



POLICY MEMO

Oversight That Works

Center for a New Economy

San Juan, P.R. | Washington, D.C.

August 2019

Introduction



Puerto Rico's protracted economic depression —

and the draconian measures implemented to combat the resulting fiscal imbalances — have eroded the island's government capacity to perform at all levels and created fertile ground for unscrupulous actors to engage in fraudulent behavior. Severe austerity programs implemented since 2006 have led to: drastic budget cuts in numerous key agencies, high employee turnover, low morale amongst public servants and limited resources across the board. Moreover, private contractors have been increasingly employed, and paid tens of millions, to take on public sector responsibilities.

In Puerto Rico where the poverty rate stands at 44% and median income is a meager \$19,775, there are public sector contractors who make ten times that amount. It should not be surprising that in this environment some have leeches on to the government to exploit rent seeking opportunities. Austerity programs have also contributed to weak enforcement of transparency and accountability processes. This complex scenario is a breeding ground for corruption.

The prevailing discontent with Puerto Rico's political elite and public institutions has been used to justify increased federal intervention in Puerto Rico. It may be convenient to entertain the simplistic narrative that Puerto Rico's current condition is solely due to its own misfeasance. And **while Puerto Rican politicians have made their share of mistakes and bad decisions, the blame for its current woes cannot be pinned on Puerto Rico alone.**

For decades, the Congressional attitude towards Puerto Rico could be, at best, charitably described as one of benign neglect; and the ravages of hurricane Maria laid bare many of the inequities faced by the residents of the island. Despite recognizing these imbalances, the prevailing narrative in mainland U.S. circles has focused on chronicles of clientelism, some colored with negative racial and cultural undertones—much like what occurred in New Orleans, in the aftermath of Hurricane Katrina.

Assessment of the Current Situation

Certainly, natural disasters stress-test the capacity of local governments and relief organizations to respond and advance reconstruction efforts in a prompt and equitable fashion.

If the scale of the damage provoked by Hurricane Maria is considered, the complexities of Puerto Rico's disaster recovery process become evident. All three of the populated islands that make up Puerto Rico suffered massive damage. Rebuilding these communities under a compressed timeframe, often juggling competing demands and problems that arise on a daily basis, and which are equally urgent, can prove challenging even in the best prepared jurisdictions.

At any given time in a post-disaster context, there are many actors working rapidly and independently, while relying on imperfect information. These stresses are magnified in Puerto Rico because it is not only managing a large-scale recovery process but it is also simultaneously going through the largest municipal bankruptcy in U.S. history.

CNE has proposed in the past the creation of a recovery authority to coordinate and manage the recovery process — one that included members of civil society and allowed for efficient interaction between all stakeholders. Despite some slow progress on limited fronts, the performance of the agencies charged with advancing the reconstruction have validated the concerns we stated back then. Thus, the present-day context allows for a net assessment of what has worked and what merits reconsideration.

First, interventionist policies designed and implemented by federal authorities to address structural problems borne out of the unique relationship between the island and the U.S., including the imposition of a financial oversight board, have not worked.

Puerto Rico's Financial Management and Oversight Board (FOMB) was created to "achieve fiscal responsibility and access to the capital markets".¹ After three years in operation, however, it has been largely ineffective in managing an orderly procedure to set the government's budget; has insisted on imposing strong austerity measures, while the island's economy is still in a depression; has advocated for ideologically-driven structural reforms ill-suited to addressing Puerto Rico's economic constraints; has executed debt restructuring transactions that are too generous to creditors; and has engaged in profligate spending on its own staff and external consultants.

In addition, its actions and policy proposals, designed mostly by fly-in consultants, with little or no knowledge of Puerto Rico's history, economy, or politics, have yielded little or no measurable results. **Hiring external firms and individuals limits the ability of local workers to grow professionally, while at the same time, eroding Puerto Rico's capacity for self-governance.**

¹ Pub. Law. 114-187

Second, the idea of imposing a new federal recovery coordinator or providing additional oversight authority to the FOMB is similarly flawed. It is true that the recovery process has been plagued by a lack of coordination: first, among federal agencies; second, among and between federal agencies and their counterparts in Puerto Rico; and third, among and between federal and state agencies on one side, and municipalities on the other. However, **instead of carefully analyzing and diagnosing the problem, suggestions to impose additional layers of federal oversight, without thinking through how they will interact with existing players involved in this massive reconstruction effort is not sound policy.**

In sum, the FOMB is already charged with a complex debt restructuring process and it lacks the experience and capacity necessary to manage federal funds for disaster recovery; while imposing a new recovery coordinator, risks centralizing reconstruction efforts even further, hindering the necessary flexibility and local-specific implementation that ensures successful coordination and transparency. Restoring confidence will not be accomplished by imposing punitive or gratuitous oversight. A successful recovery requires increased local stakeholder involvement, which will, in turn, foster local capacity building and eventually long-term economic growth.

Understanding that many of these issues are not unique to Puerto Rico, a closer examination of effective disaster management and processes in other jurisdictions can provide useful guideposts. Hurricane Katrina in New Orleans, the terrorist attacks of 9/11 in New York, and Indonesia's 2004 earthquake and subsequent tsunami are just some of the cases which exhibited many of the same uncertainties and should be studied.² However, we note that simply replicating what other jurisdictions have done is not an adequate remedy. Careful consideration must be given to cultural, geographic, socioeconomic and ecologic dimensions as they pertain to the recovery process in Puerto Rico.

Looking forward, we identify five key challenges to Puerto Rico's recovery process:

- 1 | Ineffective coordination among stakeholders;
- 2 | Poor public participation platforms;
- 3 | Superficial transparency efforts;
- 4 | The sluggish outlay of recovery funds; and
- 5 | Implementing an effective oversight mechanism.

² Olshansky, R. B., & Johnson, L. A. (2016). *After Great Disasters: How Six Countries Managed Community Recovery*. Cambridge, MA: Lincoln Institute of Land Policy.

1 | Coordination

There are many actors in every disaster recovery process and their interactions and intersections are important throughout every stage of the process. In the aftermath of hurricane Katrina in New Orleans, post-disaster recovery experts Robert B. Olshansky and Laurie A. Johnson highlight the importance of overcoming unanticipated problems: “Coordination is critical to recovery, due to many actors working in a compressed time environment and with constrained information flow. The only way to function effectively in a chaotic and uncertain environment is to provide information to actors systematically and coordinate with them regularly.”³

In October 2017, the Governor of Puerto Rico established the Central Office of Recovery, Reconstruction and Resilience, or COR3, to oversee all disaster recovery efforts. The government set the expectation that this new agency would plan and administer all resources available to the island, assist individual recipients and manage large reconstruction activities.

Key to that role is its capacity to coordinate efforts among all relevant actors. In the case of Puerto Rico, this coordination involves a series of players: the Puerto Rico Housing Department and numerous other Puerto Rico government agencies with key responsibilities in reconstruction efforts; FEMA and several other agencies of the federal government; municipal governments; the FOMB; local and foreign non-governmental organizations; hundreds of thousands of residents affected by the hurricane; and myriad external consultants, many lacking knowledge of local conditions.

Based on multiple press reports and input from civic stakeholders, this coordination process has been flawed, at best. For example, there are three major plans:

- The Economic and Disaster Recovery Plan;
- The CDBG-DR Action Plan; and
- The Fiscal Plan for the Commonwealth of Puerto Rico.

All three plans include projects and courses of actions directly affecting reconstruction efforts, but it is unclear whether there is any correspondence between them or how inconsistencies regarding timetables, scales and sequencing of projects will be addressed.⁴ At this juncture of Puerto Rico’s recovery, this ambiguity highlights the need to carefully define precise planning, coordination and implementation frameworks, and improve the flow of information.

³ Olshansky, R. B., & Johnson, L. A. (2010). *Clear as Mud: Planning for the Rebuilding of New Orleans*. Washington, DC: American Planning Association.

⁴ Letter written April 10, 2018 to Congressional Appropriators on Hurricane Maria Recovery, <https://static1.squarespace.com/static/5b155afd506fbec1e69c2c61/t/5c41085abba223348466bda9/1547765851866/Puerto+Rico+Community-Driven+Rebuilding+Sign-On+%28April+10%2C+2018%29.pdf>

2| Participation

Experts agree that recovery efforts are most effective when they empower residents to participate and take pride in the design of policies that directly affect them. Residents are best suited to recall past experiences and reflect local needs. Yet, in Puerto Rico, residents, community leaders, and several non-governmental organizations have repeatedly expressed grave concerns over the poor quality of the public input process.^{5,6} For example, the government has published inaccurate translations of government-drafted documents for public commentary, the periods for receiving comments from the public have not been properly notified and have been too short to allow for adequate public participation, and some agencies have engaged in misleading practices, such as providing access to funds only after the prospective beneficiaries have agreed to accept unfavorable conditions (i.e. permanent relocations).

It is callous to suggest broad public participation while doing little to effectively engage with and address specific requests from the community. Bypassing local participation often leads to dramatic changes that may even end up forcing residents out of their communities, and drastically affecting population and social dynamics. The failure to build an effective and binding participation process thwarts the achievement of other important objectives, such as transparency, effective monitoring, and coordination among all stakeholders. On the other hand, unilaterally imposing recovery solutions on the affected population creates mistrust, encourages stakeholders to evade rules, and undermines a shared commitment to successfully recover from the disaster.

3| Transparency

A true commitment to transparency needs to go beyond disclosing plans, regulations, facts and figures; it requires engaging relevant stakeholders, especially those directly affected by reconstruction efforts, early and often. Transparency portals typically serve as effective platforms to share successes, vulnerabilities and best practices, resulting in greater accountability. With respect to procurement practices, the whole process, from start to finish — i.e. everything from the stated need to the award process — should be easily accessible by the general public. In contrast, in Puerto Rico, the lack of information regarding specific contracts, updated timelines, and lists of large infrastructure projects pose major hurdles to effectively manage the recovery process.

⁵ Letter written May 25, 2018 to Puerto Rico CDBG-DR Program, Secretary's Office; Secretary of Housing and Urban Development, Ben Carson; Assistant Secretary of Housing and Urban Development for Community Planning and Development, Neal J. Rackleff; and Assistant Secretary of Housing and Urban Development for Fair Housing and Equal Opportunity Anna Maria Farias requesting for an accurate translation of PR Hurricane Maria Action Plan, <https://nlihc.org/sites/default/files/CDBGDR5.25.18Letter.pdf>

⁶ Formal complaint published July 1, 2019 to HUD OIG from Ayuda Legal Puerto Rico condemning actions by the Puerto Rico Department of Housing in the disaster recovery process, <https://nlihc.org/sites/default/files/Complaint-OIG-HUD-ENG-002.pdf>

This information and related data not only help monitor individual contracts and their performance regarding delivery and costs, but also help to assess broader impacts stemming from the recovery. The former requires clear identification of parties involved, changes in costs and scope of services, deliverables, subcontracting and timelines; the latter implies analyzing the distribution of funds among local and mainland firms and by different economic activities.

Regarding recovery projects, simply establishing vaguely defined metrics and providing public access to them is not sufficient. After a careful identification of standards and metrics, recovery leaders must ensure those metrics are later used to accurately assess the effectiveness of recovery efforts. Take for example the metrics reported regarding supplies of food immediately after the hurricane. Nine days after Harvey, FEMA provided 5.1 million meals to Houston. In Puerto Rico, they delivered 1.6 million meals for the same timeframe.

While at first glance these numbers may seem generous, they are meaningless unless they are accompanied by the benchmarks and goals to evaluate them. Metrics should be tied to each course of action to be implemented during the recovery and should also be tied, at the very least, to concrete measures of improved welfare and expediency in implementation. Understandably, Washington and Puerto Rico must have confidence that recovery dollars are being spent as intended. All stakeholders alike need trusted mechanisms that reveal what activities are being carried out and the rationale for its decisions.

To increase confidence from all stakeholders, there must be a clear commitment to abide by open government principles that promote civic participation, enhance government accountability, and respond to public needs.

4 | Recovery Funding

The longer it takes for communities to receive aid, the harder it is for individuals to recover from their losses, potentially jeopardizing the broader economic recovery. In the case of Puerto Rico, aid delivery has already been complicated by bureaucratic government processes. If it continues to lag, it could increase outmigration and decrease the government's revenue collection capacity to support government operations. Puerto Rico needs to receive funds expeditiously to rebuild its communities and be prepared to withstand future weather events.

Shortly after the hurricane, Puerto Rico agreed to use alternative procedures pursuant to section 428 of the Stafford Act to determine fixed costs estimates for all large-scale public assistance projects. Among other things, this means that FEMA and Puerto Rico must agree on all fixed cost estimates for these projects by October 2019. Despite the added flexibility section 428 procedures provide with regard to reaching costs estimates for certain projects, the GAO has reported the 428 process does not necessarily eliminate challenges associated with funding delays.

Clearly, this bureaucratic experiment has not worked as expected. To this day, Puerto Rico and FEMA have finalized cost estimates only for 117 projects, out of approximately 1,475 project worksheets submitted, a figure that represents less than ten percent of total projects.⁷ The absence of such agreements poses an additional challenge because the deadline to finalize estimates is fast approaching, threatening the execution of necessary long-term infrastructure investments. With another hurricane season before us, there is an urgent need to mitigate damage from future storms and safeguard investments already made.

While we agree that new coordination processes and institutional constructs need to be carefully thought out, designed, and proposed to adequately manage the recovery process, it is important to weigh the risks of imposing an additional federal bureaucratic layer or body to oversee the recovery process at this time, as it could end up rendering Puerto Rico more vulnerable to external players controlling the recovery process, and further complicating coordination issues.

Further, the reliance on an externally-imposed single leader or new externally mandated body to serve as powerful arbiters ignores the importance of building necessary local capacity that will ensure a sustainable recovery today and an effective response effort in the face of future disasters. Instead, **policymakers must foster a community-driven effort: one that harnesses local capacity and adopts good governance principles. Delegating responsibilities to outside actors undermines Puerto Rico's governance and limits the development of local knowledge critical to succeed once the recovery process ends.**

We emphasize the need for creating a distinct set of principles and processes that allow for reflection, flexibility, and adaptability. If properly designed and implemented these principles and processes would facilitate effective coordination among stakeholders at different levels of government, insure adequate public participation in the planning and oversight process, provide greater transparency and accountability in the project selection phase and in the use of funds, and speed up the outlay of recovery funds.

⁷ Road to Recovery: Puerto Rico and the U.S. Virgin Islands after hurricanes Irma and Maria: Testimony before the Subcommittee on Emergency Preparedness, Response, and Recovery, 116th Cong. (2019) (testimony of Omar Marrero, Executive Director of the Central Office for Recovery, Reconstruction and Resilience of Puerto Rico), <https://homeland.house.gov/imo/media/doc/Testimony-Marrero.pdf>

5| Oversight that Works

Effective oversight of the recovery process is crucial to avoid waste, fraud, and abuse in the allocation and disbursement of funds. Similarly, adequate oversight mechanisms are useful to monitor the planning process for the recovery; insure the integrity of government procurement and contracting practices; and guarantee the implementation of objective criteria for the selection of recovery projects, as well as for the sequencing of spending priorities and sectoral investments. For example the process for choosing between rebuilding or rehabilitating, housing, the electric grid, education, transport, water, health and education infrastructure, commercial or industrial facilities, and in which sequence.

Finally, effective oversight is important to make “explicit the inevitable tradeoffs between speed and quality.” According to Johnson and Olshansky, this “trade-off between speed and quality is dynamic, and must be continually reassessed. With smaller, short-term projects, speed may be the paramount concern, but quality becomes more important for longer-term projects.”⁸ Oversight that works would focus on monitoring this complex dynamic and serve to build public support for difficult decisions that must be made.

In short, oversight that works facilitates, rather than hinders, the disaster recovery process. That is the reason why oversight requirements should not be utilized to impose unnecessary bureaucratic requirements or processes, or to somehow “punish” local actors for alleged or perceived malfeasance.

A good example of oversight that works was implemented in Indonesia after the 2004 Sumatra earthquake and tsunami, where a nine-member oversight board was created to monitor and evaluate the ministerial-level Reconstruction and Rehabilitation Agency (BRR) and to handle public complaints. This oversight board was independent and composed of professionals with experience in auditing, and project monitoring and evaluation. Finally, this board was also responsible for providing the President of Indonesia with a bi-annual report on the progress of the reconstruction and independent audits of the BRR’s activities.

In the case of Puerto Rico, the Government could take advantage of the current wave of civic engagement that has been unleashed to create a similar **Civic Committee for Transparency and Reconstruction (CCTR)**. This Committee would be empowered to monitor and evaluate the work of the COR3; to provide regular, periodic reports on the progress of the reconstruction to the governor of Puerto Rico, Congress, and the relevant federal agencies; and to independently audit the COR3.

Members of the CCTR should have prior extensive experience in the fields of planning, project management, disaster recovery, and auditing of complicated ventures. In addition, none should have held public elected or appointed office in the Government of Puerto Rico during the prior five years to their appointment; nor should they have any contracts with or work for firms under contract by the Government of Puerto Rico or the FOMB. Finally, the CCTR should be provided with necessary resources, budget, and staff to carry out its functions for the duration of the reconstruction process.

⁸ Olshansky, R. B., & Johnson, L. A. (2016), supra, n. 2.

Conclusion and Recommendations

“All disasters are unique and the best advice for recovery is to apply local wisdom.”⁹

In light of the issues described, we suggest a locally-driven process that embeds widely accepted best practices to Puerto Rico’s disaster recovery process. In particular, we urge:

- 1 | A systematic practice of meaningful transparency, one that publicly discloses how contracts are selected and how policies are devised;
- 2 | A governance structure that aligns its actions to specific indicators and permits continuous evaluation and evidence-based decisions;
- 3 | A clear commitment to abide by open government principles that promote civic participation, enhance government accountability, and respond to public needs; and
- 4 | A central information and communication mechanism to inform of current conditions, thereby facilitating collective decision making.

We also stress that it would be counterproductive in the current context to increase the power of the unelected FOMB or to impose a federal recovery coordinator to manage or oversee the entire recovery process. Furthermore, we reiterate our belief that oversight that works is not about punishment or adding unnecessary bureaucratic conditions before the disbursement of reconstruction funds but rather about facilitating the reconstruction process.

Therefore, we strongly recommend the creation of a Civic Committee for Transparency and Reconstruction to provide the effective oversight of the reconstruction process that both the federal government and the people of Puerto Rico strongly demand and deserve.

Finally, to move forward, Puerto Rico must seize this opportunity to evaluate its recovery process, retool its existing governance framework, and allow for a bottom-up approach to design and execute an effective recovery process — for residents and by residents; one that engenders the trust and confidence of all those affected.

⁹ Olshansky, R. B., & Johnson, L. A. (2016), *supra*, n. 2.



The **Center for a New Economy (CNE)** is Puerto Rico's first and foremost policy think tank, an independent, nonpartisan group that advocates for the development of a new economy for Puerto Rico. Over the last 20 years, **CNE** has championed the cause of a more productive and stable Puerto Rico through its offices in San Juan, Puerto Rico and Washington, D.C. We seek to inform current policy debates and find solutions to today's most pressing and complex economic development problems by rigorously analyzing hard data and producing robust empirical research. **CNE** is organized as a 501(c)(3) nonprofit that does not solicit or accept government funding. **CNE** relies solely on funding by individuals, private institutions and philanthropic organizations.



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