

## THE INTERNATIONAL RESPONSE TO THE HURRICANE AND PUERTO RICO'S ROLE IN THE GLOBAL ENVIRONMENT

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Six months after the impact of Hurricanes Irma and Maria, Puerto Rico is still facing a humanitarian crisis the magnitude of which has no precedent. A month after the impact of Hurricane Maria, a group of UN human rights experts<sup>1</sup> had warned that “The hurricane has aggravated the island’s existing dire situation caused by debt and austerity measures,” saying the situation remained “alarming” for the island’s 3.5 million residents in the US territory. While this situation is without a doubt the impact of Hurricanes Irma and Maria on Puerto Rico, the magnitude of the crisis is the direct result of our existing legal and political relationship with the United States, which creates structural barriers to recovery and rebuilding efforts on the medium run and our equitable and sustainable development on the long run.

To this day there are nearly 237,000 people without electricity, in the East Coast alone<sup>2</sup>, despite multiple contracts worth hundreds of millions of dollars being awarded. In the central mountainous region of the Island, there are still people whose only source of water for bathing, washing and even drinking is from rivers, creeks and industrial water deposits. This has provoked the spread of life threatening bacterial diseases such as leptospirosis, dysentery and others. In terms of housing, the Special Rapporteur on the right to housing, Leilani Farha, stressed: “We can’t fail to note the dissimilar urgency and priority given to the emergency response in Puerto Rico, compared to the US states affected by hurricanes in recent months.” “After a natural disaster, with around 90 thousand homes totally destroyed, people are at their most vulnerable. It’s the obligation of all levels of government to act to protect them, and to ensure that lives can return to some normality quickly. People need

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<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22326&LangID=E> : Puerto Rico: Human rights concerns mount in absence of adequate emergency response

<sup>2</sup> [www.primerahora.com/tags/autoridaddeenergiaelectrica\(aee\)-2078/](http://www.primerahora.com/tags/autoridaddeenergiaelectrica(aee)-2078/)

safe and adequate homes – temporary and long-term – with electricity, clean drinking water and sanitation facilities”.

Moreover, the exact number of deaths attributed directly or indirectly to the hurricanes is still uncertain due to the lack of transparency by the government of Puerto Rico. The lack of confidence in the numbers provided by the Government was extensively denounced by the Centro de Periodismo Investigativo (CPI) and followed up by CNN and the New York Times. The Government’s response was to hire a US university to count the dead, through yet another multi-million dollar contract with no known results to date.

The impact on an already fragile economy was equally devastating. After ten years of negative growth, Puerto Rico was suffering from record high levels of unemployment, participation rates below half the labor force and declining incomes. After the Hurricane, the agricultural and manufacturing sector has lost nearly all its production capacity over the past six months, restricting resources available for recovery. Furthermore, large proportion of businesses either closed or are partially operating, leading to massive lay-offs, reduced incomes and further out migration. The UN’s Independent Expert on foreign debt and human rights, Juan Pablo Bohoslavsky, has stated: “Even before Hurricane Maria struck, Puerto Rico’s human rights were already being massively undermined by the economic and financial crisis and austerity policies, affecting the rights to health, food, education, housing, water and social security.” The crisis is deepened further by massive migration to the United States of mostly young working class and professionals in their most productive ages.

The Island’s self-governance and capacity to determine both its recovery vision and broader developmental path had been severely limited in June 2016, when the three branches of United States government claimed congressional sovereignty over Puerto Rico (See *Puerto Rico v. Sanchez Valle*<sup>3</sup>). Under legislation adopted by the United States Congress known as P.R.O.M.E.S.A., (Puerto Rico Oversight Management Economic Stability Act<sup>4</sup>), Puerto Rico is under the

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<sup>3</sup> *Puerto Rico v. Sanchez Valle*, 579 U.S. \_\_\_\_ (2016),

<sup>4</sup> Public law: 114-187

management of a Fiscal Supervisory Board comprised of 7 U. S. presidential appointees with powers that override the elected Puerto Rican government and its branches.

Congress has plenary powers over Puerto Rico under the territorial clause of the US Constitution<sup>5</sup>. As sovereign the US has primary responsibility for Puerto Rico before the international community and domestically. The US State Department has absolute power to authorize humanitarian, technical and first aid offered by any country in the world, but sustained international cooperation as needed has been banned in Puerto Rico. The US has failed to fulfill its duty as administering power during the Post Maria humanitarian crisis. The United States' response to this humanitarian crisis has been slow, inefficient and filled with bureaucratic hurdles.

The consequences for Puerto Ricans: hunger, lack of water, serious health issues and a halt to all economic productive activity. The task at hand demands a more proactive attitude of the United States and a sensible and practical management of the situation. As administering power, the United States should not be taking advantage of Puerto Rico's colonial subordination to restrict resources and the political action and power that the Puerto Rican government needs in times of humanitarian crisis. Puerto Ricans are mitigating the crisis with the support of the diaspora, American workers unions, non-governmental organizations, Puerto Rican artists and athletes and social justice movements, mobilizing private resources to fulfill the governments' duties.

Due to the extent of the destruction and years the recovery and reconstruction will take, the United States and the current government of Puerto Rico should be calling upon the international community to support rebuilding efforts in Puerto Rico. As a net financial contributor to the United Nations' programs and agencies, the United States should tap all disaster relief available for Puerto Rico such as the World Food Program, the World Health Organization, the Food and Agriculture Organization, the UN Disaster Relief Office and all other available resources. The US has consistently dissented resolutions in the UN's GA calling for the assistance of UN specialized agencies to non-self-

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<sup>5</sup> Unites States Constitution, Art. IV, Section 3, Paragraph 2

governing territories, effectively eliminating the possibility of a robust response of scale by qualified institutions on the matter at times of unprecedented destruction and humanitarian need.

The duties identified by the United Nations International Law Commission on protection of persons in the event of natural disasters include a duty to cooperation and to seek external assistance<sup>6</sup>.

*Article 9 - Forms of cooperation*

*For the purposes of the present draft articles, cooperation includes humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, equipment and goods, and scientific, medical and technical resources.*

*Article 13 - Duty of the affected State to seek external assistance*

*To the extent that a disaster exceeds its national response capacity, the affected State has the duty to seek assistance from among other States, the United Nations, other competent intergovernmental organizations and relevant nongovernmental organizations, as appropriate.*

The United States should lift barriers for the receipt of aid, such as the Jones Act. A ten-day exemption from the Jones Act was clearly not enough for a foreign country to organize and ship aid to Puerto Rico. The United States should have allowed any country that wanted to contribute with aid to do so. The unanswered offer of the Cuban government of medical personnel with tent hospitals and electric

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<sup>6</sup> International Law Commission (ILC) has been drafting articles on the Protection of persons in the event of disasters' which are still in draft. See: PPLA/2011/03, Jane McAdam, Climate Change Displacement and International Law: Complementary Protection Standards, Division Of International Protection, (May 2011)

engineers to assist in the restoration of electricity, as well the rebuke of the offer of a ship with food from the Venezuelan government, are based on ideological reasons that have no place in the handling of a humanitarian crisis. In the same manner the US refused the donation of 50,000 gallons of diesel from CITGO, in spite of being a US corporation because the diesel was coming from Venezuela. Moreover, the Jones Act should be permanently lifted in its application to Puerto Rico, as it imposes unreasonable barriers to the resources needed for the Island's recovery and long-term development.

The United States agencies should not present bureaucratic hurdles in receiving aid from other countries. The FDA has prevented food from Mexico entering into Puerto Rico because it is not FDA approved, while ignoring the inadequacy of the FEMA distributed food resources. The FDA halted ice distribution because the ice plants ran out of plastic bags with the required print of the FDA Nutritional Value Table (which is 0).

It is clear that Puerto Rico does not need a Fiscal Supervisory Board whose assignment was to help in the restructuring of Puerto Rico's debt by imposing draconian anti labor measures to ensure the payments to Wall Street and hedge funds. The Fiscal Supervisory Board costs Puerto Rico 65 million dollars annually, which should be directed to more urgent unmet recovery and development needs of our most underserved communities. The Executive Director of the Fiscal Supervisory Board costs Puerto Rico \$55,000.00 per month, while measures are being designed to continue to reduce incomes for a labor force that has faced a continued decline in incomes over the past decade.

The Fiscal Supervisory Board and all of its components should be shut down, eliminated and P.R.O.M.E.S.A. should be derogated. Puerto Rico's economic losses are being calculated in the \$94 billion dollars. Puerto Rico will not be able to pay an unaudited \$74 billion dollar debt, not now, not in ten years. The last act of the bankruptcy judge appointed under ART. III of P.R.O.M.E.S.A. should be to declare Puerto Rico's total and absolute insolvency and dismiss all claims.

Human Rights experts have also stressed the need for debt relief for the island, which filed for bankruptcy in May 2017 under PROMESA. A

federal court in San Juan has begun hearings over the biggest public debt restructuring in US history.

Puerto Rico should be working to achieve the economic sustainable development goals that the United Nations has identified through the exchange between experts, NGO'S, states and communities. The 2030 Agenda<sup>7</sup> is a blue print to follow: "All countries and all stakeholders, acting in collaborative partnership, will implement this plan". taking into account different national realities, capacities and levels of development and respecting national policies and priorities.

Because of Puerto Rico's colonial status, we have been systematically excluded from important discussions that would have provided vital information for a sustainable development planning to eradicate poverty and inequality. We have not participated in any of the major UN conferences and summits which have laid a solid foundation for sustainable development and have helped to shape the new Agenda. These include the Rio Declaration on Environment and Development; the World Summit on Sustainable Development; the World Summit for Social Development; the Programme of Action of the International Conference on Population and Development, the Beijing Platform for Action; and the United Nations Conference on Sustainable Development ("Rio+ 20"). the follow-up to these conferences, including the outcomes of the Fourth United Nations Conference on the Least Developed Countries, the Third International Conference on Small Island Developing States and the Third UN World Conference on Disaster Risk Reduction.

As a US colony, we had no say in the US decision to rebuke the Paris Climate Change Agreement, which is a present existential threat to Puerto Rico as a Small Island Developing State. As identified in the Declaration of Agenda 2030 "Climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve sustainable development. Increases in global temperature, sea level rise, ocean acidification and other climate change impacts are seriously affecting coastal areas and low-lying coastal countries, including many least developed countries and small island

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<sup>7</sup> [A/RES/70/1 - Transforming our world: the 2030 Agenda for Sustainable Development](#)

developing States. The survival of many societies, and of the biological support systems of the planet, is at risk.”

Policies must be put in place to achieve the sustainable development goals, such as “policies which increase productive capacities, productivity and productive employment; financial inclusion; sustainable agriculture, pastoralist and fisheries development; sustainable industrial development; universal access to affordable, reliable, sustainable and modern energy services; sustainable transport systems; and quality and resilient infrastructure.” But in Puerto Rico the policies that are being imposed by the Fiscal Control Board are exactly the opposite.

We need to achieve the full realization of the right of self-determination of peoples living under colonial and foreign occupation, which continue to adversely affect our economic and social development as well as our environment.

The 2030 Agenda identifies the means required for implementation of its Goals and targets. Factors identified include the mobilization of financial resources as well as capacity-building and the transfer of environmentally sound technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed. Public finance, both domestic and international, will play a vital role in providing essential services and public goods and in catalyzing other sources of finance. It is acknowledged the role of the diverse private sector, ranging from micro-enterprises to cooperatives to multinationals, and that of civil society organizations and philanthropic organizations in the implementation of the 2030 Agenda.

But without the powers of sovereignty Puerto Rico cannot mobilize the financial resources nor enter into agreements with other countries. International public finance plays an important role in complementing the efforts of countries to mobilize public resources domestically, and we do not have access to that source of finance. We are prisoners of Wall Street and its hedge funds.

A sustainable development could be achieved if we could implement some of the Agenda 2030 goals and objectives, such as:

**Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all**

8.1 Sustain per capita economic growth in accordance with national circumstances .....

8.2 Achieve higher levels of economic productivity through diversification, technological upgrading and innovation, including through a focus on high-value added and labour-intensive sectors

8.3 Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro-, small- and medium-sized enterprises, including through access to financial services

8.4 Improve progressively, through 2030, global resource efficiency in consumption and production and endeavour to decouple economic growth from environmental degradation, in accordance with the 10-year framework of programmes on sustainable consumption and production, .....

8.5 By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value

8.6 By 2020, substantially reduce the proportion of youth not in employment, education or training .....

8.8 Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment

8.9 By 2030, devise and implement policies to promote sustainable tourism that creates jobs and promotes local culture and products

8.10 Strengthen the capacity of domestic financial institutions to encourage and expand access to banking, insurance and financial services for all

**Goal 13. Take urgent action to combat climate change and its impacts\***

13.1 Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries

13.2 Integrate climate change measures into national policies, strategies and planning

13.3 Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning



13.a Implement the commitment undertaken by developed-country parties to the United Nations Framework Convention on Climate Change to a goal of mobilizing jointly \$100 billion annually by 2020 from all sources to address the needs of developing countries in the context of meaningful mitigation actions and transparency on implementation and fully operationalize the Green Climate Fund through its capitalization as soon as possible

13.b Promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing States, including focusing on women, youth and local and marginalized communities

\* Acknowledging that the United Nations Framework Convention on Climate Change is the primary international, intergovernmental forum for negotiating the global response to climate change.

We are an island, yet we have no participation in formulating strategies to protect our seas and fisheries. The 2030 Agenda goal on this aspect are extremely important for our development:

#### **Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development**

14.1 By 2025, prevent and significantly reduce marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution

14.2 By 2020, sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration in order to achieve healthy and productive oceans

14.3 Minimize and address the impacts of ocean acidification, including through enhanced scientific cooperation at all levels

14.4 By 2020, effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics

14.5 By 2020, conserve at least 10 per cent of coastal and marine areas, consistent with national and international law and based on the best available scientific information

14.6 By 2020, prohibit certain forms of fisheries subsidies which

contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation

14.7 By 2030, increase the economic benefits to Small Island developing States and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism

14.a Increase scientific knowledge, develop research capacity and transfer marine technology, taking into account the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology, in order to improve ocean health and to enhance the contribution of marine biodiversity to the development of developing countries, in particular small island developing States and least developed countries

14.b Provide access for small-scale artisanal fishers to marine resources and markets

14.c Enhance the conservation and sustainable use of oceans and their resources by implementing international law as reflected in UNCLOS, which provides the legal framework for the conservation and sustainable use of oceans and their resources, as recalled in paragraph 158 of The Future We Want.

Finally, but not least important, civil society, neighborhoods and grassroots community leadership has had a protagonical role implementing projects aiming at 2030 Agenda Goal's. We must establish the mechanisms and resources to ensure their actions are not limited exclusively to their immediate and local communities. They should be empowered to co-decide on the allocation of large capital investments and co-design and co-execute these reconstruction projects. Politicians, policy makers and developers must take into account the fact that climate change impacts island nations as a whole, not only specific geographical areas. Thus, decisions related to water supply, flood mitigation and energy infrastructure must consider interdependencies and synergies among all communities impacted. Science-driven and evidence-based projects and solutions should be the result of consultation and input from all parties affected.

The large investment that Puerto Rico needs for its reconstruction, if wisely and honestly invested, should help reduce our inequality. Any and all investments must purposefully support vulnerable communities' integration into the resulting productive activities and address current disfranchisement from labor and capital markets. The goal should be to provide access to gainful and stable incomes, whether through employment or the development of entrepreneurial projects.

Inequality, marginalization, poverty, hunger and disease directly interfere with Puerto Rican's full enjoyment of their fundamental human rights. The time has come for a new Puerto Rico with the goal of liberty, peace and prosperity for all.