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The Right to Food in Puerto Rico: Where Colonialism and Disaster Meet

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The Right to Food in Puerto Rico: Where Colonialism and Disaster Meet

Gabriela Valentín Díaz*

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I. INTRODUCTION

Adequate food lies at the center of any thriving community. The right to food, defined by the adequacy, availability, and accessibility of food, impacts a vast range of human rights in a community: health, housing, water, and education, just to name a few.¹ The Caribbean island of Puerto Rico is seeing impacts to all aspects of its human rights. In addition to dealing with long-standing historic oppression, Puerto Rico has suffered through political, economic, and environmental disasters—all within the last five years.² The United States' response to these struggles has been tepid at best and has resulted in the further deterioration and denial of access to human rights.³ The inability to access civil and political rights, like the right to self-determination and the right to political participation, because of government action and inaction directly impedes the

¹ Jessica Fanzo et al., *Tying the Knot: An Interdisciplinary Understanding of the Human Right to Adequate Nutrition*, 57 COLUMBIA J. OF TRANSNAT'L L. 62, 85-93 (2018).

² Amelia Cheatham, *Puerto Rico: A U.S. Territory in Crisis*, COUNCIL ON FOREIGN RELATIONS (last updated Nov. 25, 2020), <https://www.cfr.org/background/puerto-rico-us-territory-crisis>.

³ Gabriela Meléndez Olivera, *Hurricane Maria Exposed the U.S.'s Long Neglect of Puerto Rico*, ACLU (Dec. 11, 2017, 9:00 AM), <https://www.aclu.org/blog/human-rights/hurricane-maria-exposed-uss-long-neglect-puerto-rico>.

fulfilment of the right to food the right to food, including food sovereignty, for the people of the island of Puerto Rico. The United States must address the current conditions of food and nutrition in Puerto Rico in light of a century of colonialism and recent natural disasters that have rapidly worsened the reliability of Puerto Rico's food system.

This note will first provide background on the island of Puerto Rico and its long-standing and recent troubles, including food insecurity, natural disasters, and the global pandemic. Next, it will introduce the legal framework of international human rights to which the United States is bound and in which the right to food is guaranteed. Furthermore, this note will present the violations of the International Covenant on Civil and Political Rights (ICCPR) which, in turn, prevent the realization of the right to food. This note will conclude with recommendations intended to alleviate the current violations of human rights in Puerto Rico and to set a path towards the realization of the right to food for Puerto Rico and its 3.2 million inhabitants.

II. BACKGROUND

a. *A Brief History of Puerto Rico's Troubles*

La Isla del Encanto, or the Island of Enchantment, is a tropical archipelago in the Caribbean known for its beautiful beaches, resilient people, and complicated history. Puerto Rico is a small island measuring about three times the size of Rhode Island.⁴ It is home to about 3.2 million people and boasts a rich culture and history.⁵ The island was governed by its native people, the Taínos, until it was taken for the Spanish Crown by Christopher Columbus

⁴ *Geography*, CENT. INTEL. AGENCY, <https://www.cia.gov/the-world-factbook/countries/puerto-rico/#geography> (last visited Feb. 7, 2021).

⁵ *People and Society*, CENT. INTEL. AGENCY, <https://www.cia.gov/the-world-factbook/countries/puerto-rico/#people-and-society> (last visited Feb. 7, 2021).

in 1493.⁶ Puerto Rico was a Spanish colony for over 400 years.⁷ It was annexed by the United States in 1898 through the terms of the Treaty of Paris, which ended the Spanish-American War.⁸ During World War I, Puerto Ricans were granted U.S. citizenship.⁹ The island was ruled by U.S.-appointed governors until 1948 and in 1952 the Puerto Rican constitution was adopted.¹⁰ This constitution functions as a state constitution in relation to the United States and is therefore preempted by the United States Constitution by virtue of the supremacy clause.¹¹ Governors of Puerto Rico are now elected, along with a Resident Commissioner who serves as a Puerto Rican representative in Congress.¹² Though the Resident Commissioner has no vote when legislation is submitted for a “full floor” House vote, she is considered a part of the House of Representatives.¹³ However, Puerto Rico has no representation in the Senate.¹⁴

Today, Puerto Rico endures many effects rooted in its long history of colonialism. The legacy of colonialism is further complicated by the string of recent disasters, both man-made and natural. Puerto Rico once enjoyed a growing economy.¹⁵ Some federal tax breaks for companies that conducted business on the island began to be phased out in the 1990s.¹⁶ Because the tax breaks

⁶ *Introduction*, CENT. INTEL. AGENCY, <https://www.cia.gov/the-world-factbook/countries/puerto-rico/#introduction> (last visited Feb. 7, 2021).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See P.R. CONST.; U.S. CONST. art. VI, cl. 2 (“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”).

¹² *What is the Resident Commissioner?*, U.S. CONGRESSWOMAN JENNIFER GONZALEZ-COLON, <https://gonzalez.colon.house.gov/about/what-resident-commissioner>, (last visited Feb. 7, 2021).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ FRANCISCO RIVERA-BATIZ & CARLOS E. SANTIAGO, *ISLAND PARADOX: PUERTO RICO IN THE 1990S* 3 (Russell Sage Foundation, 1st ed. 1996).

¹⁶ Zadia M. Feliciano & Andrew Green, *US Multinationals in Puerto Rico and the Repeal of Section 936 Tax Exemption for US Corporations* 3 (Nat’l Bureau

were federal and Puerto Ricans do not have voting representation in Congress, these tax breaks were imposed and later removed without the input of the Puerto Rican people.¹⁷ Years later, the island fell into a deep recession that led to a migration of Puerto Ricans to the United States.¹⁸ Essentially, this recession was induced by a combination of the removal of these tax breaks, the Great Recession of the early 2000s, and the issuance of bonds.¹⁹ In order to make up for the phased-out tax revenue that was no longer available, the Puerto Rican government borrowed heavily from investors on a promise to repay the money with interest.²⁰ Private investors gladly funded the Puerto Rican debt and major banks managed the transactions, profiting from fees and commissions.²¹ Even when the debt became too large, banks continued selling bonds for years. In 2014, Puerto Rico received what was then the largest municipal bond offering in U.S. history: a bond of \$3.5 billion.²² The following year, Puerto Rico announced it could not pay its debt, which totaled about \$72 billion.²³ Under the federal tax code, a state under similar conditions would not be able to declare bankruptcy,

of Econ. Rsch., Working Paper No. 23681, 2017),

https://www.nber.org/system/files/working_papers/w23681/w23681.pdf.

¹⁷ See P.R. CONST. (1952); U.S. CONST. art. VI, cl. 2 (“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding”).

¹⁸ Dara Lind, *Puerto Rico’s Debt Crisis, Explained in 11 Basic Facts*, VOX (Aug. 3, 2015, 5:09 PM), <https://www.vox.com/2015/7/10/8924517/puerto-rico-bankrupt-debt>.

¹⁹ *Id.*

²⁰ Laura Sullivan, *How Puerto Rico’s Debt Created a Perfect Storm before the Storm*, NPR (May 2, 2018, 7:10 AM), <https://www.npr.org/2018/05/02/607032585/how-puerto-rico-debt-created-a-perfect-storm-before-the-storm>.

²¹ *Id.*

²² *Id.*

²³ Michael Corkery & Mary Williams Walsh, *Puerto Rico’s Governor Says Island’s Debts Are ‘Not Payable’*, N.Y. TIMES (June 28, 2015), <https://www.nytimes.com/2015/06/29/business/dealbook/puerto-ricos-governor-says-islands-debts-are-not-payable.html>.

however, a municipality could.²⁴ As a U.S. territory, Puerto Rico cannot declare traditional bankruptcy.²⁵ In 2017, the island filed for a form of bankruptcy permitted under the Puerto Rico Oversight, Management and Economic Stability Act, or PROMESA, a controversial law that gave total control over the island's finances to a financial oversight board.²⁶ That same year, Puerto Rico was ravaged by two strong hurricanes that caused devastating destruction and completely took over the conversation.

Hurricanes Irma and Maria hit Puerto Rico in 2017 within days of each other.²⁷ Both category 5 hurricanes, the destruction was incomprehensible, with effects still clearly visible years later.²⁸ The eye of Hurricane Irma drifted north of Puerto Rico, but the island still suffered significant damage.²⁹ The island reported deaths, destruction of homes, some loss of electrical power and water, and the destruction of crops, among other things.³⁰ Hurricane Maria made landfall in Puerto Rico on September 20, 2017.³¹ The storm devastated the island and completely wiped out all electricity and communications.³² The already delicate infrastructure of Puerto Rico saw critical damage. Shortages of food and water were felt island-wide for months.³³ This was once again the case following a

²⁴ Mary Williams Walsh, *Puerto Rico Declares a Form of Bankruptcy*, N.Y. TIMES (May 3, 2017),

<https://www.nytimes.com/2017/05/03/business/dealbook/puerto-rico-debt.html>.

²⁵ Yasmeen Serhan, *Puerto Rico Files for Bankruptcy*, THE ATLANTIC (May 3, 2017), <https://www.theatlantic.com/news/archive/2017/05/puerto-rico-files-for-bankruptcy/525258/>.

²⁶ *Id.*

²⁷ Robinson Meyer, *What's Happening with the Relief Effort in Puerto Rico? A Timeline of the Unprecedented Catastrophe of Hurricane Maria*, THE ATLANTIC (Oct. 4, 2017), <https://www.theatlantic.com/science/archive/2017/10/what-happened-in-puerto-rico-a-timeline-of-hurricane-maria/541956/>.

²⁸ Justin Agrelo, *5 ways Puerto Rico is Still Struggling to Recover from Hurricane Maria*, GRIST (Aug. 29, 2019), <https://grist.org/article/5-ways-puerto-rico-is-still-struggling-to-recover-from-hurricane-maria/>.

²⁹ Meyer, *supra* note 27.

³⁰ Cindy Burgos Alvarado, *Wrap-up of Damages in P.R. Caused by Hurricane Irma*, CARIBBEAN BUS. (Sept. 17, 2017), <https://caribbeanbusiness.com/wrap-up-of-damages-in-p-r-caused-by-hurricane-irma/>.

³¹ Meyer, *supra* note 27.

³² *Id.*

³³ Ann M. Simmons & Milton Carrera Galarza, *Four Months after Hurricane Maria, Puerto Rico Struggles with Lack of Electricity, Food and Water*, L.A.

series of severely damaging earthquakes that struck the island in early 2020.³⁴ For months following the 2020 earthquakes, thousands were sleeping outside due to the collapse of their homes or fear of additional earthquakes.³⁵ This left Puerto Ricans without access to basic needs such as food and water, with the Mayor of the municipality of Guayanilla telling reporter David Begnaud that one of the major needs was food. Furthermore, those recent natural disasters were also followed by delayed federal responses.³⁶ Following Maria, Congress authorized \$20 billion in disaster relief funds to be administered by the Department of Housing and Urban Development.³⁷ However, only \$1.5 billion had been released two years later when the severe earthquakes began.³⁸ President Donald Trump, prompted by the earthquakes, agreed to lift a hold on an additional \$8 billion from the \$20 billion, but not without first setting some conditions.³⁹ For example, the President required none of the funds be used to repair the island's defunct electrical grid—one of the major needs of Puerto Rico.⁴⁰ About two months after the

TIMES (Jan 30, 2018, 8:05 PM), <https://www.latimes.com/nation/la-na-puerto-rico-aid-20180130-story.html>.

³⁴ *Puerto Rico Rocked By Series Of Powerful Earthquakes*, NPR (Jan. 8, 2020), <https://www.npr.org/2020/01/08/794461203/puerto-rico-rocked-by-series-of-powerful-earthquakes>; David Begnaud (@DavidBegnaud), TWITTER (Jan. 9, 2020, 12:13 PM),

<https://twitter.com/DavidBegnaud/status/1215320762057445380>.

³⁵ Frances Robles, *Months After Puerto Rico Earthquakes, Thousands Are Still Living Outside*, N.Y. TIMES (Mar. 1, 2020),

<https://www.nytimes.com/2020/03/01/us/puerto-rico-earthquakes-fema.html>.

³⁶ Erica Wener, *Hit by Devastating Earthquakes, Puerto Rico Still Waiting on Billions for Hurricane Relief*, THE WASH. POST (Jan. 9, 2020, 6:00 AM),

<https://www.washingtonpost.com/us-policy/2020/01/09/hit-by-devastating-earthquakes-puerto-rico-still-waiting-billions-hurricane-relief/>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Katy O'Donnell, *Trump to Lift Hold on \$8.2B in Puerto Rico Disaster Aid*, POLITICO (Jan. 15, 2020, 12:26 PM),

<https://www.politico.com/news/2020/01/15/trump-to-lift-hold-on-82b-in-puerto-rico-disaster-aid-099139>.

⁴⁰ Arelis R. Hernández & Jeff Stein, *Dangling Disaster Relief Funds, White House to Require Puerto Rico to Implement Reforms*, THE WASH. POST (Jan. 15, 2020, 2:57 PM),

<https://www.washingtonpost.com/business/2020/01/15/dangling-disaster-relief->

major earthquakes and the ensuing conversations, COVID-19 began ravaging Puerto Rico, along with the rest of the United States and the world.

The once-in-a-century global pandemic hit Puerto Rico on March 13, 2020, when Italian passengers who arrived on a cruise ship became the first individuals identified with COVID-19 on the island.⁴¹ Puerto Rico, already contending with a fragile infrastructure decimated by hurricanes and earthquakes, immediately went on the defensive, imposing some of the strictest COVID-19 measures in the entire United States.⁴² The island, also having a large elderly population, imposed lockdowns, mask mandates, business and restaurant closures, curfews, limits and prohibitions on alcohol, and mandatory testing for arriving visitors, among other measures.⁴³ Because of these strict but necessary measures, many Puerto Ricans saw their income diminished or eliminated completely, further intensifying the instability, uncertainty, and food insecurity experienced by many on the island.⁴⁴

b. *Puerto Rico's Food System*

Puerto Rico depends on imports for 85% of the food it consumes.⁴⁵ While the island has never had a fully self-sustaining

[funds-white-house-require-puerto-rico-implement-reforms/?utm_campaign=wp_main&utm_medium=social&utm_source=twitter.](#)

⁴¹ *Puerto Rico Announces its First Confirmed Coronavirus Cases*, A.P. NEWS (Mar. 13, 2020),

<https://apnews.com/article/15b3086be86fc9d9c258c2576b670671>.

⁴² Adrian Florido, *Puerto Rico Enforces Strict Stay-At-Home Order*, NPR (Mar. 23, 2020, 5:10 AM), <https://www.npr.org/2020/03/23/820009391/puerto-rico-enforces-strict-stay-at-home-order>.

⁴³ Dánica Coto, *Puerto Rico to Lock Down Sundays, Close Marinas*, A.P. NEWS (Dec. 3, 2020), <https://apnews.com/article/puerto-rico-coronavirus-pandemic-3a870e3884c7e50922e2459acb5a37be>.

⁴⁴ *Survey Finds 40 Percent of Puerto Rican Families Reporting Food Insecurity Due to COVID-19*, GW PUBLIC HEALTH (Sept. 23, 2020), <https://publichealth.gwu.edu/content/survey-finds-40-percent-puerto-rican-families-reporting-food-insecurity-due-covid-19>.

⁴⁵ Jenileigh Harris & Emily J. Spiegel, *Food Systems Resilience: Concepts & Policy Approaches*, VT. L. SCH. CTR. FOR AGRIC. & FOOD SYS. 1, 26 (June 2019) [hereinafter *Food Systems Resilience*], <https://www.vermontlaw.edu/sites/default/files/2019->

food system, it produced a significant portion of the food it consumed until the 1950s.⁴⁶ The present dependence on imports is partly attributable to industrialization efforts of the 1950s.⁴⁷ A higher demand for foodstuffs supplied from outside the island, coupled with federal industrialization initiatives, contributed to a significant increase in imported food.⁴⁸ Though there were comprehensive plans for the development of agriculture, government policies limited cash crop development and diminished the amount of land available for agricultural purposes.⁴⁹ The introduction of mainland supermarkets in the late 1950s and 60s also hurt local farmers because the merchandise available to large companies was generally lower priced than that of local vendors.⁵⁰ By the 1970s, this led to the development of a “segmented market structure . . . in which only the larger, commercial producers of food crops were able to accommodate the quality and packaging requirements of the big supermarket chains.”⁵¹

At the same time, a federal tax break was implemented through which the government incentivized the development of the manufacturing and tourism sectors.⁵² Because of the appropriation of farmland, government takings of private land, and inefficient permit systems, the majority of Puerto Rico’s agricultural land became beholden to industrial uses.⁵³ Notably, these were the same tax breaks that were phased out beginning in the 1990s and jump-started Puerto Rico’s financial crisis.⁵⁴ When the tax incentives fully expired, the impact on the Puerto Rican economy was such that the government temporarily shut down.⁵⁵ The impact was also

[07/Food%20Systems%20Resilience_Concepts%20%26%20Policy%20Approaches.pdf](#).

⁴⁶ *Id.*

⁴⁷ *Id.* at 25.

⁴⁸ *Id.* at 26.

⁴⁹ See *id.* at 25.

⁵⁰ Vivian Carro-Figueroa, *Agricultural Decline and Food Import Dependency in Puerto Rico: A Historical Perspective on the Outcomes of Postwar Farm and Food Policies*, 30 CARIBBEAN STUD. 77, 95 (2002).

⁵¹ *Id.*

⁵² Harris & Spiegel, *supra* note 45, at 26.

⁵³ *Id.* at 26-27.

⁵⁴ *Id.* at 28.

⁵⁵ *Id.*

shouldered by the Puerto Rican people through lower wages and higher unemployment, thus inducing reliance on nutrition assistance programs.

The sustainability of Puerto Rico's food system was further complicated by the introduction and structure of a federal nutrition assistance program in the 1970s and 1980s.⁵⁶ In 1974, the U.S. National Food Stamp Program (FSP) was introduced in Puerto Rico.⁵⁷ The introduction of FSP increased spending on food.⁵⁸ However, it also markedly increased spending on processed foods. By 1977, "expenses incurred in buying soups, sauces and gravies had increased 67 percent; for dried fruits and vegetables, 56 percent; in flour and other cereals, 28 percent, and in canned and frozen fruits and vegetables, 25 percent."⁵⁹ Food consumption once again changed when FSP was replaced by the Nutritional Assistance Program for Puerto Rico ("PAN" in Spanish).⁶⁰ Both FSP and PAN had "a pervasive impact over most realms of the Puerto Rican economy."⁶¹ Though farmers markets in Puerto Rico benefitted from PAN, the markets became dependent on PAN funds for their survival. This is best explained in a case study on Puerto Rico's food system:

[F]armers markets in Puerto Rico rely heavily on nutrition assistance due to the structure of the farmers market program, which requires an exclusive chunk of each recipients' allotment be used at farmers markets. Thus, while the farmers market program has been successful in providing fresh food for Puerto Ricans, its viability hinges upon a contingency of food insecure consumers. In other words, the relationship between Puerto Rico's food insecure population and the presence of farmers markets and fresh food in general fuels a self-perpetuating cycle

⁵⁶ Carro-Figueroa, *supra* note 50, at 84.

⁵⁷ *Id.*

⁵⁸ *Id.* at 85.

⁵⁹ *Id.*

⁶⁰ *Id.* at 84.

⁶¹ *Id.*

that does not lend itself to building resilient food systems.⁶²

The availability and accessibility of food is also impacted by shipping laws. Specifically, the Merchant Marine Act of 1920, also known as the Jones Act, requires “maritime transport of cargo between points in the U.S. be carried by vessels that are: ‘(1) owned by U.S. citizens and registered in the U.S.; (2) built in the U.S.; and (3) operated with predominantly U.S.-citizen crews.’”⁶³ The Jones Act was a protectionist policy intended to protect the shipping and seafaring industries in the U.S.⁶⁴ There have been calls to repeal the antiquated law because it raises costs of transporting fossil fuels to all U.S. ports, however, it is especially detrimental to non-contiguous U.S. ports, like those in Hawaii and Puerto Rico.⁶⁵ Requiring shipment of goods on protected ships rather than allowing competition unnecessarily increases the price of goods in Puerto Rico relative to the price points in the U.S. and other locations.⁶⁶ This is exemplified by the cost of food in Puerto Rico relative to U.S. states:

In the US Virgin Islands, which are exempt from the law, US-made goods are about half as expensive, while the cost of living in Puerto Rico is 13 percent higher than on the American mainland. Food on Puerto Rico costs twice as much as it does in Florida,

⁶² Harris & Spiegel, *supra* note 45, at 27.

⁶³ U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-260, PUERTO RICO: CHARACTERISTICS OF THE ISLAND'S MARITIME TRADE AND POTENTIAL EFFECTS OF MODIFYING THE JONES ACT 1-2 (2013) (citing Merchant Marine Act of 1920, Pub. L. No. 66-261, 41 Stat. 988, 999 (1920) (codified as amended at 46 U.S.C. § 55102)).

⁶⁴ Matthew Yglesias, *The Jones Act, the Obscure 1920s Shipping Regulation Strangling Puerto Rico, Explained*, VOX (Oct. 9, 2017, 4:41 PM), <https://www.vox.com/policy-and-politics/2017/9/27/16373484/jones-act-puerto-rico>.

⁶⁵ Mark J. Perry, *Damage Done to Puerto Rico by the Jones Act Illustrates the Need to Repeal the Law*, THE HILL (Oct. 3, 2014, 4:00 PM), <https://thehill.com/blogs/congress-blog/politics/409752-damage-done-to-puerto-rico-by-the-jones-act-illustrates-the-need>.

⁶⁶ Yglesias, *supra* note 64.

and that's before the devastation of the island's agriculture by Hurricane Maria.⁶⁷

In the aftermath of Maria, “[b]ecause of this absurd, antiquated protectionism, it’s now twice as expensive to ship critical goods—fuel, food and building supplies, among other things—from the U.S. to Puerto Rico, as it is to ship from any other foreign port in the world.”⁶⁸ The Jones Act was temporarily waived for ten days after the hurricane, but not without controversy and hesitation from the White House.⁶⁹ Nonetheless, current opposition from the shipbuilding industry keeps the law in place despite support for its repeal from high-level politicians like the late senator John McCain.⁷⁰

c. *Food Insecurity in Puerto Rico*

Before Hurricane Maria, about half of Puerto Ricans were food insecure.⁷¹ This is significantly higher than the overall percentage of food insecure persons in the U.S.—around four times higher.⁷² While food insecurity is shaped by many factors, an especially important one is income. Puerto Rico has the lowest median household income of any U.S. jurisdiction at \$19,775.⁷³ Comparatively, the state with the lowest median income is Mississippi with \$42,009.⁷⁴ Lower income increases dependency on

⁶⁷ *Id.*

⁶⁸ Perry, *supra* note 65.

⁶⁹ Alex Daugherty, *The Jones Act Waiver was Supposed to Help Puerto Rico. So Where are the Ships?*, MIAMI HERALD (Oct. 10, 2017, 9:52 AM), <https://www.miamiherald.com/news/politics-government/article177532316.html>; see also Yglesias, *supra* note 64.

⁷⁰ Press Release, Senator John McCain, Senator John McCain Introduces Legislation to Repeal the Jones Act & Promote Free Trade, (July 13, 2017) (on file with author).

⁷¹ *Fact Sheet: Hunger and Poverty in Puerto Rico*, BREAD FOR THE WORLD (Mar. 1, 2019), <https://www.bread.org/library/fact-sheet-hunger-and-poverty-puerto-rico> [hereinafter *Hunger and Poverty in PR*].

⁷² See ALISHA COLEMAN-JENSEN ET AL., U.S. DEP’T AGRIC., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2017 21 (2018).

⁷³ *Hunger and Poverty in PR*, *supra* note 71.

⁷⁴ *Id.*

anti-hunger programs.⁷⁵ PAN is the main anti-hunger program in Puerto Rico and is funded with both federal and state funds.⁷⁶ PAN is similar to the Supplemental Nutrition Assistance Program (SNAP) available in the fifty states but PAN was created just for Puerto Rico in 1981.⁷⁷ PAN was implemented as a block grant.⁷⁸ Requirements for block grants prevent PAN from responding in times of emergency, like a hurricane or a pandemic.⁷⁹ When it was created, block granting also reduced participation in the program from sixty percent of Puerto Ricans to thirty percent.⁸⁰ A third of Puerto Ricans being dependent on PAN is more than twice the dependence of food assistance programs in the U.S., where about thirteen percent of the population is dependent on food assistance programs.⁸¹ After Hurricane Maria, because of the lack of electricity, the entire island was categorically food insecure.⁸² The federal funding for this program has been the subject of news outlets in recent months due to cuts and delays in funding.⁸³ After Hurricane Maria but before the pandemic, about forty-three percent of Puerto Ricans relied on food stamps.⁸⁴ COVID-19 further exacerbated food insecurity in Puerto Rico, and the PAN system was once again ill-equipped to respond to the emergency.⁸⁵

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Hunger and Poverty in PR*, *supra* note 71.

⁸⁰ *Id.*

⁸¹ Harris & Spiegel, *supra* note 45, at 27.

⁸² *Hunger and Poverty in PR*, *supra* note 71.

⁸³ Faris Bseiso, *Washington Post: Puerto Rico Might Not Get \$600 Million in Aid Until September Despite New Law*, CNN (June 25, 2019, 1:10 PM), <https://www.cnn.com/2019/06/24/politics/emergency-food-stamp-aid-puerto-rico/index.html>.

⁸⁴ Jeff Stein, *More than 670,000 Puerto Rico Residents have Received Cuts to Food Stamp Benefits Amid Congressional Impasse*, THE WASH. POST (Mar. 12, 2019, 10:40 AM), <https://www.washingtonpost.com/us-policy/2019/03/08/puerto-rico-starts-cutting-food-stamp-benefits-used-by-more-than-million-people-amid-congressional-impasse/>.

⁸⁵ Cristina Corujo, *COVID-19 Has Made Food Insecurity Worse in Puerto Rico*, ABC NEWS (June 2, 2020, 12:26 PM) <https://abcnews.go.com/US/covid-19-made-food-insecurity-worse-puerto-rico/story?id=70997418>.

d. *Puerto Rico's Food Post Hurricane Maria*

The fifteen-percent of food that Puerto Rico does produce was decimated by Hurricane Maria.⁸⁶ The storm wiped out eighty percent of crops on the island.⁸⁷ The storm “took out entire plantations and destroyed dairy barns and industrial chicken coops,” inflicting about \$780 million in losses of agricultural yields.⁸⁸ The devastation was so extensive, a farmer proclaimed, “[t]here is no more agriculture in Puerto Rico. And there won’t be any for a year or longer.”⁸⁹ In the immediate aftermath of the storm, it was not only the crops that were affected but also the supply chains.⁹⁰ Because of the lack of electricity and store closures, dairy farmers reportedly discarded over 4,000 liters of milk per day.⁹¹ At that point, the island was importing ninety-five percent of its food.⁹² The situation was dire and state and federal government inefficiency and bureaucracy stunted progress.⁹³

Since Hurricane Maria struck the island, there has been a refocus on rebuilding Puerto Rico’s food system. However, this shift has not been led by the state or federal governments; it has been led by the people and non-governmental organizations. While the federal government allocated money to support farms, it failed to act as quickly and efficiently as the people and non-profits. Non-profit organizations, like Chef Jose Andres’ World Central Kitchen, rushed to Puerto Rico to feed a hungry population following the

⁸⁶ Frances Robles & Luis Ferré-Sadurní, *Puerto Rico's Agriculture and Farmers Decimated by Maria*, N.Y. TIMES (Sept. 24, 2017), <https://www.nytimes.com/2017/09/24/us/puerto-rico-hurricane-maria-agriculture-.html?auth=login-email&login=email>.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Hermes Ayala, *How Puerto Rico's Food Industry Is Picking Up the Pieces After Hurricane Maria*, EATER (Dec. 8, 2017, 9:30 AM), <https://www.eater.com/2017/12/8/16739310/puerto-rico-restaurant-industry-farmers-hurricane-maria>.

⁹³ Amanda Holpuch & Lauren Gambino, ‘Close to Genocide’: San Juan Mayor’s Dire Appeal to US for Puerto Rico relief, THE GUARDIAN (Sept. 29, 2017, 5:51 PM), <https://www.theguardian.com/world/2017/sep/29/san-juan-mayor-criticizes-us-officials-for-calling-puerto-rico-relief-effort-good-news>.

hurricanes.⁹⁴ After serving over 3.7 million meals, the kitchen closed, but World Central Kitchen began to look for other ways to support Puerto Rico.⁹⁵ This led to the Plow to Plate program, now known as the Food Producer Network, which offers grants to support small farmers affected by Hurricane Maria, preferably those with a focus on agroecological and sustainable methods and who have been working to address the need for fresh, healthy, and affordable food in Puerto Rico.⁹⁶ Other organizations have also built grassroots food sovereignty movements that focus on assisting farmers on recovery post-Maria.⁹⁷ Organización Boricua, which is dedicated to food sovereignty, climate justice, supporting family farmers, and expanding the agroecology movement, was even awarded the World Food prize for its efforts.⁹⁸ To some Puerto Ricans, achieving food security after Hurricane Maria is about more than alleviating hunger.⁹⁹ Building a reliable food system could serve as a path towards reclaiming the Puerto Rican identity and self-determination.¹⁰⁰ Locals are creating community gardens, teaching others about sustainable farming, and re-establishing their locally sourced restaurants after the hurricane.¹⁰¹

⁹⁴ Lindsay Talley, *Photo Essay: Puerto Rico's Small Farmers Rebuild, with Help from Chef José Andrés' World Central Kitchen*, CIVIL EATS (Mar. 10, 2019), <https://civileats.com/2019/03/25/photo-essay-puerto-ricos-small-farmers-rebuild-with-help-from-chef-jose-andres-world-central-kitchen/>.

⁹⁵ *Id.*

⁹⁶ *Plow to Plate*, WORLD CENTRAL KITCHEN, <https://wck.org/plow-to-plate> (last visited Mar. 8, 2020).

⁹⁷ See Alison Cohen, *2018 Food Sovereignty Prize: Honoring the Work of Grassroots Movements Working at the Intersection of Climate Justice, Food Production and Democracy*, WHY HUNGER (Oct. 18, 2018), <https://whyhunger.org/category/blog/2018-food-sovereignty-prize/>.

⁹⁸ *Id.*

⁹⁹ Carly Graf, *Meet the Farmers Reclaiming Puerto Rico's Agricultural History*, CIVIL EATS (July 5, 2019), <https://civileats.com/2019/07/05/meet-the-farmers-reclaiming-puerto-ricos-agricultural-history/>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

e. *The United States' International Obligations*

The U.S. is not a party in all international human rights instruments. It has not ratified any treaties since 2002.¹⁰² However, the U.S. had a key role in the adoption of the Universal Declaration of Human Rights, the foundational document of the United Nations.¹⁰³ The Universal Declaration of Human Rights outlines two types of rights: (1) civil and political rights; and (2) economic, social, and cultural rights.¹⁰⁴ These were elaborated upon in separate covenants; the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁰⁵ Of these two, the U.S. has signed and ratified the ICCPR but has only signed the ICESCR.¹⁰⁶ This means the U.S. is expressly bound to the ICCPR.

One of the preeminent principles of international human rights law is that all rights are universal and interdependent.¹⁰⁷ Human rights are interdependent because “[t]he improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.”¹⁰⁸ Furthermore, human rights

¹⁰² *United States Ratification of International Human Rights Treaties*, HUMAN RIGHTS WATCH (July 24, 2009, 12:24 PM), <https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties>.

¹⁰³ *See Human Rights and the United States*, THE ADVOCATES FOR HUMAN RIGHTS, https://www.theadvocatesforhumanrights.org/human_rights_and_the_united_states#:~:text=During%20the%20first%20half%20of,which%20was%20signed%20in%201948 (last visited Feb. 11, 2021).

¹⁰⁴ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

¹⁰⁵ International Covenant on Civil and Political Rights, Dec. 19, 1966, S. Treaty Doc. 95-20, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, G.A. Res. 2200A.

¹⁰⁶ *UN Treaty Body Database*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx (last visited Mar. 8, 2020).

¹⁰⁷ *Your Human Rights*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> (last visited Mar. 8, 2020).

¹⁰⁸ *Id.*

are indivisible and inalienable.¹⁰⁹ Ratifying States agree to both the rights and obligations: “[s]tates assume obligations and duties under international law to respect, to protect and to fulfill human rights.”¹¹⁰ The language “to respect” means States must not violate human rights themselves; “to protect” means States must shield individuals and groups from human rights abuses by others; and “to fulfill” means States must take active steps to improve the access to rights to ensure individuals’ livelihoods and to progressively facilitate enjoyment of human rights.¹¹¹

The right to food is an economic, social and cultural right. However, even if the U.S. has not ratified the ICESCR, where the right to food is enshrined, the right is also enshrined within the Universal Declaration of Human Rights, which the U.N. General Assembly has adopted with strong support from the U.S.¹¹² Article 25 of the Universal Declaration of Human Rights states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.¹¹³

f. *The Right to Food and Food Sovereignty*

The right to food is defined as the right to feed oneself with dignity.¹¹⁴ The right to food can only be fulfilled when every person, alone or in community, has physical and economic access at all times to adequate food or can procure it.¹¹⁵ The right to food requires an environment in which people can acquire adequate food for

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² G.A. Res. 217 (III) A, *supra* note 104.

¹¹³ *Id.*

¹¹⁴ See Comm. on Econ., Soc., and Cultural Rts. (“CESCR”), *General Comment No. 12: The Right to Adequate Food*, ¶ 4, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).

¹¹⁵ *Id.* ¶ 6.

themselves and their families.¹¹⁶ The food must be accessible and “culturally acceptable food that is produced and consumed sustainably, preserving access to food for future generations.”¹¹⁷ To achieve this, people “must live in conditions that allow [them] either to produce food or to buy it. To produce [their] own food, a person needs land, seeds, water and other resources, and to buy it, one needs money and access to the market.”¹¹⁸

There are three dimensions of the right to food: food must be available, accessible, and adequate.¹¹⁹ These dimensions must be met in a sustainable manner.¹²⁰ Availability means the acquisition of food should be possible “through the production of food, by cultivating land or animal husbandry, or through other ways of obtaining food, such as fishing, hunting or gathering.”¹²¹ This food must also be available through markets.¹²² Accessibility is defined as providing both economic and physical access to nutritious food.¹²³ Food is economically accessible when the costs associated with the acquisition of adequate food are at a level where no other basic needs are compromised.¹²⁴ Food should be affordable and attainable without having to forego other necessities such as medicine or rent.¹²⁵ Physical accessibility means adequate food must be available to everyone, including vulnerable populations such as the children and the elderly.¹²⁶ Accessibility should be guaranteed to all people regardless of physical ability, age, and health.¹²⁷ Accessibility must also “be guaranteed to people in remote areas and to victims of armed conflicts or natural disasters, as well as to prisoners.”¹²⁸ Adequacy refers to the appropriate nutrition

¹¹⁶ *Id.*

¹¹⁷ U.N. General Assembly, Olivier De Schutter, *Special Rapporteur on the Right to Food: The Transformative Potential of the Right to Food*, ¶ 2, U.N. Doc. A/HRC/25/57 (Feb. 21, 2014).

¹¹⁸ CESCR, *supra* note 114.

¹¹⁹ *Id.* at 2.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ CESCR, *supra* note 114.

¹²⁵ *Id.*

¹²⁶ *Id.* at 3.

¹²⁷ *Id.*

¹²⁸ *Id.*

standards an individual needs and the safety of the food consumed.¹²⁹ Furthermore, adequacy requires the food be culturally acceptable, meaning it is appropriate to the customs and traditions of the area or individual.¹³⁰

The right to food is also inclusive of the right to food sovereignty.¹³¹ This right is recognized in the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.¹³² The right to food sovereignty is particularly important for the people of Puerto Rico because it emphasizes the role people should have in determining their own food systems and the localization of food systems.¹³³ The right to food sovereignty addresses the power dynamics in food systems¹³⁴ by fostering an understanding that all the stakeholders involved in food systems stand at a different level of power and calls on States to address these unequal spheres of power.¹³⁵ Additionally, the right to food sovereignty values local small-scale, sustainable agriculture.¹³⁶ The right to food is complementary to the right to food sovereignty because they emphasize the need for sustainable food practices and access to food.¹³⁷

While the right to food is recognized in the Universal Declaration of Human Rights, it is most prominently enshrined in the ICESCR and fully interpreted in General Comment 12 from the

¹²⁹ *Id.*

¹³⁰ CESCR, *supra* note 114.

¹³¹ Gustavo Gordillo & Obed Méndez Jerónimo, *Food Security and Sovereignty* 1, 3, FAO (2013), <http://www.fao.org/3/a-ax736e.pdf>.

¹³² United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (“UNDROP”), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018) (“Peasants and other people working in rural areas have the right to determine their own food and agriculture systems, recognized by many States and regions as the right to food sovereignty. This includes the right to participate in decision-making processes on food and agriculture policy and the right to healthy and adequate food produced through ecologically sound and sustainable methods that respect their cultures.”).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* at 7.

Economic, Social, and Cultural Rights Committee.¹³⁸ This covenant has not been ratified by the U.S., but the U.S. has signed it, thus declaring its intention to be bound by the covenant.¹³⁹ Additionally, countries that have signed the Universal Declaration of Human Rights—the drafting committee of which was chaired by Eleanor Roosevelt—have effectively shown their intention to protect, respect and fulfill the right to food.¹⁴⁰

III. ARGUMENTS

The violations against the right to food in Puerto Rico are the direct result of violations of Articles 1 and 25 of the ICCPR which protect the rights to self-determination and political participation respectively.¹⁴¹ To this day, the people of Puerto Rico have not been given the opportunity to exercise the right to self-determination. This prevents the island from choosing what their food system should look like; thus, the violation of Article 1 leads to the inaccessibility of the right to food. The violations of Article 25 emerge from the relationship the U.S. has established with Puerto Rico in which the island has no true representation in Congress or input on presidential elections. The inability to advocate and vote for policies that support Puerto Rico's food system is a violation of the Article 25 right to political participation. Additionally, it has become clear by the different federal government responses to natural disasters in Puerto Rico and U.S. states that the island is being treated discriminatorily. The violations of Puerto Rico's civil and political rights must be viewed in light of the history of discrimination the island has endured. This unequal treatment hinders the sustainable accessibility, availability, and adequacy of food in Puerto Rico.

¹³⁸ G.A. Res. 2200A, International Covenant on Economic, Social and Cultural Rights (Dec. 16., 1966) [hereinafter ICESCR]; CESCR, *supra* note 114.

¹³⁹ *UN Treaty Body Database*, *supra* note 106.

¹⁴⁰ *History of the Document, Charter of the United Nations*, UNITED NATIONS, <https://www.un.org/en/sections/universal-declaration/history-document/index.html> (last visited Mar. 8, 2020).

¹⁴¹ International Covenant on Civil and Political Rights art. 1, 25, Dec. 19, 1966, S. Treaty Doc. 95-20, 999 U.N.T.S. 171 [hereinafter ICCPR].

- a. *The denial of self-determination to Puerto Rico violates the right to self-determination, as guaranteed by Article 1 of the ICCPR. The violation of self-determination leads to the violation of the right to food.*

The U.S. is in violation of its obligation to respect the adequacy, availability, accessibility, and sustainability dimensions of the human right to food by denying the exercise of self-determination to the people of Puerto Rico. The denial of self-determination also impedes the realization of the right to food sovereignty. Article 1 of the ICCPR states:

All people have the right of self-determination. By virtue of that right they *freely determine their political status and freely pursue their economic, social and cultural development* The States Parties to the present Covenant, including those having the responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.¹⁴²

The right to self-determination was first expressed in Chapter XI of the Charter of the United Nations (the Charter)—a document that predates the United Nations itself and has been signed and ratified by the U.S.¹⁴³ As outlined in that Chapter, member states with “non-self-governing territories” have an obligation to promote the well-being of the inhabitants residing in these territories.¹⁴⁴ This obligation includes “to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection

¹⁴² *Id.*

¹⁴³ See generally *Introductory Note, Charter of the United Nations*, UNITED NATIONS, <https://www.un.org/en/sections/un-charter/introductory-note/index.html> (last visited Mar. 8, 2020).

¹⁴⁴ U.N. Charter art. 73, ¶ 1.

against abuses[,]” among other things.¹⁴⁵ Chapter XI of the Charter defines Non-Self-Governing Territories as “territories whose people have not yet attained a full measure of self-government.”¹⁴⁶ In a resolution adopted in 1946, the General Assembly of the United Nations identified 74 territories to which Chapter XI applies.¹⁴⁷ Puerto Rico was among them; thus, the right to self-determination is applicable to Puerto Rico per the Charter of the United Nations and Article 1 of the ICCPR.¹⁴⁸ While the federal government touted the adoption of the Puerto Rican Constitution in 1952 as a full exercise of self-government, the fact that Puerto Rico has never had a true choice in determining its own political status evidences the fallacy of such a claim.¹⁴⁹

The lack of opportunity to exercise the right to self-determination inhibits the realization of the right to food in Puerto Rico. Self-determination has been denied to the island since Christopher Columbus arrived at its shores in 1493.¹⁵⁰ Governance impacts many relevant factors of the right to food. As shown through Puerto Rico’s long relationship with the U.S., the federal government controls what tax breaks are implemented, how land is used, the regulations of imports and exports, and other factors that affect the right to food and the island’s ability to be food sovereign.¹⁵¹ Before the U.S. focused on the industrialization of the island, Puerto Rico’s food system was much more accessible.¹⁵² Even though the U.S. showed its intention to allow self-determination for its colonies, it has never risen to the level of issuing a congressionally mandated and binding referendum for self-

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ G.A. Res. A/RES/66 (1), at 124-25 (Dec. 14, 1946).

¹⁴⁸ *Id.*

¹⁴⁹ Letter from Acting Secretary of the Interior Vernon Northrop to the United Nations (Oct. 9, 1952), in FOREIGN RELATIONS OF THE UNITED STATES, 1952-1954, UNITED NATIONS AFFAIRS VOL. III.

¹⁵⁰ *Puerto Rico: Background*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/the-world-factbook/countries/puerto-rico/> (last visited Mar. 8, 2020).

¹⁵¹ Ana Campoy, *Yes, Puerto Rico Pays Federal Taxes. Here’s How Much*, QUARTZ (Oct. 21, 2017), <https://qz.com/1108041/yes-puerto-rico-pays-federal-taxes-heres-how-much/>.

¹⁵² Carro-Figueroa, *supra* note 50.

determination.¹⁵³ Congress must be the entity to address status issues because of the territorial clause in the U.S. Constitution.¹⁵⁴ Although Congress has not acted on self-determination, Puerto Rico has held five referendums, the most recent having taken place in 2017.¹⁵⁵ The results of the 2017 plebiscite overwhelmingly supported statehood, however, less than a quarter of eligible voters participated because of a mass boycott by anti-statehood parties.¹⁵⁶ Self-determination encompasses political, economic, and social rights.¹⁵⁷ If Puerto Rico were to exercise the right to self-determination, it could prioritize the realization of the right to food in ways its current status as a colonial holding of the U.S. does not permit. By denying self-determination to the island, the U.S. is violating its obligation to respect the right to self-determination and the right to food, including food sovereignty.

- b. *The lack of voice in federal politics violates the right to political participation, as guaranteed by Article 25 of the ICCPR. The denial of political participation inhibits the realization of the right to food.*

The U.S. is in violation of the availability, accessibility, adequacy, and sustainability dimensions of the human right to food by oppressing Puerto Rican voices that can politically advocate for the right to food in Puerto Rico. This political participation is distinct from self-determination because Article 25 “deals with the right of individuals to participate in those processes which constitute the conduct of public affairs,” affairs which should be part of the conduct of a freely determined form of government, by virtue of

¹⁵³ Vann R. Newkirk II, *Puerto Rico’s Plebiscite to Nowhere*, THE ATLANTIC (June 13, 2017), <https://www.theatlantic.com/politics/archive/2017/06/puerto-rico-statehood-plebiscite-congress/530136/>.

¹⁵⁴ U.S. CONST. art. IV, § 3, cl. 2 (“The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.”).

¹⁵⁵ Newkirk, *supra* note 153.

¹⁵⁶ *Id.*

¹⁵⁷ U.N Charter art. 73, ¶ 1.

Article 1.¹⁵⁸ Article 25 of the ICCPR states, “[e]very citizen shall have the right and the opportunity . . . to take part in the conduct of public affairs, directly or through freely chosen representatives.”¹⁵⁹ This right may not be diluted on the basis of “political or other opinion, national or social origin, property, birth or other status.”¹⁶⁰ Puerto Ricans’ right to political participation is violated by the denial of the right to vote in U.S. presidential elections and the lack of voting representatives in Congress. This, in turn, results in violations of the right to food.

- i. The denial of the right to vote for the office of President of the United States directly inhibits the realization of the right to food in Puerto Rico.

Citizens on the island do not vote for President of the U.S.¹⁶¹ Puerto Ricans may vote in the presidential primaries, holding 58 delegates, yet are prohibited from voting in the presidential election and hold no electoral votes.¹⁶² This is a violation of the Article 25 right to political participation. The right to political participation includes the right to vote at elections and may only be subject to reasonable restriction, like a minimum age.¹⁶³ The lack of voice in presidential elections prevents Puerto Ricans from choosing a Commander-in-Chief who represents the interests and ideals of Puerto Ricans, thus depriving Puerto Ricans of the opportunity to take part in the conduct of public affairs. The conduct of public affairs “covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.”¹⁶⁴ Thus, public affairs include all policies

¹⁵⁸ Hum. Rts. Comm., *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service*, ¶ 2, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Dec. 7, 1996) [hereinafter HRC].

¹⁵⁹ ICCPR, *supra* note 135, at art. 25.

¹⁶⁰ HRC, *supra* note 152, at ¶ 3.

¹⁶¹ *Frequently Asked Questions, Electoral College*, NATIONAL ARCHIVES, <https://www.archives.gov/electoral-college/faq#territories> (last visited Mar. 8, 2020).

¹⁶² *2020 Presidential Primaries, Caucuses, and Conventions*, THE GREEN PAPERS, <https://www.thegreenpapers.com/P20/PR-D> (last visited Mar. 8, 2020).

¹⁶³ HRC, *supra* note 152, ¶ 10.

¹⁶⁴ *Id.* ¶ 5.

relevant to the right to food, like agriculture, natural resource management, and so on. Puerto Ricans are currently excluded from the national and international levels and are limited at the regional and local levels, thus silencing Puerto Rican voices in the determination and administration of policies regarding food sovereignty and food security. A series of cases, none of which reached the Supreme Court of the United States, purported to explain why Puerto Ricans and inhabitants of other U.S. colonial possessions, although full U.S. citizens, are not afforded the right to vote for President.

The holdings in the cases relating to the right of U.S. citizens in U.S. territories to vote in presidential elections, violate the right to political participation as expressed in Article 25 of the ICCPR. In *Sánchez v. United States*, where a Puerto Rican citizen challenged the constitutionality of Puerto Rico's ability to consent to the status of "commonwealth" absent the right to vote in presidential elections, the district court stated, "the Constitution does not, by its terms, grant citizens the right to vote, but leaves the matter entirely to the States."¹⁶⁵ The court pointed to the constitutional amendments that guaranteed the right to vote for women and black citizens as support for its proposition and dismissed the suit.¹⁶⁶ Later, in *Attorney Gen. of Guam v. United States*, where citizens of Guam—another U.S. colony—argued that voting in presidential elections was a privilege of citizenship, the Ninth Circuit Court of Appeals affirmed the district court's dismissal of the case.¹⁶⁷ The Ninth Circuit held that "the Constitution does not grant to American citizens the right to elect the President . . ." and explained that under Article II of the Constitution, the right to vote in presidential elections belongs to states and citizens vote indirectly for President by voting for state offices.¹⁶⁸ *De La Rosa v. United States I* involved two groups of plaintiffs; the first, a group of Puerto Ricans who had always lived in Puerto Rico and the second, a group of citizens who previously resided in U.S. states and moved to the island, effectively losing

¹⁶⁵ *Sanchez v. United States*, 376 F. Supp. 239, 241 (D.P.R. 1974).

¹⁶⁶ *Id.*

¹⁶⁷ *Attorney Gen. of Guam v. United States*, 738 F.2d 1017, 1018 (9th Cir. 1984).

¹⁶⁸ *Id.* at 1019.

their right to vote in a presidential election.¹⁶⁹ The plaintiffs sought a declaratory judgment that would grant them the right to vote in presidential elections by virtue of their U.S. citizenship.¹⁷⁰ In that case, the court also held that citizens living in Puerto Rico would not have the right to vote in presidential elections until either Puerto Rico became a state or it was granted the right by constitutional amendment.¹⁷¹ The court approached the issue in the case as a determination of the island's political status and ruled that determination falls on Congress.¹⁷² In 2000, *De La Rosa v. United States II* acknowledged the problematic nature of Puerto Rico's status in answering the question of whether citizens in Puerto Rico had the right to participate in presidential elections.¹⁷³ The court reasoned that the previous cases on point ignored the Supreme Court's consistent affirmation of voting as a fundamental right and that voting is a function of citizenship.¹⁷⁴ The court further reasoned that Article II of the Constitution, which lays out the electoral system, merely provides the logistics of how states participate in presidential elections, but is not limited to states themselves.¹⁷⁵ However, the First Circuit reversed the district court's ruling on the grounds of *stare decisis*, given that the facts in *De La Rosa I* and *II* were exactly the same.¹⁷⁶

In applying these holdings to Puerto Rico, which is neither a state nor sovereign, has no voting representation in Congress, and has no control over its self-determination, the courts have effectively ruled that Puerto Ricans do not have a right to political participation. This even violates the plain language of Article 25 of the ICCPR in which the right to political participation is guaranteed to "[e]very citizen."¹⁷⁷ *De la Rosa II* would have been the correct interpretation of the relationship between Article II of the U.S. Constitution and what it means to be a "citizen" of the U.S. It is unconscionable that "[m]any Puerto Ricans . . . have fought and died for a Commander-

¹⁶⁹ *Igartúa De La Rosa v. United States*, 842 F. Supp. 607, 608 (D.P.R. 1994).

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 609.

¹⁷² *Id.* at 610.

¹⁷³ *Igartúa De La Rosa*, *supra* note 163, at 141-42.

¹⁷⁴ *Id.* at 146.

¹⁷⁵ *Id.* at 145.

¹⁷⁶ *Igartúa-De La Rosa v. United States*, 386 F.3d 313, 314 (1st Cir. 2004).

¹⁷⁷ ICCPR, *supra* note 135, art. 25.

in-Chief they can't even choose.”¹⁷⁸ To realize the right to political participation as guaranteed by Article 25 of the ICCPR, Puerto Ricans must be able to choose the President of the country that governs it. Without the right to political participation, even at the presidential level, Puerto Ricans cannot vote for an electorate that will prioritize the accessibility, availability, adequacy, and sustainability of food.

- ii. The absence of voting representatives in Congress severely affects the realization of the right to food in Puerto Rico.

Per the Puerto Rican Constitution, Puerto Rico is a commonwealth with a state government that functions similarly to the state governments of U.S. States.¹⁷⁹ There is a House of Representatives, Senate, and Governor, all of which are elected.¹⁸⁰ However, at the federal level Puerto Rico has no freely elected representative or senator with a voice.¹⁸¹ There is only the position of Resident Commissioner, who is technically a member of the House of Representatives.¹⁸² This position serves as the only elected envoy from Puerto Rico to the federal government.¹⁸³ The office of Resident Commissioner was first created by the Foraker Act in 1900.¹⁸⁴ When the role was first created, the scope of the responsibilities of the Resident Commissioner was not defined.¹⁸⁵ This led to the denial of floor privileges until the House amended its rules to provide the right to speak on the floor and serve on

¹⁷⁸ Maria Mendez, *She Has Congress' Loneliest Job*, ROLL CALL (Aug. 18, 2018, 2:10 PM), <https://www.rollcall.com/2018/08/15/she-has-congress-loneliest-job/>.

¹⁷⁹ P.R. CONST., art. I (1952).

¹⁸⁰ P.R. CONST., art. III (1952).

¹⁸¹ *What is the Resident Commissioner?*, U.S. CONGRESSWOMAN JENNIFFER GONZÁLEZ-COLÓN, <https://gonzalez-colon.house.gov/about/what-resident-commissioner/> (last visited Mar. 8, 2020).

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Foraker Act § 39, 31 Stat. 77 (1900).

¹⁸⁵ *What is the Resident Commissioner?*, *supra* note 175.

committees to territorial representatives.¹⁸⁶ Other laws have been enacted since then that have made the office of Resident Commissioner more closely resemble that of a member of the House of Representatives, with the exception of a right to vote to enact legislation.¹⁸⁷

While the Resident Commissioner is allowed to speak, the lack of a true vote in the House means the concerns and initiatives of the Resident Commissioner will be deprioritized. Over the years, Resident Commissioners have undertaken initiatives and advocacy in issues that directly affect Puerto Rico to little avail. Most recently, in March of 2020, Jenniffer Gonzalez-Colón, the Resident Commissioner of Puerto Rico, spoke before the House Appropriations Committee's Sub-Committee on Agriculture to request additional funds for PAN in Puerto Rico.¹⁸⁸ She also advocated for Puerto Rico and other colonial holdings to have access to SNAP, as inhabitants of the fifty states have.¹⁸⁹ Under PAN, a two-person Puerto Rican household is eligible to receive \$216 per month, whereas a U.S.-state household of the same size would be eligible to receive \$357 per month under SNAP.¹⁹⁰ This conversation came over a year after Congress missed the deadline to reauthorize funds for food-stamp aid after Hurricane Maria, cuts to food stamps in Puerto Rico by the Trump administration, and the withholding of disaster relief funds.¹⁹¹ As appalling as the disparities and neglect may be, the political capital of the Resident Commissioner as someone who does not have a vote is not nearly as impactful or motivating to voting representatives to take action.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Jenniffer González pide más fondos del PAN*, EL NUEVO DÍA (Mar. 3, 2020, 3:16 PM), <https://www.elnuevodia.com/noticias/locales/nota/jennifergonzalezpidemasfondosdelpan-2550451/>.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Jeff Stein & Josh Dawsey, *Puerto Rico Faces Food-Stamp Crisis as the Trump Administration Privately Vents About Federal Aid to Hurricane-Maria Battered Island*, THE WASH. POST (Mar. 25, 2019, 2:10 PM), https://www.washingtonpost.com/business/economy/puerto-rico-faces-food-stamps-crisis-as-trump-privately-vents-about-federal-aid-to-hurricane-maria-battered-island/2019/03/25/ade500fe-4cb3-11e9-b79a-961983b7e0cd_story.html.

Because the Resident Commissioner has no vote, she has no leverage to make others sympathetic to issues that affect Puerto Rico, including food, which is at present a pressing issue that must be addressed.

Not only is it difficult to rally support for issues that affect Puerto Rico, but Puerto Rico is simply ignored in national legislation. In March 2020, Congress passed the Families First Coronavirus Response Act in response to the COVID-19 pandemic.¹⁹² The Act included an emergency food assistance program titled Pandemic EBT (P-EBT).¹⁹³ The program “lets states participating in SNAP issue benefits on electronic benefit transfer (EBT) cards to school-aged children who are missing free and reduced-price meals due to school closures.”¹⁹⁴ Because Puerto Rico cannot be part of the SNAP program, Puerto Rico was excluded from participating in P-EBT and receiving additional funds, even though child hunger has been at the forefront of COVID impacts in Puerto Rico.¹⁹⁵ Despite Puerto Rico’s governor urging Congress to include Puerto Rico in P-EBT, Puerto Rico continues to be excluded from the program.¹⁹⁶ This situation would *never* arise if Puerto Rico had voting representation and such representation could demand equal treatment, focus on alleviating food insecurity, and strengthen food sovereignty on the island.

¹⁹² See generally Families First Coronavirus Response Act, Pub. L. No. 116-127 (2020).

¹⁹³ *Id.* §1101(d).

¹⁹⁴ Brynne Keith-Jennings, *Puerto Rico Needs More Food Aid to Better Respond to COVID-19*, CTR. ON BUDGET AND POL’Y PRIORITIES (May 8, 2020, 4:45 PM), <https://www.cbpp.org/blog/puerto-rico-needs-more-food-aid-to-better-respond-to-covid-19>.

¹⁹⁵ Adrian Florido, *'Mamá, I'm Still Hungry': In Puerto Rico, Child Hunger Becomes A Flashpoint*, NPR (May 13, 2020, 5:01 AM), <https://www.npr.org/2020/05/13/854734386/mam-im-still-hungry-in-puerto-rico-child-hunger-becomes-a-flashpoint>.

¹⁹⁶ Press Release, Government of Puerto Rico, Governor of Puerto Rico Urges Congress to Include Puerto Rico in the P-EBT Program to Provide Children Nutritional Assistance Benefits During the COVID-19 Pandemic (May 5, 2020), <https://prfaa.pr.gov/2020/05/05/governor-of-puerto-rico-urges-congress-to-include-puerto-rico-in-the-p-ebt-program-to-provide-children-nutritional-assistance-benefits-during-the-covid-19-pandemic/>.

- iii. The enactment of federal legislation without the vote of the Puerto Rican people violates the right to political participation and further hinders the realization of the right to food.

The lack of true representation of Puerto Ricans in Congress forces Puerto Rico to depend on other members of Congress who are sympathetic to issues affecting the island to vote with the interests of the Puerto Rican people. This is true despite the fact that there are more “U.S. citizens” living in Puerto Rico than in twenty-one U.S. states.¹⁹⁷ The Resident Commissioner is not just dependent on other members taking interest in Puerto Rico, but she also shoulders the burden of teaching her colleagues that problems of Puerto Rico are the problems of the U.S. in the first place.¹⁹⁸ This educational component is an important aspect of advocacy for and against legislation that affects Puerto Rico because all legislators should understand they must, at the very least, consider Puerto Rican interests, given that there is no voting representation in Congress.

A prominent example of a controversial law enacted at the federal level that directly impacts Puerto Rico is PROMESA, or the Puerto Rico Oversight, Management, and Economic Stability Act.¹⁹⁹ PROMESA, the word for “promise” in Spanish, was signed into law by President Obama in 2016.²⁰⁰ The law established a fiscal oversight board to control and make decisions on how to handle Puerto Rico’s public debt.²⁰¹ There are seven members of the board, the majority of whom were initially proposed by then-Senate Majority Leader Mitch McConnell and then-Speaker of the House Paul Ryan.²⁰² The board also has an ex-officio member, designated by the Governor of Puerto Rico.²⁰³ The board has been criticized by

¹⁹⁷ Ryan Sturyk, *More Americans Live in Puerto Rico Than 21 Other States (and Other Things to Know)*, CNN (Sept. 26, 2017), <https://www.cnn.com/2017/09/26/politics/puerto-rico-state-hurricane-maria/index.html>.

¹⁹⁸ Mendez, *supra* note 178.

¹⁹⁹ Puerto Rico Oversight, Management, and Economic Stability Act [PROMESA], Pub. L. No. 114-187, 48 U.S.C. § 2101 (2016).

²⁰⁰ *Id.*

²⁰¹ *Id.* at § 101.

²⁰² *Id.*

²⁰³ *Id.*

Puerto Ricans for the austerity measures it has imposed on the people, the conflicts of interest of its members, and the costs of the Board, which the Puerto Rican people cover.²⁰⁴ The austerity measures proposed by the board have a significant impact on the sustainability, accessibility, availability, and adequacy of food:

The plans released Wednesday call for a 10 percent average cut to a pension system facing nearly \$50 billion in liabilities. They also seek the closure of prisons, consolidation of dozens of state agencies and significant reductions in government subsidies to the island's 78 municipalities and Puerto Rico's largest public university. The board also said Puerto Rico's government should cut sick leave and vacation pay by half.²⁰⁵

The diminishing of funds for education, lowering of pensions, and inadequacy of employment benefits severely undermine the fulfilment of the right to food. Furthermore, the board said that the government of Puerto Rico should immediately impose a work requirement for a nutritional assistance program.²⁰⁶ These austerity measures that are implemented without the input of the Puerto Rican people are a direct violation of the right to political participation.

Citizens of Puerto Rico recognize PROMESA as a violation of their right to political participation but must rely on voting members of Congress to voice their concerns.²⁰⁷ While the PROMESA bill enjoyed tepid support from the then-Puerto Rican Governor Alejandro García Padilla and the then-Resident Commissioner Pedro Pierluisi, PROMESA has faced public opposition since its

²⁰⁴ Kate Aronoff & Alleen Brown, *Sanders and Ocasio-Cortez Call for Reversal of Puerto Rico Austerity Measures*, THE INTERCEPT (Sept. 24, 2019), <https://theintercept.com/2019/09/24/puerto-rico-austerity-congress/>.

²⁰⁵ Dánica Coto, *Board Reveals Austerity Measures in Puerto Rico Fiscal Plans*, AP NEWS (April 18, 2018), <https://apnews.com/8576655a1647424fa3725a030f17a1a6/Board-reveals-austerity-measures-in-Puerto-Rico-fiscal-plans>.

²⁰⁶ *Id.*

²⁰⁷ *Coalition of Puerto Ricans Calls on Senate to Oppose Promesa*, CARIBBEAN BUS. (June 25, 2016), <https://caribbeanbusiness.com/coalition-of-puerto-ricans-calls-on-senate-to-oppose-promesa/>.

inception.²⁰⁸ This public opposition has endured. During the political unrest in Puerto Rico in the summer of 2019, Puerto Ricans demanded Governor Ricardo Rosselló resign after a two-year administration of inefficiency, corruption, and disrespect.²⁰⁹ A popular chant among the hundreds of thousands of protesters said “*Ricky renuncia, y llévate la junta.*”²¹⁰ With this chant, protestors demanded Rosselló resign and take the PROMESA fiscal oversight board with him.²¹¹ While Rosselló eventually resigned, “*la junta*” remains.²¹² However, the message behind this chant did not go unnoticed in the U.S. Congress. In September of 2019, thirteen U.S. Congress members sent a letter to the Financial Oversight and Management Board created under PROMESA.²¹³ The letter was signed by high-profile members of both chambers, like Senators Bernie Sanders and Elizabeth Warren, and Representative Alexandria Ocasio-Cortez, among others.²¹⁴ The letter echoed the cries of the Puerto Rican people in asking for the abolishment of the board because of its full control over the economic decisions of the island and cited the concerns of conflicts of interest, mismanagement of funds, and the undemocratic nature of the board.²¹⁵ The letter asked the board for information regarding all of the Congress members’ concerns.²¹⁶ The board responded with their own letter with the information requested and challenged the claims

²⁰⁸ Patricia Guadalupe, *Here’s How PROMESA Aims to Tackle Puerto Rico’s Debt*, NBC NEWS (June 20, 2016, 1:39 PM), <https://www.nbcnews.com/news/latino/here-s-how-promesa-aims-tackle-puerto-rico-s-debt-n601741>; see also Pierluisi, Pedro, *History, Art and Archives*, UNITED STATES HOUSE OF REPRESENTATIVES, [https://history.house.gov/People/Listing/P/PIERLUISI,-Pedro-\(P000596\)/](https://history.house.gov/People/Listing/P/PIERLUISI,-Pedro-(P000596)/) (last visited Mar. 8, 2020).

²⁰⁹ Amber Phillips, *Why Puerto Rico’s Governor is Resigning*, THE WASH. POST (July 25, 2019, 11:01 AM),

<https://www.washingtonpost.com/politics/2019/07/19/why-puerto-rico-is-crisis/>.

²¹⁰ Aronoff & Brown, *supra* note 204.

²¹¹ *Id.*

²¹² *Id.*

²¹³ Letter from Thirteen Congress Members to the Financial Oversight and Management Board for Puerto Rico (Sept. 24, 2019) (available at: <https://www.warren.senate.gov/download/puerto-rico-fomb-letter>).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

in the Congressional letter, however, support for the board and its propositions remains minimal among the public.²¹⁷ The denial of political participation for Puerto Ricans is exemplified through these circumstances in which even the attention of some Congress' highest profile members is insufficient to inspire a full dialogue over the rights of Puerto Ricans and their self-governance. Thus, this presents a situation in which the fulfilment of the right to food is nearly impossible.

IV. RECOMMENDATIONS

To realize the right to food in Puerto Rico, the U.S. must focus on empowering Puerto Rican voices. This begins with establishing a path to self-determination. Self-determination is the ultimate power Puerto Rican voices could be granted after 500 years of others guiding the destiny of Puerto Rico. With a binding self-determination process, Puerto Ricans would have the capacity to choose whether and how to build a resilient food system as a sovereign nation, maintain the food system as it is under the commonwealth system, or be admitted as a state, after which the federal government would have to implement federal food programs as they are in U.S. states. During the 2020 presidential primaries, some of the Democratic candidates for president had plans for Puerto Rico, though none clearly supported self-determination. Bernie Sanders supported "self-rule" for Puerto Rico, addressing the debt and remedying the government's shortfalls in addressing recovery after Hurricane Maria, while Joe Biden supported only the latter two.²¹⁸ The Biden-Harris plan for

²¹⁷ Letter from Financial Oversight and Management Board for Puerto Rico to Thirteen Congress members in response to the Congressional letter (Oct. 7, 2019).

²¹⁸ *Empower the People of Puerto Rico*, BERNIE SANDERS, <https://berniesanders.com/issues/empower-puerto-rico/> (last visited Mar. 8, 2020); Emerald Pellot, *Joe Biden Released A New Platform Regarding Puerto Rico And Hopes To See The Island Get The Respect It Deserves*, WE ARE MITU (Dec. 3, 2019, 4:18 PM), <https://wearemitu.com/things-that-matter/joe-biden-unveils-plan-for-puerto-rico-which-he-says-deserves-more-respect-than-trump-has-given/>.

Puerto Rico, which was released about six weeks before the 2020 general election, made no mention of self-determination, instead referencing infrastructure, debt relief, and education.²¹⁹ Additionally, the Jones Act should be repealed. The Jones Act is an antiquated protectionist law that increases the cost of living for Puerto Ricans and disproportionately affects non-mainland states, like Hawaii, and Alaska, and colonial possessions.²²⁰ The law raises the price of goods like food and perpetuates unequal treatment for noncontiguous states and colonial possessions.²²¹ Furthermore, the government should invest in local agriculture and sustainable farming. Since Hurricane Maria, there has been a resurgence of sustainable and local farming, but it has mostly been led by the people and non-profit organizations, with minimal support from the government.²²² While local food sovereignty efforts are paramount to the realization of the right to food, an investment from the federal government could strengthen those grassroots movements, contribute to the economy, and ensure the accessibility, availability and adequacy of food. Finally, the government should raise the minimum wage. The federal minimum wage has remained stagnant for about ten years, even though the cost of living has risen eighteen percent.²²³ With a third of Puerto Ricans dependent on PAN, a higher, more realistic minimum wage could allow the economic accessibility to food at all times.²²⁴

V. CONCLUSION

As the relationship between Puerto Rico and the United States currently stands, Puerto Rico belongs to, but is not a part of, the

²¹⁹ *The Biden-Harris Plan For Recovery, Renewal And Respect For Puerto Rico*, JOEBIDEN.COM, <https://joebiden.com/the-biden-harris-plan-for-recovery-renewal-and-respect-for-puerto-rico/> (last visited Dec. 16, 2020).

²²⁰ Yglesias, *supra* note 64.

²²¹ *Id.*

²²² Ayala, *supra* note 92.

²²³ Aimee Picchi, *The Federal Minimum Wage Sets a Record—for Not Rising*, CBS NEWS (June 15, 2019), <https://www.cbsnews.com/news/federal-minimum-wage-sets-record-for-length-with-no-increase/>.

²²⁴ Harris & Spiegel, *supra* note 45 at 27.

United States. Judge Torruella, who wrote the concurrence in *De la Rosa II*, likened Puerto Rico's situation to the phrase "separate but equal," which was used to justify deep pain and disenfranchisement inflicted on the Black community in the U.S.²²⁵ The denial of the rights to self-determination and political participation that Puerto Rico has been subjected to at the hands of Uncle Sam for over one hundred years can come to an end. The end of this oppression could mean the realization of the right to food for Puerto Ricans. First, the path to self-determination must be forged. It has been promised—by virtue of the very first article of the ICCPR—and denied by the U.S. government.²²⁶ Furthermore, if Puerto Rico is to remain a commonwealth, citizens in Puerto Rico must be afforded the right to vote in presidential elections. U.S. government officials have recognized as early as the 1960s that "it is inexcusable that there still exists a substantial number of U.S. citizens who cannot legally exercise [the] fundamental right" to vote for president.²²⁷ Not only should Puerto Ricans vote in presidential elections, but they should also have voting representation in both chambers of Congress. Finally, discriminatory treatment towards Puerto Rico must end. The current conditions are not conducive towards the realization of the right to food. This does not just affect the right to food, but also every other human right. After one hundred years of living under the purported mantle of freedom and democracy, Puerto Ricans must be ensured their right to self-determination and political participation equally. Only then can the Puerto Rican people choose leaders who can prioritize the accessibility, availability, adequacy, and sustainability dimensions of the right to food.

²²⁵ JUAN R. TORRUELLA, *THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL* (Universidad de Puerto Rico, 1st ed. 1985).

²²⁶ ICCPR, *supra* note 141, art. 1.

²²⁷ AD HOC ADVISORY GROUP ON THE PRESIDENTIAL VOTE FOR PUERTO RICO, *THE PRESIDENTIAL VOTE FOR PUERTO RICO* 13 (1971).