



**Shadow Report for submission before the  
United Nations Committee of Human Rights that supervises compliance with the  
International Covenant on Civil and Political Rights (ICCPR)**

**Re: United States Report | Self-Determination**

**I. Summary**

Recognizing the “supreme law of the land” under the Supremacy Clause of the U.S. Constitution, the U.S. Government ratified the ICCPR in 1992. Although the reaffirmation gives acceded treaties the status of federal law it is, as with any other member, a “not self-executing Declaration. Which in the case related to the people of Puerto Rico under the United States administration - for more than one hundred and twenty-five years - results on a severe economic and social disruption with racial grounds that stem from our colonial history.

It is a racist culture against colonies and its inhabitants supported by the Territories Clause of the United States Constitution and ratified by recent Supreme Court decisions under the doctrine of the *Insular cases*. (See *Puerto Rico v. Sánchez-Valle*, 136 S. Ct. 1863 (2016) (declared Puerto Rico as a territory without sovereignty for purposes of the double jeopardy doctrine), *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649 (2020) (excluding PROMESA Board members from the Appointment Clause of the U.S. Constitution), *United States v. Vaello-Madero*, No. 20-303 (denying supplemental social security (SSI) to the disabled or blind, residents of Puerto Rico).

**Historical background:**

**1898:** Puerto Rico was a colony of Spain from 1493 until 1898, when Spain was defeated during the Spanish-Cuban-American War. The war ended when Spain was subjected to sign the *Treaty of Paris* on December 10, 1898. Pursuant to this treaty, Spain ceded all its rights over Puerto Rico and the Philippines to the United States.<sup>1</sup>

**1922:** *Balzac v. Porto Rico*, 258 U.S. 308 (1922) was decided, which stated, amongst other things, that the United States Constitution did not apply to Puerto Rico, except by express will of Congress. The Supreme Court clarified that the extent of the U.S. citizenship to the people of Puerto Rico did not constitute an implicit transition from an unincorporated territory, *Downes v. Bidwell*, 182 U.S. 244 (1901) to an incorporated one.

---

<sup>1</sup> Fernando Picó, *Historia General de Puerto Rico*, 2nd ed., pp. 221 et seq (1986).

**1950:** Public Law 600 (64 Stat. 319 (1950)), authorized the people of Puerto Rico to draft a Constitution subject to the final approval of the U.S. Congress. A referendum was held in order to adopt a Constitution in June 4, 1951.

**1952: The Commonwealth Constitution:** March 3, 1952, a new referendum was held to adopt a Constitution. On July 25 of the same year, the Puerto Rican constitution is approved by referendum. Before its approval, U.S. Congress enacted Public Law 447 (1952), substantially modifying Puerto Rico Bill of Rights. The United States proclaimed Puerto Rico as a commonwealth, but remains a colony of the United States according to *de facto* treatment, and the most recent US Supreme Court decisions.

**1953: United Nations General Assembly:** With the new commonwealth status, and misleading information submitted by the United States, it no longer had the obligation to report on Puerto Rico's status to the UN General Assembly. This decision was taken by the U.N. General Assembly in 1953, through Resolution 748 (VIII). (26 votes in favor; 16 against, and 18 abstentions). To this date the US Congress has never executed a process of self-determination for the People of Puerto Rico.

**1972: the U.N. Decolonization Committee** recognized and reaffirmed “the inalienable right of the people of Puerto Rico to self-determination ...” and has kept the question of Puerto Rico under continuous review for the past fifty-one years. [A/AC.109/419](#). In its resolutions regarding Puerto Rico, since then, the Committee of 24 has repeatedly recognized Puerto Rico's status as a ‘people’ with the right to self-determination.<sup>2</sup>

The Congressional commonwealth façade imposed by the US Government over Puerto Rico since 1953 has finally collapsed. Instead of promoting self-government and decolonization, the US has reaffirmed its sovereign power over Puerto Rico, fostering economic dependence against the inherent dignity, equal and inalienable right of Puerto Ricans<sup>3</sup>. U.S. policies in Puerto Rico are the true cause of its economic, social and political. See Steven P. Lausell Recurt, *The Song Remains the Same: The United States' Fiduciary Duty to Puerto Rico as a Basis for Legal Responsibility* (May 26, 2016) (Master

---

<sup>2</sup> See Special Committee resolutions: [A/AC.109/419](#), [A/AC.109/438](#), [A/AC.109/574](#), A/AC.109/589, A/AC.109/628, A/AC.109/677, A/AC.109/707, A/AC.109/751, A/AC.109/798, A/AC.109/844, A/AC.109/883, A/AC.109/925, A/AC.109/973, A/AC.109/1013, A/AC.109/1051, A/AC.109/1088, A/AC.109/2131, A/AC.109/1999/28, A/AC.109/2000/24, A/AC.109/2001/22, A/AC.109/2002/22, A/AC.109/2003/22, A/AC.109/2004/L.7, A/AC.109/2005/L.7, A/AC.109/2006/L.7, A/AC.109/2007/L.7, A/AC.109/2008/L.7, A/AC.109/2009/L.7, A/AC.109/2010/L.8, A/AC.109/2011/L.6, A/AC.109/2012/L.7, A/AC.109/2013/L.6, A/AC.109/2014/L.6, A/AC.109/2015/L.6, A/AC.109/2016/L.6, A/AC.109/2017/L.12, A/AC.109/2018/L.7, and A/AC.109/2019/L.7, A/AC.109/2021/L.7,

<sup>3</sup> General Assembly resolution 2200A (XXI) of 16 December 1966, International Covenant on Civil and Political Rights, Preamble

thesis, Lund University, Sweden)

## Disenfranchisement under PROMESA

**2016: PROMESA:** On June 30, 2016, President Barack Obama signed the *Puerto Rico Oversight, Management, and Economic Stability Act* (PROMESA, at 48 U.S.C. § 2101 *et seq.*), a bill that establishes a fiscal or Control Board (*Financial Oversight and Management Board for Puerto Rico -FOMB-*) to oversee the commonwealth's finances, with the task of restoring the credit of Puerto Rico by paying a multibillion-dollar debt of 73 billion dollars to bond holders. The fiscal board consists of members appointed by the President of the United States. **It rules despite never being elected by the People of Puerto Rico.** As such, the Board unlawfully “usurp[ed] the Commonwealth of Puerto Rico’s political and governmental powers and right to home rule.” *Altair Global Credit Opportunities Fund (A), LLC v. United States*, 138 Fed. Cl. 742 (U.S. Claims 2018).

The Act has created enormous issues on the island especially related to austerity measures, massive payments to members of the board, lack of transparency, its power to veto local legislation, and the inability for the people to access the judiciary for social justice in all cases, including civil rights’ cases. PROMESA triggered an automatic stay of the commencement or continuation of judicial actions against the Government of Puerto Rico, including lawsuits for civil rights violations pursuant to the Civil Rights Act (42 U.S.C. sec. 1983).

The wrong interpretation of the PROMESA statute is even jeopardizing the *Puerto Rico Police Bureau Reform* (Case No. 12-2039 (GAG)) by sending the wrong message to high and low rank officers regarding their duty to protect and respect the civil liberties and fundamental freedoms of people. The unique financial crisis in Puerto Rico that PROMESA is intended to deal with should not be used as free pass for individual government actors to violate fundamental rights, nor should constitute an additional burden for litigants in Puerto Rico to have access to a fair judicial remedy in federal and state courts.

PROMESA has not only created a civil rights free zone in Puerto Rico, but there is the danger of extending its application to other colonies ahead like Guam, the Virgin Islands, and Samoa.

The legal framework in which the People of Puerto Rico’s economy collapse was mostly designed by laws enacted by the U.S. Congress, and misleading procedures at the United

Nations. PROMESA is not the exemption. PROMESA allows an ***exclusive bankruptcy of the entire insular government***, allowing an illegal taking of the budget of Puerto Rico, resulting in a human rights' crisis and the population displacement, which increased after Hurricane María in 2017. <https://www.prensa-latina.cu/2021/06/29/unos-500-mil-puertorriquenos-emigraron-a-estados-unidos>

This occurs while the real actors accountable for the debt of Puerto Rico remain behind the scenes. The Board adopted so-called “austerity measures” to curtail government spending without ever considering the necessity to audit the debt, jeopardizing the wellbeing of the population; the most affected are vulnerable groups, among which are poor children and communities, disabled individuals, students, workers and the elderly. The Board pretends to continue this path reaching agreements in usurpation of the constitutional powers of the elected government.<sup>4</sup>

Since the filing of the bankruptcy process, the Board has engaged in vicious litigation designed to delay the eventual production of important documents. (See *CENTRO DE PERIODISMO INVESTIGATIVO (“CPI”) vs. THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD OF PUERTO RICO*, Civil No. 17-1743 JAG). The Board also challenges the legislative powers of the Commonwealth of Puerto Rico. See *THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO v. HON. PEDRO R. PIERLUISI URRUTIA, et als*, PROMESA, Title III, No. 17 BK 3283-LTS (Jointly Administered), Adv. Proc. No. 21-00072-LTS.

### ***PROMESA violates principles of constitutional and public international law***

PROMESA disenfranchised the People of Puerto Rico, because the elected public officials' actions are overridden by the FOMB if, in its sole discretion, determines that are contrary to PROMESA. Consequently, besides violating the Commonwealth's Constitution, PROMESA violates the 1<sup>st</sup> Amendment of the U.S. Constitution, which includes the right to vote as a form of expression. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *Norman v. Reed*, 502 U.S. 279, 288 (1992). ICCPR, Arts. 16 and 25.

The Board uses the fiscal plan to impose its policy preferences on Puerto Rico's people, overthrowing decades of progress in the fields of State University autonomy (<https://pulsoestudiantil.com/la-junta-de-supervision-fiscal-recorta-94-millones-del-presupuesto-de->

---

<sup>4</sup> <https://www.noticel.com/la-junta-de-control-fiscal/tribunales/ahora/top-stories/20220120/swain-dice-tomo-en-cuenta-el-dolor-y-la-esperanza-de-los-puertorriquenos-al-confirmar-plan/>; [Diálogo UPR | ¿La antesala de Promesa? Venden y destruyen terrenos protegidos](#); [Diálogo UPR | Recortes de Promesa afectarían a las agencias que protegen el medio ambiente](#); [COLUMNA – ¿Cómo el Plan de Ajuste de la Deuda afecta a los jóvenes en Puerto Rico?](#) | [Microjuris al Día](#); [Cinco años después: El fracaso de la Ley Promesa - Sin Comillas](#)

[la-upr/](#)), [public education \(more than 400 public schools closed\)](#)<sup>5</sup>, **labor law, public health**<sup>6</sup>, **retirement plans, security, putting essential services in private hands**<sup>7</sup>, **among others**. The plan encompasses nearly every aspect of life and governmental budget expenditures. See [UNPO: UN Special Rapporteur on Minority Issues Releases Report on United States Unrepresented Peoples and Territories](#).

Furthermore, PROMESA’s enactment was grounded upon Congress’ plenary power over Puerto Rico pursuant to the Territories Clause of the U.S. Constitution, as interpreted in the *Insular Cases*. The first two opinions of the *Insular Cases* in 1901 –*Downes v. Bidell* and *DeLima v. Bidwell*– were written by Justice Brown, who drafted the majority opinion in the racist case of *Plessy v. Ferguson*, 163 U.S. 537 (1896). The *Insular Cases*, based on race, made a distinction between incorporated and unincorporated territories. Justice Brown observed that, because the “**alien races**” that inhabited the new territories that the U.S. had acquired differed from other Americans in “religion, customs, laws, methods of taxation, and modes of thought, the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible.” *Downes v. Bidwell*, 182 U.S. 244, 287 (1901). JA47. Such cases established those unincorporated territories, such as Puerto Rico, **belong to** but are not part of the U.S., that only fundamental rights of the U.S. Constitution apply *ex proprio vigore*, and that they are subject to the rules and regulations of Congress. *Balzac v. Porto Rico*, 258 U.S. 298, 312-13 (1922). Therefore, the *Insular Cases* has kept the archipelago and its residents as **property** of the U.S. and subject to a colonial regime for more than a century. (125 years) This status, as non-self-governing, along with the powers assumed by the FOMB over the local elected officials, is no different from the status that slaves had in the 19<sup>th</sup> Century, which were property of their owners with no voting rights.

Therefore, PROMESA violates the 15<sup>th</sup> Amendment as it disenfranchised the People of Puerto Rico, pursuant to the Plenary Powers of the US Congress. Letting the FOMB go over the enactment of local laws by the constitutionally elected officials, based on the cited jurisprudence, is a clear violation of the 15<sup>th</sup> Amendment, denying the people of Puerto

---

<sup>5</sup> <https://www.noticel.com/legislatura/ahora/top-stories/20220311/investigacion-escuelas-cerradas-y-en-desuso-en-san-juan/>

<sup>6</sup> <https://www.univision.com/local/puerto-rico-wlii/crisis-medica-a-causa-del-exodo-de-medicos-de-puerto-rico-a-estados-unidos; Médicos de Puerto Rico que emigran EEUU no tendrán que tomar formación al retornar | Puerto Rico | Edición USA | Agencia EFE>

<sup>7</sup> <https://actualidad.rt.com/actualidad/407370-miles-puertorriquenos-protesta-crisis-energetica;>  
[https://www.metro.pr/noticias/2022/07/18/luma-energy-utiliza-datos-obsoletos-de-densidad-poblacional-para-establecer-su-respuesta-a-emergencias/;](https://www.metro.pr/noticias/2022/07/18/luma-energy-utiliza-datos-obsoletos-de-densidad-poblacional-para-establecer-su-respuesta-a-emergencias/)  
[https://www.elvocero.com/gobierno/legislatura/plan-de-emergencia-de-luma-no-ha-sido-discutido-con-los-78-alcaldes/article\\_9ea3f686-d37f-11eb-91fb-7fbb2fa52e29.html;](https://www.elvocero.com/gobierno/legislatura/plan-de-emergencia-de-luma-no-ha-sido-discutido-con-los-78-alcaldes/article_9ea3f686-d37f-11eb-91fb-7fbb2fa52e29.html)  
<https://www.metro.pr/pr/noticias/2021/04/30/organizaciones-ambientales-exigen-se-cancele-contrato-de-luma-energy.html>

Rico their effective right to vote. PROMESA is a sadly sample of the heritage left by the infamous Insular Cases. So is *Sánchez-Valle*, 136 S. Ct. 1863 (2016) while reaffirming the political subordination of Puerto Rico to the “plenary powers” of the U.S. Congress as a colony.

This Committee should ask the U.S. government to repudiate the offensive and archaic racial views expressed in those cases (ICCPR, Art. 2), and take a stand against the outdated racist and imperial rationale that underpins the Insular Cases, as applied through the “Territories Clause” of the U.S. Constitution and declare PROMESA, the Board and any mechanism of usurpation of powers of the people of Puerto Rico a grave violation to the ICCPR which in its Article 1 unequivocally rejects colonialism.

In addition, PROMESA and the colonial regime imposed on Puerto Rico violates the customary norm of the right to self-determination which is binding upon the U.S. See *The Paquete Habana*, 175 U.S. 677, 700 (1900); *Filartiga v. Peña-Irala*, 630 F.2d 876, 881-84 (2nd Cir. 1980); *Roper v. Simons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010) The right to self-determination is an *erga-omnes* right,<sup>8</sup> and has been catalogued as a customary norm by the International Court of Justice (“ICJ”). See *Legal Consequences of the Separation of the Chagos Archipelago. From Mauritius in 1965*, Advisory Opinion, ¶ 160, (Feb. 25, 2019), and *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, Advisory Opinion, 1971 ICJ 16, ¶ 52, (Jun. 1).

After the adoption of the Commonwealth Constitution in 1952, the U.S. successfully petitioned the United Nations to remove Puerto Rico from its list of non-self-governing territories. The U.S. thereafter ceased to render reports (pursuant to U.N. Charter, Chapter XI, Art. 73(e)) regarding the administration of the territory. See U.N. G.A. Resolution 748 (VIII) (1953). PROMESA simply unmasked what was previously misrepresented as the acquisition of “full measures of self-government” by the People of Puerto Rico in 1953. The Control Board serves as the “checkmate” to thwart the already discredited constitutional government with the power to overrule the decisions of Puerto Rico’s elected Government. It is undemocratic, unconstitutional and a violation of the object and purpose of the ICCPR.

Puerto Rico remains, effectively, an unincorporated territory of the United States. **For more than 70 years, the United States government has been in breach of its international obligations to Puerto Rico regarding its economic, social and political**

---

<sup>8</sup> Luis Enrique Romero Nieves, *The International Court of Justice and the Development of the Right to Self-Determination: An Approach to the Case of Puerto Rico*, 47 Rev. Jur. U.I.P.R. 669, 669 (2013). (citations omitted).

**development.** The U.S.'s failure to render reports under Art. 73(e) of the U.N. Charter for decades constitutes a violation of international law. See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 16. In the case of Puerto Rico, “the principle that the well-being and development of such peoples form ‘a sacred trust of civilization’ . . . to promote to the utmost the material and moral well-being and the social progress of the inhabitants” (I.C.J. Reports 1950, p. 131) has not been observed by the United States. PROMESA is an admission of this statement and the failure of a Congressional design. The Fiscal Board is a new instrument to continue the path of colonial rule pursuant to the so called “plenary powers of the U.S. Congress” under the Territories Clause.

Under international law, the U.S. has “an ongoing fiduciary duty to Puerto Rico pending the latter’s full decolonization.” S. Lausell, *Id.* **It requires “that the United States act exclusively in the best interests of Puerto Rico” creating the conditions for economic, social, and political development. Mostly due to the United States’ breach of its fiduciary duty, “Puerto Rico’s stunted development model has finally collapsed.”** *Id.* **U.S. policy in Puerto Rico is the true cause of the present economic disruption.** *Id.*

PROMESA creates an “illegal taking” of the governmental budget, jeopardizing a wide range of human rights and the rule of law, while the accountability of the U.S. Congress remains in a limbo, supported by the confidentiality and secrecy promoted by the Control Board. No other state or territory in the US has been subjected to such an ordeal.

PROMESA militates against Congress fiduciary duty towards Puerto Rico. A duty exists to investigate the debt with the benefit of TRANSPARENCY and a forensic audit. Congress actions through PROMESA are an attempt to avoid its fiduciary duty under international law: to respect the “sacred trust of civilization” for the “material and moral well-being” of the people of Puerto Rico. The U.S. Congress has a great deal of responsibility regarding the public debt in Puerto Rico. **Reparation of grievances is paramount** to repair more than a Century of unequal, racist, discriminatory, and colonial treatment very well illustrated by the insular cases. This has been the result of racism and discrimination not against a minority but a People with the right to self-determination.

Accordingly, PROMESA cannot be used as a shield by the U.S. Congress to escape its international obligations with Puerto Rico under Art. 1 of the ICCPR, Art. 73(e) of the U.N. Charter, and Art. 15 of the ICERD.

The fiduciary duty of the U.S. includes the obligation to render reports to the UN, General

Assembly, something that the U.S. Government has been intentionally omitting for the past 70 years. In this regard, any TRANSITION to any process of decolonization must start immediately, without further delays, and including reparations. This is an indispensable element of the right to self-determination that must be addressed by the entire United Nations human rights system.

## II. **Short stories from directly impacted communities highlighting testimonies from victims and survivors.**

The bankruptcy of the Commonwealth of Puerto Rico, PROMESA Act, and the creation of the Control Board are the best example of the colonial measures that as detailed above, affects all aspects of the daily life of all Puerto Ricans. The austerity measures implemented by the Board and the tax exemption policies to attract foreign investments is contributing to a housing crisis, population displacement and gentrification.

### **The Committee Position**

The Committee should ask the U.S. government to repudiate decades neglect in the administration of the territory without any accountability before the International Community. Congress must eliminate PROMESA, the Board and any mechanism of usurpation of powers of the Commonwealth of Puerto Rico and assume its responsibility in the economic and social crisis endured by the People of Puerto Rico. And proclaimed the necessity of bringing colonial rule to a speedy and unconditional end.

## III. **U.S. Government Response**

The United States Government simply did not address in its Report any of the discriminatory and racist issues herein discussed. In previous reports submitted to the Human Rights Committee (CCPR/C/81/Add. 4) pursuant to Art. 40 of the *International Covenant on Civil and Political Rights* (I.C.C.P.R.), Art. 1, the U.S. Gov. affirmed incorrectly that “the States of Alaska and Hawaii, **as well as the Commonwealth of Puerto Rico**, all of which used to be “non-self-governing” for purposes of Article 73, have completed acts of self-determination through which they have resolved the terms of their respective relationships with the rest of the United States.” (Report, p. 6). This is misleading and does not represent the political relationship between the United States and the people of Puerto Rico.

Since 1898 until the present, Puerto Rico has been considered a territory of the United States subject to the “Plenary Powers” of the U.S. Congress according to the Territories

Clause of the U.S. Constitution. This is confirmed by the racist doctrine of the insular cases, ratified recently by the U.S. Supreme Court. See *Puerto Rico v. Sánchez-Valle*, 136 S. Ct. 1863 (2016; *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649 (2020; and *United States v. Vaello-Madero*, No. 20-303 (denying supplemental social security (SSI) to the disabled, elder or blind, residents of Puerto Rico).

In addition, in ***Sánchez Valle*** (2016), the U.S. Supreme Court reaffirmed the lack of sovereignty of the people of Puerto Rico, contrary to the representations made before the U.N. General Assembly in 1953 in order to have Puerto Rico removed from the list of non-self-governing territories through G.A. Resolution 748 (VIII) (1953).

Finally, if any doubt remain, on June 30, 2016, President Barack Obama signed the Puerto Rico *Oversight, Management, and Economic Stability Act* (PROMESA), a bill that establishes a **non-elected seven-member board** to oversee the commonwealth's finances. (See *Aurelius*) Puerto Rico is now the only jurisdiction in the United States where the Government can be forced to a bankruptcy process, provoking a taking of the state's budget in order to pay a debt that has not being audited. This action affects all essential services of the people of Puerto Rico: education, retirement plans, electric power, health, access to justice, University etc. Puerto Rico remains effectively a non-self-governing territory without any accountability from its administrative power, the United States of America.

#### IV. **Other UN and Regional Human Rights Bodies Recommendations**

Since 1972, the Special Committee (or the Committee of 24) had issued 41 Resolutions reaffirming the Caribbean and Latin American character of the People of Puerto Rico, and their right to self-determination as a people, pursuant to the *Declaration on the Granting of Independence to Colonial Countries and Peoples* (G.A. Res. 1514(XV)), the transfer of sovereign powers to the People of Puerto Rico, amnesty to their political prisoners, and the demilitarization of the territory. See Special Committee resolutions at footnote number 3.

The international community shares the view that Puerto Rico lacks sovereign powers and self-government. UN Special Rapporteur on Poverty, Phillip Alston, who visited the island after Hurricane María, stressed that the situation in Puerto Rico indicates a lack of self-government. A/HCR/38/33/Add.1 (referring to PROMESA and the Board).

In addition, a recent visit of the U.N. Special Rapporteur on minority issues on November 2021, Fernand de Varennnes, confirmed the discriminatory treatment of Puerto Rico, mainly in the island of Vieques, subjected to all kind of experimentation with live ammunition, and

the disastrous environmental effects of these activities on the health of the inhabitants of this island:

***“It is no coincidence that most of the populations of these territories are members of ethnic, religious and linguistic minorities, and can also be considered indigenous peoples, with associated rights in relation to self-determination. In addition, these territories are considered under Chapter XI of the Charter of the United Nations as Non-Self-Governing Territories, meaning “territories whose people have not yet attained a full measure of self-government”. While Puerto Rico is currently not on the UN list of non-self-governing territories, the United Nations Special Committee on Decolonization determined in 1972 that a “colonial relationship” existed between the U.S. and Puerto Rico. ...***

*“The Commonwealth of Puerto Rico is similarly devoid of a degree of political participation and representation which is difficult to understand in a democracy, with more than 3 million people who live on the territory who have no power in their own national capital. Puerto Rico, and Puerto Ricans as members of a minority and a people in international law, have a fiscal deficit that compounds their political rights deficit. **Because of the territory’s precarious budgetary position real legal and political authority ultimately resides in the Financial Oversight and Management Board that was imposed by Congress on Puerto Rico as part of PROMESA. The draconian and drastic austerity measures which as a consequence are imposed on Puerto Rican territorial authorities and the whole population, without regard to any obvious human rights considerations in the Board’s decisions, have led to dramatic cuts and reductions in areas such as public education, public health and other areas of social and economic rights.** It is difficult to disagree with some of the affirmations, expressed by Puerto Ricans met during meetings in San Juan and Vieques, that Puerto Ricans are being controlled by a colonial-type entity by an overseas power to the detriment of the people of Puerto Rico, without any meaningful representation at the national level and with no ability to really move to govern themselves on their own territory, and that they are therefore a non-self-governing territory in the international sense.[...]*

*“I was particularly struck with the example of the island of **Vieques** in Puerto Rico in this regard. **The US military used the island as a live munitions target practice for about 60 years.** According to internal Navy documents,*

*bombardments occurred on 180 days out of a year on average. The US military used high-level depleted uranium munitions and bombs from 1972 on the populated island of some 8,000-9,000 population. Other forms of contamination exist (heavy metals, etc.) because of the use of Vieques as a munitions testing and warfare exercise ground. The result, summarized eloquently in a town meeting of a lack of any visible cleanup yet, is simply ‘They bombed us, they made us sick, then they left us. They don’t give a damn.’*

**“Even though the Navy stopped these exercises and withdrew from Vieques in 2003, the health consequences are continuing across generations, with cancer rates clearly higher for Vieques than for the rest of Puerto Rico. Furthermore, not only has the land occupied not been returned to the residents of Vieques (much of the island was designated a National Wildlife Refuge under the control of the United States Fish and Wildlife Service), but promised decontamination activities, including of a highly contaminated site, promised under a National Priorities List (NPL) for long-term cleanup financed by the federal Superfund program has still not progressed as of 20 November 2021. As of the same date, the hospital in Vieques damaged by Hurricane Maria had still not been repaired. The population must still travel to the main island, not always a simple task, despite approval on 21 January 2020 by the Federal Emergency Management Agency (FEMA) of \$39.5 million to help rebuild the hospital. I personally saw no visible renovations have been made on location almost two years later in November 2021. The results are people being sick and dying because of unavailable medical treatments in Vieques, ... **what they experience would not occur if they were members of the White Anglo-Saxon majority.**”** (Emphasis added) [UNPO: UN Special Rapporteur on Minority Issues Releases Report on United States Unrepresented Peoples and Territories](#)

#### V. **Recommended Questions:**

- 1) Does PROMESA (Congressional Act), and a Control Board (appointed by the U.S. President), with the power to overrule the decisions of Puerto Rico’s elected Government, comply with the concept of self-government?
- 2) Considering the treatment of Puerto Rico by both the US Supreme Court and the US Congress, as an unincorporated territory of the United States (subject to the “plenary powers” of the US Congress), would you deem necessary to renew rendering reports to the U.N. General Assembly regarding the administration of Puerto Rico? See *Case of Nueva Caledonia* [41 U.N. GAOR, Supp. (NO. 53), U.N. Doc. A/41/53 1986]; or simply the presence of the United States in Puerto Rico must be considered illegal as the ICJ ruled in

the Case of Namibia (South-west Africa)?

- 3) Considering PROMESA, as a Congressional response to the financial crisis in Puerto Rico: Would you agree that the US failed its fiduciary duties towards Puerto Rico?
- 4) What would have happened if the United States had filed its corresponding reports regarding Puerto Rico (under Art. 73 (e) of the UN Charter) during the last 70 years?
- 5) What are the requirements for decolonization under the international covenants on human rights? S. Lausell, *Id.*
- 6) What economic obligations does political decolonization impose upon colonial Powers? S. Lausell, *Id.*
- 7) Assuming the United States has sovereign powers over Puerto Rico; Has the United States exercised its fiduciary duty to Puerto Rico in accordance with its international obligations? S. Lausell, *Id.*

## VI. Suggested Recommendations

- 1) It is our interest that all these concerns are raised under Art. 1 of the ICCPR to the United Nations relevant bodies, especially the General Assembly, to revisit the obligations of the United States government under this Convention towards Puerto Rico and the other territories, due to a systemic policy of discrimination and denial of the right to self-determination as well as other human rights.
- 2) A referral to the International Court of Justice (ICJ) for an Advisory Opinion seems to be paramount to analyze the impact of the United States' lack of reports before the UN General Assembly for 70 years, pursuant to Art. 73 (e) of the UN Charter. See ICJ Advisory Opinion on the Case of Namibia (1971).
- 3) In the case of Puerto Rico, PROMESA must be nullified, and the U.S. Congress and Treasury Department must assume their responsibility for the debt due to their failure to comply with the U.S. fiduciary duties towards Puerto Rico.
- 4) Civil rights' claims must be reopened by the courts, granting the people access to justice and to the judicial system.
- 5) Immediate steps, however, shall be taken, without delay to respect all civil and human rights granted by the U.S. Constitution, and the International human rights treaties signed and ratified by the United States to all Puerto Ricans and residents

of other U.S. Territories notwithstanding their place of residence.

- 6) The Insular Cases and their racist and discriminatory rationale must be condemned by this Committee and revoke by the U.S. Supreme Court.
- 7) Reparations must be recognized for the people of Puerto Rico to address more than 125 years of colonial exploitation under the U.S. flag, discrimination, racism, and an administration of the territory exclusively in the benefit of the United States economic and military interests.

*Estelí Capote Maldonado*

Co Director - IPPR

T. +1.787.52969675

E. [ipripuertorico@gmail.com](mailto:ipripuertorico@gmail.com)

W. <https://puertoricointernacional.org>

*Rafael E Rodríguez Rivera*

Director

Clínica de Asistencia Legal

Facultad de Derecho, Universidad Interamericana