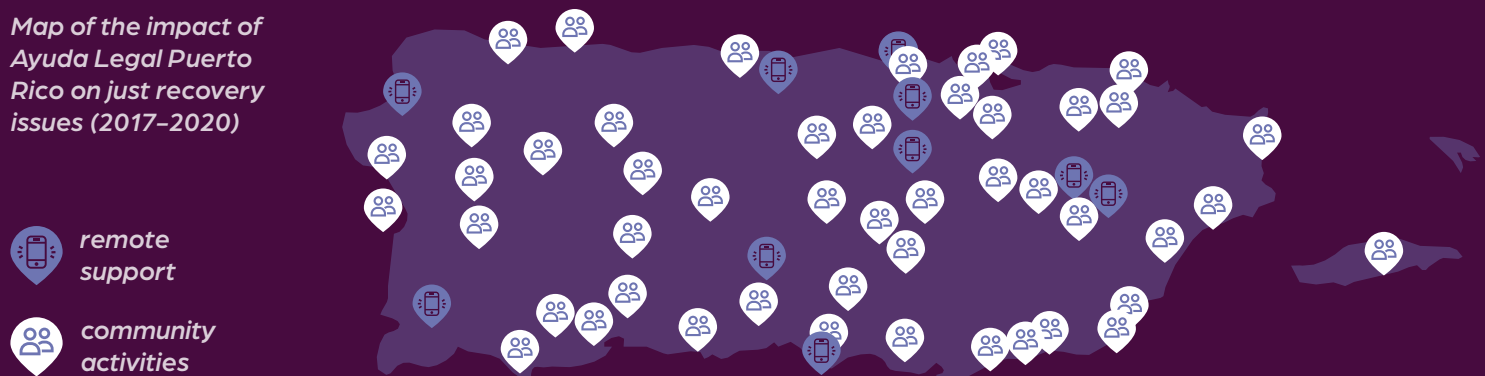
Lcda. Verónica González Rodríguez
Community Lawyer

Lcda. Nicole Díaz González
Public Policy Analyst

The work of Ayuda Legal Puerto Rico

Since its beginning on September 21, 2017, the Just Recovery program has provided a space for education and legal support for nearly 7,000 people. Accompaniment has been done through community legal brigades, direct individualized legal support, advocacy meetings, training workshops, and other education and empowerment strategies around housing and disaster recovery issues. Next, the impact map of the Just Recovery program from our beginnings until July 2020.

Map of the impact of Ayuda Legal Puerto Rico on just recovery issues (2017–2020)

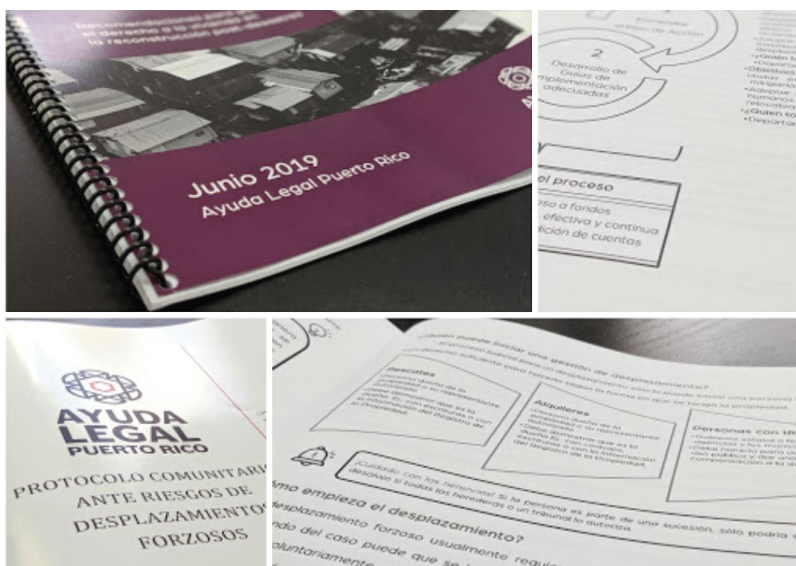


Since February 2018, Ayuda Legal Puerto Rico has facilitated the advocacy space called *Jornada de Participación Comunitaria Recuperación Justa*. Organizations, communities, and foundations interested in educating and influencing on issues related to dignified housing and just recovery meet here. To date, more than 70 organizations have participated in this space. In August 2019, the *Jornada* had a peak activity. The First Just Recovery Summit brought together nearly 80 organizations, communities, and foundations from all over Puerto Rico. In this space, the main public policy claims aimed at changing the Action Plan for CDBG-DR funds were endorsed. The Second Summit was held in a virtual format, due to the pandemic. The distance did not prevent us from bringing together representatives from more than 200 organizations, groups and communities in Puerto Rico, the United States and the Caribbean.



A first report on just recovery was published in June 2019. It led to important discussions on public policy, use of CDBG-DR funds, amendment to administrative processes and the right to housing in the event of disasters. This document has been widely used by collaborators, allies and government officials in Puerto Rico and the United States. It also serves as a historical document of the advocacy claims presented to both the local and federal government and the response generated.

context is an effective tool to denounce and organize. Furthermore, it links us to a world that extends far beyond the United States and that country's extremely limited commitments to the economic, social, cultural, and environmental rights of the people. Disasters, caused by economic, social, and political interests, are not unique to Puerto Rico. We are part of an international community of people and nations fighting against disaster capitalism, for justice in the face of climate change, and for the right to stay on our lands. From there, human rights are a vehicle to claim, stay, decide, and return.



These indicators are related to advocacy and human rights claims that we have presented in almost three years of work responding to disasters. We interweave them to each of the topics contained in this writing to evaluate the actions of the government.

In some cases, official actions and omissions repeatedly threaten the same rights or several at the same time. We must bear in mind that human rights require a transversal outlook. The impact of a lack of adequate response in a disaster affects all other rights. When we defend dignified housing, we are defending the right to education, work, health, and freedom from violence. Without a secure roof there is no way to withstand a hurricane or a pandemic, we are more vulnerable to threats to our physical safety, and we have fewer opportunities for education or work. The guarantees of a dignified life are universal, indivisible, and interdependent.⁵ The purpose is to be able to speak up when, in the process of recovery and the struggle for housing, we are facing violations of guarantees of a dignified life. This is an important tool in the process of building power.

Guidelines to Read this Report

Rights Do Matter: Human Rights Indicators for Assessing Government Response to Disasters⁴

In colonial spaces like Puerto Rico, the relevance of discourses and practices on human rights is even greater. Without ignoring the criticism of how these narratives and the organizations that promote them internationally have failed numerous groups, advocating for an active and critical defense of human rights in a disaster

⁴ An important part of this analysis and the indicators collected here were taken from the manuscript in preparation for publication. ARIADNA GODREAU AUBERT, INDEBTED, UNRESOLVED AND DISPOSSESSED: THE IMPACT OF AUSTERITY AND UNSUSTAINABLE DEBT ON THE RIGHT TO HOUSING OF THOSE LIVING IN COLONIAL LANDS (2020)

⁵ Vienna Declaration and Program of Action of the World Conference on Human Rights, Res. A.G. A / CONF.157 / 23, (June 25, 1993).

Advocacy Claim	<p>Recognize the right of individuals and communities to have recovery plans that address their needs, wishes and human rights.</p>	What are we looking for? <p>Affirmative actions to address the needs of these groups with urgency</p> <p>Impact of regulations and guidelines on black and impoverished communities, as well as populations that have already experienced displacement</p> <p>Impact of the regulations and guidelines on particular groups such as the elderly or people with functional diversity.</p> <p>Adoption and implementation of policies that prioritize historically marginalized groups</p> <p>Establishment of real mechanisms for real and effective participation in decision-making on recovery, in such a way that the people and communities most affected by disasters will be able to participate in the recovery and allocation of funds.</p>
Human Rights	<p>Right to non-discrimination</p> <p>Right to participation⁶</p> <p>Right to an adequate standard of living⁷</p>	
Key Components	<p>Disproportionate impact of disasters and the lack of adequate assistance to particular groups due to their social condition, race, functional diversity and other identities</p> <p>Protections for historically marginalized populations</p> <p>Inclusion of groups that have been systemically excluded from participation (women, youth, black communities, impoverished communities, the elderly, people with functional diversity and immigrants, among others).</p>	



⁶ The right to participation has been widely recognized at the international level. It includes recognition of the right of access to information as a condition for individuals, groups and communities to participate in public policy matters. International Covenant on Civil and Political Rights, Art. 25, December 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171.

⁷ Universal Declaration of Human Rights, Res. A.G. 217 (III) A, Art. 25, U.N. Doc. A / RES / 217 (III) (December 10, 1948).

Advocacy Claim	<p>Ensure that the immediate response to a disaster includes guarantees of dignified shelter for people who have to leave their homes.</p> <p>Guarantee the repair and reconstruction of safe, livable, and decent homes.</p>	What are we looking for?	Transfer plans and safe shelter guarantee.
Human Rights	<p>Right to dignified housing⁸</p> <p>Rights of displaced people⁹</p> <p>Right of return¹⁰</p>		Response to requests for assistance.
Key Components	<p>Habitability</p> <p>Access to services</p> <p>Security of tenure</p> <p>Affordability</p> <p>Access to information</p> <p>Participation</p> <p>* Protection of the social network</p>		Average amount of attendance.
			Ability to guarantee temporary or transitional housing for disaster survivors.
			Time taken to do the housing care process.
			Access to essential services (such as water, electricity, others) after a disaster.
			Actions or policies that do not discriminate against people without formal titles, reducing their vulnerability.



⁸ *Id.*

⁹ International humanitarian law broadly recognizes the rights of provisionally or temporarily displaced persons. Although legal frameworks have mostly been developed in the context of armed conflicts, they can be translated into disaster contexts even more so in the face of the threat of climate change for historically disadvantaged communities and groups. Rule 131 establishes that in the event of displacement, all measures must be taken to guarantee hygiene, safe shelter, health, safety and nutrition conditions, among others. They also recognize the right of return and protection of their property. The Guiding Principles on Internal Displacement collect and expand these standards, emphasizing the right of these people not to suffer discrimination. Principle 25 recognizes the government's responsibility to address the rights of these populations. Report of the Representative of the Secretary General, Addendum, Guiding Principles on Internal Displacement, E / CN.4 / 1998/53 / Add.2 (February 11, 1998) (by Francis M. Deng).

¹⁰ Rule 132 of international humanitarian law. It recognizes the right of internally displaced persons to return to their homes and lands when the hostile practices that motivated their displacement cease. Includes people who left their homes voluntarily or involuntarily.

Advocacy Claim	<p>Zero forced displacements</p> <p>Choose to mitigate before displacing</p>	What are we looking for?	<p>Creation and implementation of policies to minimize forced displacement.</p> <p>Creation and implementation of adequate relocation plans with a human rights perspective.</p> <p>Actions or policies that promote the lack of transparency regarding contracts related to projects that threaten housing.</p> <p>Actions or policies (or actions of third parties) that speculate on land and threaten to increase housing costs.</p> <p>Policies that ensure and monitor that funds will benefit limited and moderate-income individuals and communities.</p> <p>Ensuring that individuals and communities most affected by disasters will be able to submit proposals that influence the allocation of mitigation funds.</p> <p>Accessibility of mechanisms to participate in processes related to CDBG-MIT funds</p> <p>Mitigation proposals that have a long-term impact with protection for future generations.</p> <p>Considerations on the need to protect the environment in development processes, with awareness of climate change.</p>
Human Rights	<p>Right to free, prior and informed consent¹¹</p> <p>Right to equitable development¹²</p>		
Key Components	<p>Protections against housing commodification</p> <p>Shared responsibility between the state and third parties</p> <p>Climate Justice¹³</p> <p>Intergenerational equity</p>		



¹¹ The discussion of this right is related to Article 19 of the Declaration of Rights of Indigenous Peoples. United Nations Declaration on the Rights of Indigenous Peoples, Annex, Res. A.G. 61/295, U.N. Doc.A / 61 / L.67 / Add.1 (September 13, 2007). This right has been interpreted as extending to people at risk of displacement or eviction, whether due to mass evictions or new developments. (References to court documents)

¹² Declaration on the right to development, Res. A.G. 41/128, U.N. Doc A / RES / 41/128 (December 4, 1986).

¹³ United Nations Framework Convention on Climate Change. May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107. Ratified by the United States.

Brief Background: Disasters of the last three years and the assistance received

Hurricanes Irma y María ^{14, 15}

In 2017, Puerto Rico was hit by the hurricanes Irma and María. On September 6th, Irma hit Puerto Rico as a Category 3 hurricane. It had dire consequences for our Caribbean relatives. The greatest impact was concentrated in the northeast of the archipelago. It left a million people without power. Just 14 days later, Puerto Rico was hit by hurricane María, a category 4 hurricane that devastated the entire country. The crisis was exacerbated by poor management in relation to immediate response, policies that prevented the arrival of supplies, the lack of basic resources such as water, food and medicine, the interruption for months of essential services and numerous human rights violations. The government repeatedly insisted on denying a death toll estimated to exceed 3,000. When it comes to housing, and although the numbers have been changing, an estimated 70,000 homes suffered significant damage in the wake of the disaster. It is estimated that 130,000 people left the country in the wake of the disaster.¹⁶

In the case of Hurricane Maria, 1.1 million requests for assistance were submitted. FEMA denied 58% of requests for assistance and 3 out of 4 appeals. Average assistance received was \$ 1,800. Two-thirds of the people in Puerto Rico who received assistance to repair their homes received less than \$ 3,000. An estimated 70,000 people were rejected for not having a formal title. Three years after the hurricanes, the

number of people with blue tarps is not known for sure. Of the 20,000–30,000 tarps the government estimated in May 2019, the number inexplicably dropped to 4,500. This estimate – which seems misleading to us – responds to an official approximation after the Department of Housing asked 23 municipalities about the status of the blue roofs. There were no home repair processes between May 2019 and the new estimate, shared in August 2020.

While FEMA refers to immediate assistance, CDBG-DR funds seek to promote long-term recovery from disasters. Puerto Rico has received allocations totaling \$9.7 billions, which should be directed to planning, housing, infrastructure, economic development, and other programs. These funds must address the needs of individuals and families surviving the major disasters of 2017.

The Department of Housing manages these funds by appointment of the United States Department of Housing and Urban Development (HUD). The use that the government wants to give to this money, with what it means to actively consult the people, is included in the Action Plan. This is a document that establishes the programs that the government proposes to implement with this money. Among all the programs, the one related to the repair, reconstruction and relocation of homes draws our attention. It involves meeting the need for a safe roof after the disaster, even considering the impact of subsequent disasters such as earthquakes. As of the date of publication of this report, just a hundred houses have been repaired.

¹⁴ FEMA, *Puerto Rico Hurricane Irma (DR-4336-PR)*, <https://www.fema.gov/disaster/4336>

¹⁵ FEMA, *Puerto Rico Hurricane Maria (DR-4339-PR)*, <https://www.fema.gov/disaster/4339>

¹⁶ John D. Sutter, *130,000 left Puerto Rico after Hurricane Maria, Census Bureau says*, [cnn.com](https://edition.cnn.com/2018/12/19/health/sutter-puerto-rico-census-update/index.html), 19 de diciembre de 2018, <https://edition.cnn.com/2018/12/19/health/sutter-puerto-rico-census-update/index.html>

Earthquakes of 2020



Since December 28, 2019, Puerto Rico has not stopped shaking. Strong seismic events – such as those of January 6 and subsequent events – have affected thousands of families in the south, west and center of the country. It is estimated that 780 homes were significantly affected.¹⁷ According to official estimates, as of January 8 there were around 9,000 displaced people.¹⁸ People sought refuge – on basketball courts, vacant lots, their open garages or streets – because their homes were partially or completely destroyed, because they posed an imminent risk of collapse, or because they had a justified fear about the safety of the structure. Days later, the government set up official shelters. These militarized shelters were singled out for being inadequate, unsanitary, and unsafe. Some were established in flood zones where families lost what little they had left. These centers were the scene of violence against impoverished mothers. We were present when young mothers received threats related to the removal of their children if they did not agree to stay within the perimeter of the camp, even

even though conditions were clearly dangerous.

As of March 18, 2020, at the beginning of the COVID-19 quarantine, around **200 people** remained in state-run shelters or so-called informal shelters.¹⁹ Many of these people are in multiple states of vulnerability due to their age, poverty, gender or functional diversity, exposed to physical and sexual violence, not having access to medicines and adequate care for mental health crises, among other harmful effects.

As of July 15, 40,000 people had requested FEMA assistance in the aftermath of the earthquakes.²⁰ Only about 30% of the applications have been approved.²¹ Some people report that they have not been offered adequate alternative housing. It has been offered, for example, to relocate families from Guánica to Arecibo, despite not having transportation and the fact that their support community is in the south. As of the date of publication of this report, no shelter and relocation plan has been published to support southern families in the face of the new hurricane season.

COVID-19

The COVID-19 pandemic is another disaster. Added to the fragility caused by austerity, a dilapidated healthcare system, policies that promote inequality and the lack of adequate attention to hurricanes and earthquakes, this new crisis has exposed the repeated inability of the government to safeguard the lives and

¹⁷ Alex Figueroa Cancel, Preliminary study points to 800 houses affected by earthquakes, *elnuevodia.com*, January 15, 2020, <https://www.elnuevodia.com/noticias/locales/notas/estudio-preliminar-apunta-a-800-casas-afectadas-por-sismos/>

¹⁸ Puerto Rico: almost 9,000 displaced people by earthquake, *dw.com*, January 15, 2020, <https://p.dw.com/p/3WDF7>

¹⁹ Leysa Caro González, *Emergencia por el coronavirus podría retrasar la recuperación de damnificados por sismos*, *elnuevodia.com*, 16 marzo 2020, <https://www.elnuevodia.com/noticias/locales/nota/emergenciaporelcoronaviruspodriaretrasarlarecuperaciondedamnificadosporsismos-2553271/>

²⁰ FEMA, *Federal Disaster Assistance for Puerto Rico Earthquakes Tops \$104 Million*, 14 de julio de 2020, <https://www.fema.gov/news-release/20200716/federal-disaster-assistance-puerto-rico-earthquakes-tops-104-million>

²¹ FEMA, *Puerto Rico Earthquakes (DR-4473-PR)*, <https://www.fema.gov/disaster/4473>

rights of people. While Puerto Rico experiences an upturn in cases, there are still no protocols that guarantee the shelter of people threatened by new disasters or that guarantee their safe access to transitory and temporary housing. Nor have any protocols been published related to the protection of particularly vulnerable populations in the face of this pandemic, such as older adults and those with pre-existing health conditions.

Who is left out of recovery?

Crises do not affect all people equally. Disasters increase the vulnerability of groups that have already suffered the impact of inequality and discrimination. In terms of human rights, it is essential to make visible the relationship between the lack of assistance and poverty, as well as the increase in the risk of displacement for black communities, poor people, heads of families and elderly people. In relation to these groups, the government has the responsibility to take affirmative actions to prevent, address and remedy the major threats they face.

In this context we problematize the word crisis, understanding that the lack of dignified housing and the terrible impact of the recovery that does not prioritize people are not accidents or system errors. These ills are part of social, economic, and political models that prioritize housing as an opportunity for enrichment and that bet on disaster capitalism as an engine.

The government fails to do this when there is no correlation between the needs of the groups and the assistance provided after disasters. Policies that punish the lack of a formal title or that criminalize self-construction are symptoms of this failure. So are the policies that deprive communities that for reasons of race and class live in regions and under conditions that are now considered "risky."

Since July 2019, we have been using formal complaint mechanisms to denounce civil rights violations as a legal and advocacy strategy to make visible the impact of the CDBG-DR regulation created by the Department of Housing and endorsed by HUD. In these actions, we accompany people living in affected communities or we act in our institutional capacity. The result has been to promote individual remedies to guarantee the enjoyment of dignified housing after disasters as well as to amplify Just Recovery claims that benefit the entire Country.

Map showing the correlation between homes affected by Hurricane María and the requests received.



CDBG-DR Home Repair, Reconstruction and Relocation Program: Are Three Years of Waiting Enough?

The Home Repair, Reconstruction and Relocation Program (R3), which as of the date of this report has a budget of \$ 3,289 million, should be an option for those still waiting for assistance to guarantee a safe roof. This program is the last resort available to those who suffered damage to their homes from Hurricanes Irma and María. Almost a year after the opening of the program, official data indicate another reality. From its start date, July 31, 2019, until it stopped accepting applications on January 7, 2020, 26,951 applications were received.²² Almost three years after hurricanes Irma and María, the Housing Department has not yet delivered one hundred repaired houses.²³

Thus, the government failed in its obligation to protect the right to dignified housing of the survivors. The lack of safe and secure roofs indicates non-compliance with guarantees such as the provision of safe shelter for displaced people, timely assistance, security of tenure and those rights related to dignified housing and the minimization of forced displacement.

About the program and its eligibility

criteria

The R3 program is aimed at people whose homes are not in adequate conditions to be inhabited as a result of the hurricanes Irma and María. Its objective is to provide dignified, safe, and “hygienic” housing through three types of assistance: repair, reconstruction, and relocation.

The CDBG-DR Action Plan, the most recent version of which was approved in August 2020, establishes the following eligibility criteria to apply to the R3 Program: confirmed damage to property, ownership of the structure or ability to prove it by alternative methods²⁴ have low or Moderate income²⁵ and be an eligible single-family structure that was your primary residence at the time of the storm. It also stipulates that:

*To be eligible for reconstruction, the property **cannot** be in flood zones, in the path of rising bodies of water, or in areas with extraordinary engineering or conditions that make on-site rebuilding not feasible.*

As of July 31, 2019, the Department of Housing established a term of 90 days to evaluate the applications submitted by people belonging to different priority groups. These priority groups include people who are 65 years of age or older, functionally diverse, or people whose property has suffered considerable damage, including those temporarily repaired with blue tarps.

The official data

In March 2019, the government of Puerto Rico

²² Action Plan, on p. 76.

²³ As of August 21, 2020, only 56 homes had been completed. All have been repairs. Letter from Attorney Maytte Texidor-López, Director of the CDBG-DR Program Legal Division, to Ayuda Legal Puerto Rico, Information request: Updated data on the R3 Program, by municipality, August 26, 2020. On file with Ayuda Legal Puerto Rico.

²⁴ Any person who, in the application process, submits an alternative method to demonstrate ownership, will be referred to the Title Acquisition Program. Failure to obtain a honed degree, at least as far as relocation assistance is concerned, will not be eligible for R3 Program assistance. This title requirement is discussed in more detail in the Title as a Condition section of this report.

²⁵ Low or moderate income individuals or families are those whose income is below 80% of the area median household income. Government of Puerto Rico, Action Plan for Disaster Recovery for the Use of CDBG-DR Funds in Response to Hurricanes Irma and María (2017), Fourth Substantial Amendment, August 17, 2020, at p. 57. Available at: <https://www.cdbg-dr.pr.gov/download/4ta-en-mien-da-al-plan-de-action-amendment-substantial-effective-el-17-de-Agosto-de-2020> / [Action Plan]

reported that there were 30,000 homes with blue tarps in Puerto Rico and that this problem would be addressed starting in August with the R3 Program.²⁶ According to estimates by the Department, by August 2020 this number inexplicably dropped to 4,500. Through information requests that took months to be answered, the agency reported that it had received 26,951 requests and that of these it only received 3,048 from people with blue tarps.²⁷ To date, about 6,000 people have been determined pre-eligible.²⁸ It is also unclear how many of these eligible people were in priority groups – people with blue tarps, functional diversity, older adults, among others – or what type of assistance they were eligible for. The Department reported that 697 award agreements had been signed with a total average of \$ 67,838, of those agreements only 56 homes had been completed through repair.²⁹ Since the program closed in January 2020, 837 people were placed on the waiting list and the number continues to grow.³⁰

At a press conference in June 2020,³¹ the governor promised that around 300 to 400 homes affected by hurricanes Irma and María would be built each month. Later, the Department clarified that the houses would not be complete, but that their reconstruction process would begin.³²

Obstacles to receiving assistance,

again

The process was very onerous

The low numbers of applications compared to the need identified by the government itself, especially from people in priority groups, are concerning. On multiple occasions, we warned about the lack of promotion of the program, how annoying it was for people with limited internet access to complete the application, the obstacle represented by requiring multiple affidavits in the process, as well as the impact that distance and availability would have, a limited number of service centers to the general public, among others. In visits we made to communities seriously affected by the disaster – in and outside the metropolitan area – we were able to verify first-hand that people did not know about the program and those who did know about its existence had generally little or wrong knowledge about it. They also reported inability to travel to places where applications could be completed.

Requirement of formal ownership

On the other hand, the eligibility criteria for title deeds repeat the serious pitfalls we saw after Hurricanes Irma and María. The Department's scheme requires the registration of title to the property. This was decided by the agency, whose staff has insisted on an incorrect interpretation of federal regulations, instructing

²⁶ Ricardo Cortés Chico, *Todavía 30,000 casas tienen como techos toldos de FEMA*, ElNuevoDía.com, 10 de mayo de 2019, <https://www.elnuevodia.com/noticias/locales/notas/todavia-30000-casas-tienen-como-techos-toldos-de-fema/>

²⁷ Letter from Lcda. Maytte Texidor-López, Director of the CDBG-DR Program Legal Division, to Ayuda Legal Puerto Rico, Information request: Updated data on the R3 Program, by municipality, August 26, 2020. On file with Ayuda Legal Puerto Rico.

²⁸ Action Plan p. 76

²⁹ Letter from Attorney Maytte Texidor-López, Director of the CDBG-DR Program Legal Division, to Ayuda Legal Puerto Rico, Information request: Updated data on the R3 Program, by municipality, August 26, 2020. On file with Ayuda Legal Puerto Rico.

³⁰ CDBG-DR Advisory Committee APA4 Virtual Session with Secretary Fernández Trinchet, Meeting of April 22, 2020, Minutes, Annex Citizen Advisory Committee Q & A, on p. 5. Document on file with Ayuda Legal Puerto Rico.

³¹ Radio Isla, *Gobernadora promete reconstruir hasta 400 viviendas afectadas por huracanes mensualmente*, radioisla.tv, 18 de junio de 2020, <https://radioisla.tv/gobernadora-promete-reconstruir-hasta-400-viviendas-afectadas-por-huracanes-mensualmente/>

³² CyberNews, *Secretario de la Vivienda afirma inicio de construcción de viviendas por R3*, periodicolaperla.com, 24 de junio de 2020, <https://www.periodicolaperla.com/secretario-de-la-vivienda-afirma-inicio-de-construccion-de-viviendas-por-r3/>

people that without a title they will not have disaster assistance.³³ It would also not be possible to receive relocation assistance because these individuals must deliver the title to their current home to obtain the new structure. The agency determined that people who do not have a title will be referred to the Title Authorization program, while their place is reserved in R3. According to data reported by the Department of Housing, 2,966 R3 applicants have referred to the Title Authorization program, but, as of August 21, 2020, not a single title has been provided.³⁴ This process is unclear, although more than a third of the applicants determined to be pre-eligible have been referred to it.

This panorama – contradictorily – gets complicated by the approval of Executive Order 2020-063, which establishes that a formal title will not be required for the R3 process when it comes to repairs or reconstructions. While this is a major step forward, the fact that weeks have passed without the Department acting on this new development concerns us. From Ayuda Legal Puerto Rico, we demand that every person who requested R3 be notified of these changes, regardless of the stage they are in, including people having received an ineligibility determination.³⁵ This new regulation should open the door to reconsider all the cases that were rejected outright or referred to the Title Authorization program. No case should be suspended for having been referred to this program.

That said, the Order does not meet the requirement imposed by the Action Plan to establish “a Direct Mortgage Deed with the imposition of restrictive conditions, which will be registered in the Property Registry of Puerto Rico” on the repaired or reconstructed homes.³⁶ Registration in the Registry, of course, requires a formal title to the home, which in principle the assistance would remain pending the result of the steps that the Title Authorization Program may make to formalize the tenure.

The Title Authorization Program is not designed to solve the multiplicity of tenure problems that can prevent a person from having title to property, including contentious claims and cases in which the usucapion terms have not expired. It also does not include R3 applicants as a priority group.³⁷ As we have repeatedly said, title issues will not be resolved on a case-by-case basis, they require holistic public policies that analyze the circumstances and desires of communities without formal titles in Puerto Rico. In the next section of this report, we expand on our discussion of title as a condition.

Policies punish those who decided to repair their houses on their own

The amendments to the third version of the guide for the R3 program added an additional obstacle for

³³ CDBG-DR Puerto Rico @cdbgdpruertorico, Facebook.com, WEBINAR: Programa de Autorización de Títulos (28 de mayo de 2020, 1:00 pm), <https://www.facebook.com/cdbgdpruertorico/videos/1489125354590782/>; Departamento de la Vivienda @DeptVivienda, Twitter (14 de julio de 2020, 5:11pm), <https://twitter.com/DeptVivienda/status/1283147098507141122>

³⁴ Letter from Lcda. Maytte Texidor-López, Director of the CDBG-DR Program Legal Division, to Ayuda Legal Puerto Rico, Information request: Updated data on the R3 Program, by municipality, August 26, 2020. On file with Ayuda Legal Puerto Rico.

³⁵ As of this date, of the 714 ineligibility determinations, 236 are due to the person not being the owner of the property. Letter from Attorney Maytte Texidor-López, Director of the CDBG-DR Program Legal Division, to Ayuda Legal Puerto Rico, Information request: Updated data on the R3 Program, by municipality, August 26, 2020. On file with Ayuda Legal Puerto Rico.

³⁶ Action Plan, p. 138.

³⁷ Action Plan, p. 143.

receiving assistance.³⁸ The Department established that it will not complete the repairs initiated by the homeowners of affected houses “informally,” that is, without government permits and other related documents. In such cases, if the person is eligible for assistance, they can only receive reconstruction assistance. This implies that the R3 program will demolish the home, including the owner’s repairs, and build a model home in its place. We must not forget that, according to the same criteria, if the house is in a flood zone, the family will only be eligible for relocation.³⁹

There is no temporary or transitory housing plan for those who wait for long months a response from R3

People who have been waiting for a response since August 2019 from the R3 program are calling Ayuda Legal Puerto Rico telephone line support service. Per the suggestion of the guidelines and program officials, people have moved to their relative’s houses, friends or have had to juggle to rent other spaces. Given the inexplicable delay of a year in fixing the homes, plus the physical distancing that COVID-19 forces, this situation is unsustainable for the surviving families. For example, a person without a formal title who applied for R3 assistance and needs to relocate could be on hold for up to a year, while the legal title issue is being addressed. Similarly, while we welcome the most recent amendments to the Action Plan regarding the possibility of stopping relocation while mitigation is being considered, it could be a long time between one process and the other. During this period, the person would be exposed to the precariousness of the structure, the onslaught of new disasters and the social

fragility to which those who live on unsafe roofs are exposed. Therefore, it is necessary to redistribute the funds from this program to integrate a temporary housing program with the firm commitment that this person will be able to return home as soon as possible.

We need to act now!

We work so that the human rights of these communities are guaranteed, particularly those that have to do with the right to dignified housing, such as: equitable access to funds, zero forced displacement, and the real and effective participation of the communities.

- Requests for assistance should be accessible, simple, and uniform: Programs should be promoted widely using social media and traditional channels, with enough time for families to prepare for the process before applications begin to be received. The technological gap must be considered to provide alternatives on paper as well as centers and mobile units that offer services during extended hours in different regions of the Country.
- Eliminate any provision that excludes people without formal title: The document that we have presented must be approved for the applicants to self-certify under sworn statement that they own the property. Title to property cannot be a condition for receiving disaster assistance. This prevents agile and uniform assistance for the most affected people. The state has access to other mechanisms to render accounts and protect public funds.

³⁸The Title Acquisition Program did not appear in the first two versions of the draft Action Plan, published on May 10, 2018 and June 14, 2018. It appears for the first time in the version of August 30, 2018, approved by HUD, but was not subject to public hearing or comment.

³⁹ Department of Housing, CDBG-DR Program Guides: Repair, Reconstruction or Relocation Program (Program R3) (v. 7), June 15, 2020. Available at: [https://www.cdbg-dr.pr.gov/download/repair-rebuild-or-relocation-program/\[R3 Guide\]](https://www.cdbg-dr.pr.gov/download/repair-rebuild-or-relocation-program/[R3%20Guide])

- Establish specific terms of time within which the agency must act and provide adequate notice to applicants.
- Adopt a clear and standard process for requesting reconsideration or review of agency determinations, including a form and designated offices to receive it.
- Separate repair and reconstruction programs from relocation programs to allow space for mitigation: Although this claim is achieved in the Fourth Substantial Amendment to the Action Plan, as one of the greatest advocacy achievements we have in this time, there is a lack of modification of the guides and their implementation. While waiting for the mitigation process, temporary housing is urgently needed for the affected people.
- Eliminate the prohibition on reconstruction in risk areas and allow homes in flood zones or landslide risk areas to be eligible for substantial improvements or reconstruction when mitigation measures that would make them safe can be implemented. This requires implementing the changes that forced the Executive Order 2020-063 and the Fourth Substantial Amendment to the Action Plan.

Title as a condition: Exclusion policies against people without legal documents

The title deed cannot be a condition to exercise the rights. Demanding a legal document to obtain assistance after disasters, punishes impoverished people, already affected by

conditions that prevent their access to justice and the enjoyment of dignified housing.

We won, but the government didn't do their part

It is estimated that FEMA denied about 58% of requests for assistance submitted after hurricanes Irma and María.⁴⁰ One of the main reasons was the difficulty that thousands of homeowner families had to prove their ownership of the affected property. As we were able to verify in numerous community legal brigades, many were required to have a title deed as a condition for receiving assistance. This was due to the incorrect application of regulations and law, both federal and local. To request and receive assistance to repair the home, they did not require – as was mandatory – notarized sworn statements to prove ownership. In addition to being an onerous requirement and violating the right of access to justice, these were not necessary.

Using the example of partner organizations in Texas, at the Ayuda Legal Puerto Rico office, we prepared an investigation adjusted to local law and created a sworn statement form regarding proof of ownership.⁴¹ This document allows owners without title to request assistance and prove their ownership without the need for a formal deed or title. After various advocacy efforts, FEMA approved this document in the summer of 2018. However, the federal agency put on the nonprofits, the responsibility to notify people who had their application unfairly denied of their right to appeal. Without the necessary information, with limited resources, and despite numerous brigades held, it was impossible to reach all the families that could have benefited from this achievement. It should be noted that the government of Puerto Rico did not help to

⁴⁰ Benjamín Torres Gotay, *Menos del 1% de los damnificados obtuvo la ayuda mayor de FEMA*, *elnuevodia.com*, 3 de marzo de 2018, <https://www.elnuevodia.com/noticias/locales/notas/menos-del-1-de-los-damnificados-obtuvo-la-ayuda-mayor-de-fema/>

⁴¹This was achieved thanks to the support of lawyers from the organization and the probono work of the lawyer Ivette Rivera Rivera.

amplify the message. Without a doubt, there is a clear correlation between discrimination against owners without formal titles and greater vulnerability to withstand the process after hurricanes and subsequent disasters.

In Puerto Rico, it is not required that a homeowner register their home in the Registry of the Property. There is also no obligation to have a legal document proving that an individual owns a home. FEMA's federal regulation governing disaster assistance also does not require a title deed.⁴² As we tirelessly repeated, a definition of homeowner is established so broad, that it includes people who oversee maintenance, who pay property taxes or who have a proprietary interest in it.

In the case of CDBG funds, there is no definition of an owner. This role corresponds to governments. By November 2018, we had asked the Department to adopt the same definitions to allow an agile disbursement of funds and not to exclude people without formal title. To this date, we have not seen action in this direction. What persists are two distinct standards for assistance with federal disaster funds, promoting confusion and discrimination against specific groups.

In other jurisdictions, such as Texas, a sworn statement had already been adopted that allows the applicant to complete – on their own – a document swearing to own the property and explaining why they do not have a title deed.⁴³ This sworn statement is used for both FEMA and CDBG-DR funding assistance requests.

History repeats itself, several times

After a first reading of the CDBG-DR Action Plan, we realized that the Department of Housing required title deeds for families with needs discovered after Irma and Maria to request assistance. We denounce the vagueness of the "possibility" of accepting alternative proof of ownership and we predict that we could be facing a scenario similar to FEMA. In October 2018, we sent to the then Secretary Fernando Gil Enseñat an investigation on the topic of ownership and disaster assistance, along with a model of the sworn statement adapted for CDBG-DR.⁴⁴ We never received a reply.

Instead, individuals who requested assistance from Ayuda Legal Puerto Rico reported the Department's insistence that both sworn statements be completed to prove ownership. This despite the fact that we warn about the increase in the cost of the processes – even for the Department itself that hired private companies to carry out the application process – and the need for these documents to be signed before a notary public. Sometimes, as happened with FEMA, the companies themselves referred people to Ayuda Legal Puerto Rico for us to help them complete the declaration.

According to the Department of Housing: without a title, nothing will be possible

Although the Department of Housing has insisted otherwise in the past, it is clear that a title deed is a necessary condition for receiving assistance from federal CDBG-DR funds. This is not by federal mandate but because the agency itself chose to adopt processes that openly exclude people without formal titles.

⁴² See definition of homeowner in 44 CFR §206.111 (2020)

⁴³ Texas General Land Office Community Development and Revitalization, *Hurricane Harvey Disaster Recovery Housing Guidelines*, pp. 40–41 (April 1st, 2020).

⁴⁴ Ayuda Legal Puerto Rico, *Hacia una recuperación Justa: Recomendaciones para garantizar el derecho a la vivienda en la reconstrucción post-desastres*, June 2019, p. 14. Available at: <https://www.ayudalegalpuertorico.org/2019/06/13/informe-recuperacion-justa/>

All processes related to housing within the R3 Program require a title. In the case of the relocation program, the Department has insisted on the need for this document since the person must give up her house in exchange for another structure. They argue that this is only possible if you have a title deed prior to the authorization of the relocation. In addition, individuals are required to sign a Restrictive Conditions Lien Deed, which is only possible if there is a prior title.⁴⁵ This lien forces you to live in the property for 15 years, subject to various penalties - including acceleration of the loan that was granted and the foreclosure of the house.

With regard to the repair and reconstruction processes, the guides also establish ownership requirements and periods of occupation that oblige the applicant to have a title as a condition for receiving assistance. Again, it is insisted that there be the inscription of a Deed of Lien of Restrictive Conditions in the Registry of the Property.⁴⁶

When the program identifies that the person does not have a formal title - 50% of the population according to the CDBG-DR Action Plan - it is referred to the Title Authorization Program. One third of R3 applicants are before the Title Authorization program. Some of the people who have contacted Ayuda Legal Puerto Rico classify this step as "a limbo."

Authorization of Titles : A justified investment or an unnecessary maze?

The Title Authorization Program has an allocation of \$ 44,000,000.⁴⁷ The first time it appears is after the comment process of the first draft of the CDBG-DR Action Plan, so there was no opportunity to comment or participate in its design.⁴⁸ Since then, we have raised a red flag against this program, pointing out its inability to address the situation of informal titles effectively, as well as the risk that it will be seen as legitimization of the discourse that establishes that the title is a condition for receiving assistance.

According to the Department, a title protects people from "legal or other tricks to keep the property", allows to apply for loans, increases the value of the property, facilitates the transfer of property, protects the domain and protects in court.⁴⁹ In other spaces, the agency has said that the title is necessary to request assistance after hurricanes and that without it, no aid will arrive.⁵⁰

Very little or nothing is warned about the delay that usually accompanies judicial processes in our Country or about the consequences of a person trying to obtain a property title in this way and not succeeding, for not meeting the requirements, for example. The Program establishes that people will have to complete the process in 180 days, with a maximum extension of another 180 days.⁵¹ The vagueness

⁴⁵ R3 Guide, p. 49

⁴⁶ R3 Guide, p. 62

⁴⁷ Action Plan, p. 143.

⁴⁸ We recall that the Title Acquisition Program did not appear in the first two versions of the drafts of the Action Plan, published on May 10, 2018 and June 14, 2018, but it appears for the first time in the third version of the document.

⁴⁹ Department of Housing, *Programa para viviendas en los 78 municipios de Puerto Rico que carecen de su Título de Propiedad*, <https://cd-bg-dr.pr.gov/autorizacion-de-titulos/>

⁵⁰ Department of Housing @DeptVivienda, Twitter, (14 de julio de 2020, 5:11pm), <https://twitter.com/DeptVivienda/status/1283147098507141122>

⁵¹ Department of Housing, *CDBG-DR Guía de Programa: Programa de Autorización de Título (v. 2)*, May 27th, 2020, p. 18. Available at: <https://www.cd-bg-dr.pr.gov/download/programa-de-autorizacion-de-titulos/>

with which the handling of very frequent cases such as inheritance or rescuers handled "case by case" is worrying. The Department has also not made it clear how many people it estimates will benefit from this program and if they will have the capacity to serve applicants who go directly to this project plus those people referred by R3.

Again, properties in flood zones or at-risk areas are excluded, unless a title is required to receive assistance from a CDBG-DR program.⁵² That is, a person without a formal title who wants to repair or rebuild, who is required to have the lien deed, may not be eligible for this program. It is not yet clear how this will be harmonized with the new changes in Executive Order 2020-063 and the Fourth Substantial Amendment. It seems to us that it should lead to a de facto elimination of this prohibition that is so unfair and unique among the jurisdictions that receive these funds. Even so, it is necessary to clarify it because it excludes thousands of people from the recovery process.

In relation to the impact on historically marginalized groups, the data on eligible

applications that have been referred to the Title Authorization program correspond to the percentage of poverty level according to the applications received from each town.⁵³ In other words, in the municipalities with the highest poverty rates, there were more applications with ownership problems.⁵⁴

We need to act now!

- Individual title deed is not a requirement for requesting disaster assistance: Title requirements exclude and discriminate against particular groups.
- Adopt the uniform document that alternately evidences ownership.
- There are other guarantees of reliability and accountability: The title requirement seeks to establish a guarantee that the money will be used for the proper purposes. However, there are other methods to promote the correct use of this money. First, applicants never receive a penny of the money. The companies in charge of inspecting, purchasing materials, repairing, rebuilding and other related

Map that represents the proportion between poverty and assistance received.



✓ Towns where more than 25% of the applications received were approved.

💰 Towns where the annual income is less than \$ 16,000

⁵² Action Plan, p. 145.

⁵³ Aggregated data obtained from the report of the Ayuda Legal Puerto Rico Research Board, to be published.

⁵⁴ *Id.*

matters are selected by the Department itself. The agency has the obligation to monitor and supervise the work of these companies.⁵⁵

- The title "problem" requires a comprehensive public policy solution thought out and consulted with groups and communities.

Buying homes and the threat of forced displacement

The right to adequate housing includes choosing where to live without unnecessary interference from the state. In the post-disaster context, it is essential that the recovery processes consider viable alternatives for the community to remain in their space and improve their living conditions. Only when there is no better alternative could the government be justified in interfering with the right to housing by encouraging the displacement of individuals and families.

The regulations applicable to CDBG-DR funds authorize the Department to obtain properties to reduce risk conditions. They are usually structures in flood zones and areas susceptible to landslides. Purchases or buyouts is the process by which properties that cannot be rebuilt under R3 would be managed, so families can only be relocated.

The R3 program, as initially designed, did not give space to assess whether there were ways to reduce the risk to which the community was exposed. Displacement does not consider the effect of distancing or even breaking a community's social fabric, including their

economic, work, or educational aspects, on which we all depend. Although it is presented as a voluntary decision of the applicant, it is not possible to speak of willfulness, when the only options for the applicants are to relocate or not to receive assistance to improve the condition of their home. As always, the displacements have a root in inequality. While in R3, families are told that they cannot build in flood zones, a developer who obtains funds from the Social Interest Housing Program can build in this same place.⁵⁶

The amendments achieved in August 2020, however, appear to open the door to consider mitigation as an alternative to displacement. Now, relocation-eligible individuals who do not wish to leave their home immediately "may defer their acceptance of assistance ... to allow for the participatory development of a housing mitigation program under the CDBG-MIT Program."⁵⁷ As we have repeatedly warned, as of the writing of this report, the Department has not published guidelines that operationalize the scope of this clause.

A threat that affects a large part of the population

The Planning Board estimates that 252,813 structures are in flood zone areas. This number reflects an increase of over 90,000 structures in areas that were designated as floodable, due to rain or storm surge, after Hurricane María.⁵⁸ Up to 30,000 homes in flood zone areas were

⁵⁵ The guidelines already establish a monitoring process for the people who live in the properties. R3 Guidelines, on p. 63.

⁵⁶ Department of Housing, *Guías del Programa CDBG-DR: Programa de Viviendas de Interés Social*, Sec 9.6 p. 26. ("Projects located in a Special Flood Hazard Area (SFHA) (also known as a 100-year floodplain) that receive assistance from the CDBG-DR Program must obtain and maintain flood insurance for the amount and duration indicated by the National Flood Insurance Program of the Federal Agency for Emergency Management")

⁵⁷ Action Plan, p. 141.

⁵⁸ Reimagine Puerto Rico, *Over 250,000 structures are in flooding zones*, May 22nd, 2019, <https://reimaginepuertorico.org/sobre-250000-estructuras-estan-en-zonas-inundables/>

damaged by the hurricane.⁵⁹ On the other hand, according to 2010 data, it is estimated that about 49% of the population lives in areas with moderate or high risk of landslides.⁶⁰

Part of these structures are located in coastal flood zone areas. By 2010, 56% of the population lived in coastal cities, which may be facing a rise in sea level of up to 0.8 meters or 2.6 feet as a result of climate change.⁶¹ In 2019, the Planning Board identified over 1,000 structures at risk from coastal erosion in the next 30 years.⁶²

Without comprehensive alternatives such as mitigation, it is not possible to guarantee dignified housing and Just Recovery to these thousands of people.

What the regulation establishes

The government of Puerto Rico can buy properties with CDBG-DR funds. Although the Action Plan uses purchase and acquisition synonymously, legally they are not. The purchase or buyout is an "acquisition of properties located in a flood zone that aims to reduce the risk of future floods". The Department describes the relocation program in R3 as one to provide owners of "significantly affected residences located in high-risk areas,

the opportunity to move to a safer location." Therefore, it is a purchase or buyout of the property. Once the property is purchased, the agency must dedicate it to "open, recreational or flood spaces and retention ponds."⁶³ This space cannot be redeveloped.

Applicants are only eligible for relocation if their home requires reconstruction or substantial improvements and is located in a flood zone area or presents a risk that prevents reconstruction on the site.⁶⁴ In those cases, the agency buys the affected structure and gives in exchange a voucher for a new home outside the risk zone. Although the Notice of Assignment authorizes the payment of incentives – that is, additional assistance to "encourage households to relocate"⁶⁵ – the Department decided not to adopt this mechanism.

This purchase and relocation system is similar to FEMA's Hazard Mitigation Grant Program (HMGP). However, there is an important distinction: FEMA's program is separate from disaster relief. Under the HMGP, FEMA helps local governments reduce the loss of life and property as a result of a disaster in future disasters. With these funds, the local government announces in the press, community meetings or other media the opportunity to buy the properties. The interested person makes an

⁵⁹ ElNuevoDia.com, *Around 30,000 structures in flood zones were affected by the hurricanes*, ElNuevoDia.com, January 24th, 2018, <https://www.elnuevodia.com/noticias/locales/nota/unas30000estructurasenareasinundablesseafectarontrashuracanes-2392655/>

⁶⁰ Puerto Rico Climate Change Advice, *Puerto Rico's State of the Climate Assessing Puerto Rico's Social-Ecological Vulnerabilities in a Changing Climate 2010-2013*, p. 21, Available at: https://data.nodc.noaa.gov/coris/library/-NOAA/CRCP/other/grants/NA09NOS4190173/Puerto_Rico/PR_TNC_PRCCC_Summary_Rept.pdf

⁶¹ Puerto Rico Climate Change Advice, *Puerto Rico's State of the Climate Assessing Puerto Rico's Social-Ecological Vulnerabilities in a Changing Climate 2010-2013*, pp. 21 and 9, Available at: https://data.nodc.noaa.gov/coris/library/-NOAA/CRCP/other/grants/NA09NOS4190173/Puerto_Rico/PR_TNC_PRCCC_Summary_Rept.pdf

⁶² Reimagine Puerto Rico, *Over 250,000 structures are in flooding zones*, May 22nd, 2019, <https://reimaginepuertorico.org/sobre-250000-estructuras-estan-en-zonas-inundables/>

⁶³ 83 F.R. 5863 (Feb. 9, 2018)

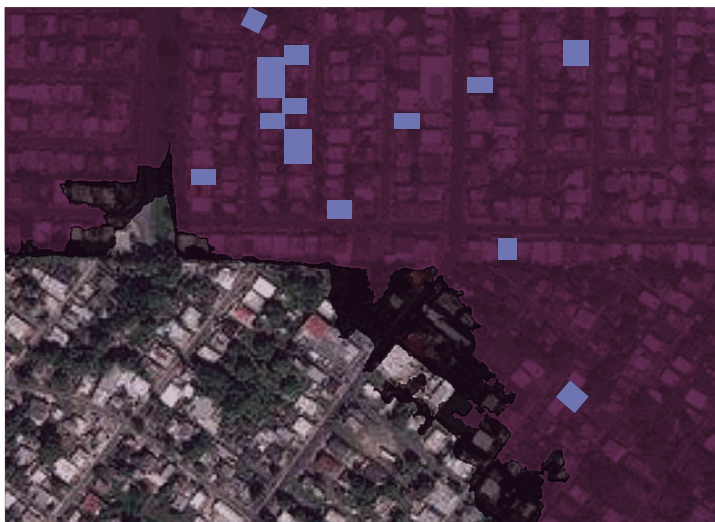
⁶⁴ Action Plan, pp. 137-38.

⁶⁵ 83 FR 5862 ("to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan.")

approach to the government to buy their house. Participation in the program must be strictly voluntary and the owners must actively support the application.⁶⁶

The purchase of houses through the R3 program, in addition to promoting the displacement of impoverished people and communities – those with more resources will not be displaced even if they are in flood zones – creates other problems. As it is an individual purchasing strategy, upon completion of the process the agency will own hundreds of small lots of land around the archipelago. These lots cannot be developed so they are left unoccupied, creating a checkerboarding effect on the remaining community. Poorly managed, these spaces can become a nuisance, diminish the value of surrounding structures, affect connections between residents, and encourage more people to leave the community. Likewise, they can increase the probability of subsequent state interventions, including expropriations, to address the reduction in population and the situation of homes that are now isolated from the rest of the community and infrastructure services. We noted earlier that the Action Plan now allows mitigation measures to be considered before the person receives relocation assistance. However, it remains an individual determination of the person who would receive assistance. It is not clear how this part of the process will be integrated with mitigation measures that may well be collective.

Checked effect: Acquisition of properties scattered throughout the floodplain



Checked effect: Acquisition of most of the properties in the floodplain



— ● flood zone

— ● purchased property

We need to act now!

- Eliminate the absolute prohibition to rebuild or make substantial improvements in risk areas, insofar as it is not compatible with the consideration of mitigation measures.
- Effectively operationalize participatory plan-

- ning and housing mitigation under CDBG-MIT programs.
- Adopt a displacement minimization policy and a relocation plan with a human rights perspective.

⁶⁶ 42 U.S. Code § 5170c (a); FEMA, *Homeowner's Guide to the Hazard Mitigation Grant Program* (Feb. 2015),

- Ensuring relocation as a genuinely voluntary process, rather than a consequence of being ineligible for other grants.
- Guarantee the right of return for those who had to leave their community, township, and even Puerto Rico.
- Establish measures to prevent that the purchased properties creates a checkerboarding effect on the remaining community.
- Clarify that the home acquisition process under the relocation program is a purchase and maintain the restriction of usage required by federal regulations.
- Consider using incentives for communities to leave a high-risk area together where mitigation is not possible.

And meanwhile, the Country for whom? Investment and speculation about housing

The public policies adopted by the government of Puerto Rico to guide recovery after disasters are worrisome for those of us who believe that reconstruction plans must be guided by the needs and desires of our communities. While for some it will be forbidden to stay in their homes because they are considered "risky", investors and developers benefit from incentives and promotions that seek to build in those same

places, now categorized as "economically profitable."

Unjust Recovery and Opportunity Zones

In this report we discuss how major programs to repair and rebuild homes deny access to those living in flood zones or landslide-prone areas. Public officials at different levels categorically insist that families living in these areas should be displaced, without first considering possible mitigation measures or guaranteeing that the resources and spaces exist to provide them with dignified housing elsewhere.

Meanwhile, nearly all of Puerto Rico has been declared eligible for the failed Opportunity Zones scheme, a program created by the Trump administration in 2017 to incentivize long-term private investment in low-income communities,⁶⁷ but in reality, has resulted in massive displacements in other jurisdictions.⁶⁸ As an example, in the Opportunity Zones in Los Angeles, California, the evictions of tenants increased significantly.⁶⁹ This is mainly due to the fact that investors in Opportunity Zones are required to substantially improve the properties they acquire, which implies that they must double their value.⁷⁰ As a result, the buildings or houses they buy are subjected to major renovations, or even demolitions, requiring relocation of residents and often leading to increased rent and cost of living that many people cannot afford.⁷¹ An early analysis of the Opportunity Zones found that the incentive structure benefits more the high-profit and the

⁶⁷ Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (codified at 26 U.S.C. § 1400Z-1–§1400Z-2 (2017)).

⁶⁸ Strategic Actions for a Just Economy, *Displacement Zones: How Opportunity Zones Turn Communities into Tax Shelters for the Rich* (2019). Disponible en www.saje.net/oz.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

luxury real estate market projects than projects with high social impact.⁷² In turn, these practices continue to impoverish municipalities, reducing contribution income.



98% of Puerto Rico has been designated as an opportunity zone

Added to this is the unprecedented extension of the Opportunity Zones scheme in Puerto Rico. Federal law states that a maximum of 25% of the number of low-income communities in a jurisdiction will be designated as an Opportunity Zone.⁷³ However, the legislation includes a special rule for Puerto Rico by which all low-income communities can receive the designation.⁷⁴ This means that interested corporations and individuals will have unusual flexibility in choosing the destination of their investments.

Under the classification of priority projects in the Opportunity Zone, those who are interested in and can invest in construction or rehabilitation projects for rent or sale, will enjoy tax privileges both at the federal and local levels in exchange for "contributing to the community." Such a contribution is poorly defined and there is no provision that requires Opportunity Funds or individual investors to prove that they are benefiting the community in which they are established. The community benefit can consist

of an unverified statement from the corporation owner assuring that it will create an indefinite number of jobs, that it will "beautify" some neglected section of a town or even that it will attract more affluent individuals to an economically depressed area. Housing developments are not required to be of social interest nor affordable.

Authorized speculation is not a new story

The idea of alliances between the government and investors to meet housing needs in exchange for tax benefits began to be implemented in Puerto Rico at the end of the 20th century. In the 1990s, the government modified its way of addressing the problem of the shortage of affordable housing, betting on the private sector to assume a large part of the responsibility.⁷⁵ Since then, and largely driven by federal legislation, the development of public and subsidized housing has been done in partnership with private companies that receive incentives to build and manage low- and middle-income units.⁷⁶ Some of the tools provided by the federal government include the Low Income Housing Tax Credits (LIHTC), Community Reinvestment Act (CRA) benefits, and the New Markets Tax Credit (NMTC).

These mechanisms are part of the reconstruction plans after hurricanes Irma and María and for the economic recovery of Puerto Rico. In addition, the government plans to combine them with funds that have been or will be received through FEMA and Community

⁷² Brett Theodos, *An Early Assessment of Opportunity Zones for Equitable Development Projects Nine Observations on the Use of the Incentive to Date*, Urban Institute (2020). Disponible en https://www.urban.org/research/publication/early-assessment-opportunity-zones-equitable-development-projects/view/full_report.

⁷³ 26 U.S.C. § 1400Z-1(d)(1)

⁷⁴ 26 U.S.C. § 1400Z-1(b)(3)

⁷⁵ José I. Alameda Lozada, *La Vivienda de Interés Social en Puerto Rico* (2005). Available at: https://estadisticas.pr/files/BibliotecaVirtual/estadisticas/-biblioteca/AVP_LaViviendaInteresSocialIPR_2005.pdf

⁷⁶ *Id.*

Development Block Grants, aimed at disaster recovery and risk mitigation.

Examples of these mechanisms are three affordable housing developments recently announced by the Department of Housing and that will provide housing for a total of 601 families: De Diego Village, an apartment building for low-income families in the urban area of Río Piedras, a multi-family housing complex and elderly homes on the land where the demolished José Gautier Benítez residential complex was located in Caguas and San Blas Apartments, a project aimed at providing affordable housing for the elderly in the urban area of Coamo.⁷⁷ These projects will be financed with a combination of private funds, Low Income Housing Tax Credits (LIHTC), and funds from the CDBG-DR Gap to Low Income Housing Program. In its CDBG-DR Action Plan, the Department of Housing allocated \$413 million to this program, of which it awarded \$18.1 million to De Diego Village, \$46 million to José Gautier Benítez and \$8 million to San Blas Apartments.⁷⁸ The Department of Housing considers the financing for at least three other projects of this nature in San Juan (Sabana Village and Viewpoint at Roosevelt) and Humacao (Hogar Mediavilla Negrón II).⁷⁹

Added to this combined financing scheme is the wide range of tax incentives aimed at foreign investors to establish themselves in Puerto Rico, such as Laws 20 and 22 (now contained in the

Tax Incentives Code) and the Opportunity Zones. These tax breaks, which are categorized as place-based incentives, are intended to attract private money to regions and communities with high rates of poverty and unemployment. The goal is for companies and individuals to establish their businesses in these areas, create jobs, rebuild damaged or abandoned infrastructure, and thus improve the quality of life for their residents. This in exchange for a substantial reduction in your taxes and other benefits such as preferential treatment in the permitting processes. According to the Department of Economic Development and Commerce, at least 4,255 individuals and corporations enjoy tax decrees under Laws 20 and 22.⁸⁰ At this time, the agency has not published a list of beneficiaries of the Opportunity Zones incentives. It should be noted that, although the names of the former are known, both their identity and their contribution are largely unknown to the general public.

In other jurisdictions they have combined strategies such as these to advance community development goals, disaster recovery and risk mitigation. For example, in South Los Angeles, California, nonprofits, financial institutions, and private companies teamed up to build affordable housing and community structures for common use.⁸¹ In Norfolk, Virginia they aim to achieve projects that reduce risks from disasters such as floods.⁸² These initiatives have been and will be successful to the extent that

⁷⁷ Department of Housing, *CDBG-DR Program Guidelines: CDBG-DR Gap to Low Income Housing Tax Credit Program*, July 31, 2019 (v. 2.0). Available at: <https://www.cdbg-dr.pr.gov/lihtc/>.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Department of Economic Development and Commerce, *Acceso a la información, Información Pública sobre Beneficiarios de Decretos*. Available at: <https://www.ddec.pr.gov/accesoinfo/>.

⁸¹ Sorenson Impact Center, *Opportunity for Prosperity in SoLa*, *Forbes* (June 12, 2020). Available at: <https://www.forbes.com/sites/sorensonimpact/2020/06/12/opportunity-for-prosperity-in-sola/#5d2ceed481f5>.

⁸² Peter Plastrik, *Playbook 1.0: How Cities Are Paying for Climate Resilience*, Innovation Network for Communities (2019). Available at: <https://static1.squarespace.com/static/5736713fb654f9749a4f13d8/t/5d275d9135b62f0001df44b5/1562860947122/Playbook+1.0+How+Cities+Are+Paying+for+Climate+Resilience+July+2019.pdf>.

they combine planning, transparency, accountability, accessibility, and above all, effective community participation in all its stages.

However, the history of these measures in Puerto Rico does not show a good record. In practice, putting affordable housing development in the hands of the private sector results in a marked decline in the number of units being built, especially after the beginning of the recession more than a decade ago.⁸³ The performance of private companies in the management of public housing is also questionable.

Investing as part of a disaster recovery strategy

Likewise, doubts have been raised about the effectiveness of the use of CDBG-DR funds when, almost three years after Hurricane Maria, not a single home has been repaired or rebuilt. There are also questions about how beneficial it is to allocate CDBG-DR funds to new private housing developments and what guarantees will be made that they will continue to be affordable once the restrictions imposed by the incentives expire. In all these cases, factors such as planning, accountability or participation have been, at best, deficient.

It is in this context that proposals for mitigation projects will be considered, both with FEMA funds and with CDBG-MIT funds. While FEMA generated processes for communities to propose alternatives, the development of participation strategies to define the use of CDBG-MIT funds has been more uneven. At the moment, the Housing Department has not opened adequate and comprehensive processes to identify risks and possible alternatives from the communities. The

Comprehensive Community Resilience Planning program with CDBG-DR funds has just begun to operate. No tools have been provided to enable community groups and organizations to qualify for mitigation funds. Yes, the pill has been sweetened for foreign investors to whom the entire territory of Puerto Rico is sold as a paradise eager for development. In this case, neither hurricanes, earthquakes nor the fragile electrical system are insurmountable problems. Faced with this, we ask ourselves: long-term recovery, for whom?

If the recovery and mitigation processes do not have the participation nor are accessible to the most vulnerable sectors of the population, it will be difficult for them to meet their needs or leave them in a better position in the face of a future disaster. Considering these deficiencies, then those who win in these processes are those companies and individuals that have the capital, the expertise and the plans to guarantee the adequate space and environment to establish their businesses and generate the highest possible profit from them. That seems to be the government's bet by not creating policies that protect communities against displacement and improve their opportunities to participate equitably in their own planning and recovery.

We need to act now!

- Any public policy that affects the right to housing and to Just Recovery must have broad participation mechanisms that make it possible to amplify the needs, desires and human rights claims of communities. This includes holding public hearings before and during implementation.
- Incorporate clear definitions of low-income communities to avoid speculation and that

⁸³ Jennifer Hinojosa y Edwin Melénez, *The Housing Crisis in Puerto Rico and the Impact of Hurricane Maria*, Center for Puerto Rican Studies, Hunter College, City University of New York (2018).

potential economic benefits are diverted outside the community.

- Prioritize, in any incentive, protections for the right of communities to remain in their spaces and to preserve the social network that unites them, including mechanisms to control the benefit of the community and to avoid the increase in rents and property costs, gentrification and lack of access to educational, medical services and employment.
- Require the hiring of local workers as a measure of community economic development.
- Open spaces for access to capital and fair acquisition mechanisms for community groups and grassroots organizations. This includes promoting incentives that facilitate the creation of community-based opportunity funds and encouraging the participation of the cooperative sector.
- We must continue to analyze and inspect the incentives and contracts granted to corporations, in relation to opportunity zones but also to the management and implementation of recovery processes. These contracts often lack few controls and accountability mechanisms. The corporate sector must be held accountable for human rights violations in relation to dignified housing and displacement.

Affirmative Steps: Participatory Mitigation as an Answer

Even within the available federal funds framework, the possibilities for mitigation are vast and

diverse. Their effectiveness in protecting lives and communities, however, depends on whether they can be tailored to the needs and wishes of the affected community. Generally speaking, residents are in the best position to identify the most pressing risks and their possible solutions. The process to evaluate and implement mitigation measures is an opportunity for the community to demand measures, projects and actions that will promote its strength and capacity to resist new disasters, as well as its power to recover in a just and equitable way.

The government has a responsibility to ensure that people participate effectively in these processes. This implies providing the time, support and tools necessary so that the community can, with knowledge and anticipation, evaluate the mitigation measures available to their community. Furthermore, it requires the commitment of the State to adopt measures that serve the community.

FEMA funds and their relationship with CDBG-MIT

Before, during and after a disaster

FEMA's Hazard Mitigation Assistance (HMA) programs provide funding for projects that reduce risk to individuals and property from natural hazards. These programs allow the implementation of mitigation measures before, during and after recovery from a disaster.

FEMA manages three programs that provide funding for eligible mitigation planning and projects that reduce losses caused by future disasters: (1) Hazard Mitigation Grant Program (HMGP); (2) Flood Mitigation Assistance (FMA); (3) Program for Pre-Disaster Mitigation (PDM).

HMGP funds can be awarded to state government entities, municipalities, and private non-profit organizations that submit Letters of

Intent. The submitted projects go through an analysis and evaluation process based on selection criteria before being finally approved.

The case of Puerto Rico and what we do not know about letters of intent

Puerto Rico receives funds through HMGP. The HMGP Program provides funding for long-term risk mitigation measures after a major disaster declaration and is administered by the State. The Government of Puerto Rico chose the Office of Recovery, Reconstruction and Resilience (COR3) as the recipient, which is responsible for disbursing the money to applicants and implementing the program.

On February 2, 2019, FEMA notified the Government of Puerto Rico that the amount of HMGP funds available based on this disaster was \$ 2,999,975,000 in federal funds for risk mitigation. This amount is derived from the total federal disaster assistance provided under the disaster declaration.

As of the notification, COR3 received 3,200 letters of intent from municipalities, public corporations, central government agencies, and nonprofit entities. In July 2020, it was announced that some 552 applications had been recommended to proceed to the next stage, in which a more comprehensive proposal on the project to be subsidized is required.⁸⁴ Among the letters of intent selected, 200 correspond to private entities, 135 to the central government and public corporations, and 171 to municipalities. This information is published on the COR3 Transparency Portal.⁸⁵ We know that the benefited projects are, for the most part, hospitals and secondly, churches.

A needs analysis in the face of the mitigation processes

The risks identified through the FEMA approved Hazard Mitigation Planning (HMP) is the starting point for a mitigation needs assessment. Recipients of CDBG-MIT funds must quote data sources, including risks identified in the current HMP. This does not prevent municipalities, groups, and organizations from identifying additional risks that are not included in the HMP.

CDBG-MIT funds are a possibility of Just Recovery

HUD allocated \$8.285 million in CDBG-MIT mitigation funds. These funds seek to promote measures to reduce or mitigate risks that may cause damage to life or property in a future event.⁸⁶ Unlike CDBG-DR funds, which repair damages caused by hurricanes, CDBG-MIT will be used to develop measures that allow for us to be better prepared at the possibility of another disaster. Well used, these funds will help make homes and common spaces safer and more resilient in the face of a natural event, such as hurricanes or earthquakes. This requires that people facing risks of floods or landslides, among others, can actively, effectively, and continuously participate in the decision-making process.

Mitigation must address the needs of the people

For the purposes of CDBG-MIT funds, mitigation activities are actions that increase resilience to disasters and that, by reducing the impact of future disasters, reduce or eliminate the long-term risk of loss of life and damage and

⁸⁴ Leysa Caro González, *Hazard Mitigation Grant Program accepted 552 projects*, ElNuevoDia.com, July 9th, 2020. Available at: <https://www.elnuevodia.com/english/news/story/hazard-mitigation-grant-program-accepted-552-projects/>

⁸⁵ COR3 Transparency Portal, <https://recovery.pr/es/document-library>

⁸⁶ 85 F.R. 4677 (January 27, 2020)

loss of properties.⁸⁷ For example, a mitigation activity could be to improve the rainwater collection sewer, restore a wetland, or place solar panels in a community center to have a place with electricity during the disaster.

The Department of Housing, as a subsidized entity, has to prepare a Mitigation Needs Assessment that considers present and future mitigation needs. The agency will then publish a detailed Action Plan outlining what mitigation activities will be carried out with those funds and how the money will be managed.⁸⁸

All activities in which CDBG-MIT funds are used must meet the definition of mitigation activity mentioned above, address present and future risks that were identified in the Mitigation Needs Assessment, be CDBG eligible activities; and meet what is termed a "national goal."

Some of the national goals include benefiting low- and moderate-income people, housing, incentives and buyouts in risk areas, and employment. HUD removed the "slum removal" as a priority.⁸⁹ These funds can also be used, as a mitigation measure, to reduce risks and stabilize community lifelines.⁹⁰ The Action Plan must explain how the proposed activities meet these requirements.

Participating so that this plan is adequate

Our priority is to encourage participation in the development of the instrument. People's participation in the processes that define public

policy is a right. In HUD's words, people that are "recovering from disasters are best suited to ensure beneficiaries are informed of missed opportunities and additional risks that need to be addressed."⁹¹ For this reason, the State has the responsibility of promoting participation, and to establish mechanisms that facilitate and promote that participation, which in turn allows people to make their mitigation needs known.

The Department of Housing is obliged to hold two public hearings before and two public hearings after the drafting of the plan. The first two public hearings were scheduled for September 16 and 18 to be broadcast simultaneously through the public television station (WIPR), radio (940AM), the CDBG-DR Puerto Rico Facebook page and its YouTube channel. Comments can be submitted through the CDBG-DR Puerto Rico portal, email, and by phone. Following the publication of the draft action plan, three more public hearings will be held, the dates of which have not yet been announced.

Additionally, the Department of Housing has to create one or more citizen advisory councils for the use of CDBG-MIT funds. That council has to hold public meetings at least twice a year in order to promote transparency in the process.

We need to act now!

Almost three years after hurricanes Irma and María and with the accumulation of subsequent disasters, to ensure the real and effective participation of the population is essential. To

⁸⁷ 84 F.R. 45840 (August 30, 2019)

⁸⁸ *Id.*

⁸⁹ 84 F.R. 45857 (August 30, 2019).

⁹⁰ 84 F.R. 45840 (August 30, 2019).

⁹¹84 FR 45852 (Aug. 30 2019)

encourage and facilitate the participation of the greatest possible number of people, especially those most exposed to risks, we raise the following claims.

- It is important to amplify and review the outreach mechanisms: This includes making available the Spanish translations of the Assignment Notices, developing a broad educational campaign about the funds, their purpose and application to community settings. Information on the availability and eligibility of these CDBG-MIT funds should be disseminated, including a timeline on how to participate and how they will be used, clarifying the roles of the different components of the state and federal governments in the plan and implementation of projects with the funds and widely announce the comment period recognizing that the pandemic, tied to the curfew, has limited access to newspapers.
- Ensure real and effective participation: This includes holding accessible public hearings that encourage and give the public the opportunity to make their points and ask questions freely and openly. A wide period for commenting and public interviews should be designed so that people can prepare properly. Participation must be possible by regular mail, email and telephone, enabling voice mailboxes for these purposes. Comment periods should not be less than 60 days, taking into account disasters and vulnerabilities faced by the population. The updated comment log must be publicly available and accessible.
- A plan that meets the needs and desires of the people: A draft of the action plan must be written that is legible and accessible to the general population that does not require specialized knowledge. It should be made crystal clear in the master documents which

projects will be eligible. Once projects are determined, explain how they reduce risk, and how they affect impacted communities.

- Greater participation, with fair and clear parameters: Include in the action plan the design of the CDBG-MIT Advisory Council or Citizen Advisory Committee required by the Notice of Assignment. This should include how their membership will be chosen, how long those members will be on the council, and what functions and delegated powers the council(s) will have.

The spaces for participation that we want and deserve

Participation is a fundamental right. In the context of just recovery, it is essential to understand the needs, desires and protect dignified housing of individuals and communities surviving a disaster.

When we speak of this right, we refer to processes - that is, the holding of meetings, public hearings, question and answer sessions and the nomination of Committees. We also talk about the substantive aspects. How much room or space have communities and groups had to express their concerns? How many of the top recommendations from communities and groups have influenced the recovery process with federal funds? How seriously have criticism and accusations of the programs been taken? What adjustments has the Department of Housing made to address them?

In light of the CDBG-DR process

There have been multiple barriers that communities have encountered around the participation within the CDBG-DR funding

process. If we talk about a component as basic as "access to information" and "accessibility" we could highlight that the information published on these funds has not been entirely accessible. According to federal regulations, the Department of Housing has the responsibility to guarantee the participation of individuals and interest groups in the creation of the Action Plan, as well as in its future amendments.

The agency has not fully complied with this requirement. The information provided by the Department on the plans and guidelines has not been fully accessible under federal regulations. Similarly, the spaces managed for the participation of communities, organizations and community groups have been the subject of criticism. It is because of this, and because of the historical memory of communities that have been on the sidelines of government plans, projects, and government programs in Puerto Rico, that the participation component within the CDBG-DR funding allocation process has been the object of outrage and demands from the communities and organized groups.

The duty of the Department of Housing

This agency has the obligation to guarantee a fair participation process that is consistent with the needs and accessibility requirements of the law. In this historical context, in which there is an instability of the local organizational infrastructure, the communities continue to organize and continue to insist on participating in the process that corresponds to them.

For these purposes, public hearings must be accessible and meet the needs of particular populations such as people with functional diversity, without access to the Internet or telephone, or older adults. This is more urgent in the face of COVID-19, where distancing can give way to virtual strategies that represent more

obstacles for these groups. Alternative strategies include ensuring alternative methods of participation, such as providing access through the WIPR, and using a platform that promotes citizen participation and allows interaction with government officials. The information of the public hearing, the publication of the comments and a transcript of what happened there is quickly available. Consistent with the above, comment periods should be as long as possible and be accompanied by real and effective education campaigns.

However, the process of participation and the response of the communities does not only respond to how accessible and understandable the information may be, but also to how linked and included communities and organized groups for participation may feel. There is great mistrust about these participation mechanisms, managed by the government precisely because of the exclusion that has prevailed in much of the process.

Since 2018, together with numerous organizations, we have demanded that community participation bodies be recognized that could oversee and influence the work of the Department. This requirement was not recognized until the end of that year, when the constitution of this group was announced in an inadequate way. What is now called the CDBG-DR Advisory Committee for Citizen Participation requires numerous changes to truly be a space for advocacy and influence. As a priority, it is urgent to clarify whether the Department will recognize the decisions of this plenary session as binding, what powers the Committee will have in relation to supervision, examination of documents and influence on the guides and regulations related to recovery. It is also necessary, as HUD suggests, a figure of an impartial facilitator since the Department itself should not handle the discussion between entities of the civil society. If this minimum is not

reached, we will have a focus group that will serve to provide information to the Department, with very little capacity to guarantee accountability and real participation.

We need to act now!

To this end, we insist on the proposal of Regional Community Councils that influence, monitor, and build power around a just recovery. This strategy can have highly beneficial consequences when this Council:

- Promotes that advisory, oversight and accountability bodies have a more diverse, inclusive, comprehensive, and practical representation. By having more spaces for representation, the doors are opened to communities and sectors that are usually excluded and invisible as a result of obstacles such as discrimination based on race, nationality or class, the absence of community organization or the distance from metropolitan areas.
- The work can be carried out closer to the communities represented on each committee, reducing the constraints represented by lack of transportation systems, job schedules, and family responsibilities.
- Allows the characteristics, needs, experiences and particular knowledge of each region to be taken into consideration and does not have to be totally subordinated to considerations of more general application.
- Reduces the distance between the organisms that make decisions and the communities affected by their determinations. By being closer to those who make decisions, the affected sectors have greater access to relevant information to form their opinions, evaluate the performance of the entities involved, and demand compliance with

established regulations and commitments reached.

- Builds power in and between communities that actively participate in the Just Recovery process and those that decide to organize based on shared experiences. The recognition of the right to participate in their recovery process is in itself an incentive for community organization and the integration of individuals to collective ways of participation. Regional community meetings strengthens the possibility of future joint work by laying the foundations of solidarity, trust and exchange of experiences.

We know we can win: Some achievements of the process

The advocacy after disasters is a bet on hope and the construction of power in a process that is with intuition and known to be extensive. In our role as lawyers and defenders of human rights, of Just Recovery and dignified housing, it is easy to collect the failures and pain that add up to the stories of the survivors we accompany. Doing so, keeps us awake and sensitive. It can also wear people out. We recognize that fatigue in the organizations and communities that are directly affected by each of the disasters that happen in Puerto Rico, particularly in groups that have historically been marginalized from the reconstruction process. We must also recognize the small or large achievements that we accumulate along the way. Every time we win and recognize when someone else wins in this uneven process, we are facilitating spaces for power and recovery. Therefore, and recognizing the long journey to come, we close this report by recapping some of the most important achievements of this year.

- At a narrative level, we are speaking of Just Recovery, equitable access to funds, zero forced displacement, and real effective participation when advocating for the proper use of these funds and processes.
- We held a Second Summit for Just Recovery, doubling the participation and increasing the diversity of organizations in relation to the 2019 meeting. This shows that the language of just recovery is a common aspiration and struggle, which continues to align valuable resources and experiences.
- Through the Community Participation Campaign for Just Recovery we have supported a space for advocacy for just recovery that has been alive and well for more than two years.
- HUD ordered the creation of a space for consistent participation, through a citizen advisory council, for the use of mitigation funds.
- The Department took our recommendations to facilitate participation in the processes of the drafting of the action plan for CDBG-MIT funds, including the radio and television broadcast of public hearings and accepting comments by telephone, to mitigate difficulties that were created by Covid-19 pandemic.
- The Governor issued an executive order that continues to break the myth of the title as a condition for receiving disaster assistance. Today, people who are eligible to repair or rebuild do not need a formal title to obtain the permits and certifications required for those tasks.
- The Department amended the Action Plan to separate the repair and reconstruction programs from the relocation program, creating a space for people who were previously only eligible for relocation to decide whether they need to relocate immediately or defer their assistance to allow room for mitigation.
- A further amendment was achieved to identify a participatory mitigation program that allows the repair or rebuilding of safer and more resilient homes, without displacing people from their community.

This and much more has been possible. We continue working for everything that is needed, committed to the Country.



This report was created with the support
of the following entities:





**AYUDA
LEGAL**
PUERTO RICO

**Conocer tus derechos
es poder**

www.recuperacionjustapr.org