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HUMAN RIGHTS

The Lack of Proof of Ownership in Puerto Rico Is Crippling Repairs in the Aftermath of Hurricane Maria

by Ivis Garcia

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When Hurricane Maria made landfall in September 2017, it devastated the tiny island of Puerto Rico. The level of damage proved far more severe than the territory's government could bear. More than a year and a half following the devastating hurricane, thousands of people in the U.S. territory are still living in damaged homes.

In Puerto Rico, there are about 1,237,180 million homes. Of those, 1,138,843 (92 percent) were damaged by the hurricane. And of those damaged, 1,118,862 (98 percent) applied for the Federal Emergency Management Agency's (FEMA) Individuals and Households Program (IHP) as of May 2018. These figures came from Ron Roth, a FEMA spokesperson who noted to NBC News that the number of approved applications totaled 452,290—with 335,748 denied.

This means that about 40 percent of those who self-identified as being in need were not awarded assistance. Although many people have decided to rebuild on their own, a large percentage of these U.S. citizens still live with blue tarps over their houses, as they lack the funds necessary to repair their roofs. Unfortunately, this leaves them vulnerable to inclement weather—especially during hurricane season. Without a way to protect their homes from further inclement weather, families stand the risk of losing even more.

This concern has alarmed many who note that, should another hurricane hit, almost two years after Maria, many of these affected families still do not have a safe place to live. In light of this, why is it that FEMA rejected hundreds of thousands of assistance applications? This article addresses the current state of housing in Puerto Rico and how the lack of proving ownership may be crippling the territory's recovery. In addition, this article will summarize some policy responses proposed by advocates.

Housing in Puerto Rico

Puerto Rico has a history of informal construction. Anywhere between 585,000–715,000 (45–55 percent) of homes and commercial buildings in Puerto Rico have been constructed without building permits or following land use codes, according to a 2018 study of the Puerto Rico Builders Association. Furthermore, the vice president of the Society for Puerto Rican Planners, David Carrasquillo, estimates that 260,000 homes in Puerto Rico do not have titles or deeds. The reasons, to be discussed in the following paragraphs, are varied.

There is undoubtedly a history of what is commonly referred to as “illegal” home building, although known as “rescuing” land by those who have engaged in the practice. Because of their lack of resources, many Puerto Ricans in the past have taken to building homes on vacant land—whether they own it or not. This land often turns out to be public land own by the state. About 45 percent of Puerto Ricans, according to the 2017 five-year estimates American Community Survey, live below the poverty level.

Though there still may be cases in which citizens “illegally” build houses on land that is not theirs, much of the issue related to not having titles is not because of illegality, but rather it has to do with a lack of historical documentation. This results from the fact that in Puerto Rico many people live on land that has been subdivided generationally in their families, though they never went through a formal process of subdividing the land.

Similarly, many heirs have not gone through the process of declaring inheritance. In Puerto Rico, it is common to see someone occupying a home still under the name of deceased parents or family members because the new occupant never resolved the ownership of the property. Furthermore, for many in Puerto Rico, the proper documentation is not commonplace when a family acquires the property. One might have bought land lawfully and have no title merely because the person who owned it before did not have one.

For these reasons, hundreds of thousands of people in the nation are living on land to which they do not hold a formal title. In many ways, this does not pose a problem in day-to-day life, as other individuals may not claim the land. Most families have decided not to resolve these issues because it can cost thousands of dollars in lawyers’ fees, take a lot of time to find adequate information, and requires them to visit many governmental offices, which might be towns apart to “solve” what many considered a nonissue.

Local and Federal Ownership Laws

FEMA's adherence to strict homeownership regulations precludes individuals living in these homes from gaining access to federal aid. As noted above, of the 1.1 million households that applied, only about 40 percent (452,290) were approved, representing \$1.39 billion in grants. This means that about 60 percent were not approved either because they were deemed ineligible (335,748) or they were simply denied (330,824). FEMA sent letters to applicants with 41 reasons or codes for denying aid, from insufficient damages to pre-existing conditions.

According to organizations such as Ayuda Legal Huracán María and Fundación Fondo de Acceso a la Justicia, FEMA's number one reason for denying households aid was precisely because of their inability to prove ownership. Although the number of those dismissed from IHP because of not being able to show evidence of ownership has not been made public, Ayuda Legal Huracán María has a record of 48,000 families in Puerto Rico living on untitled property, affected by the disaster, and denied from assistance.

One of the primary reasons FEMA has denied these applications is because of its inability to recognize Puerto Rico's Civil Code and property rights framework, which derives from Spanish law. Under Puerto Rican law, one can be the legal owner of a property without having a formal title, presenting deeds, and so on. However, FEMA asked for such documentation to obtain assistance, leaving thousands unable to apply or receive help. The issue proves more complicated than most may think. In many ways, FEMA's policies look to avoid unlawful claims by those who do not own property. On the other hand, they punish hardworking citizens who rightfully own their homes, but lack the documents to prove it.

However, these issues might be explained by a closer look at the manner in which FEMA provides aid to owners as established in section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, 1974, 42 U.S.C. 5151 et seq.). The Stafford Act, under the Emergency Management and Assistance, 44 C.F.R. § 206.111 (2018), defines owner-occupied residence as a home occupied by (1) the legal owner; (2) a person who does not hold formal title to the residence and pays no rent, but is responsible for the payment of taxes or maintenance of the residence; or (3) a person who has lifetime occupancy rights with formal title vested in another. It is important to note the striking similarities between the Puerto Rico Civil Rights Code and the Stafford Act in which one should not have to provide a title to be considered an owner.

The National Low-Income Housing Coalition (NLIHC), through their Disaster Housing Recovery Coalition (DHRC) in collaboration with local organizations in Puerto Rico such as Ayuda Legal Huracán María and Fundación Fondo de Acceso a la Justicia, have been keeping an eye on the situation and have raised concerns to FEMA, noting that FEMA should provide an alternative way of proving ownership in accordance to both the local and the federal laws, where a title is not needed.

The Declarative Statement

Because FEMA requires that some form of ownership documentation be produced, thousands of individuals lost access to the aid they need to repair their homes. For these households, then, there may be no proof other than their own word that they own their property. A sworn declaration was created by the DHRC of the NLIHC in order to help those individuals without deeds or titles. In this statement, the owner needs to provide their personal information and an address of the property that needs repairs.

Given that many heirs occupy homes and, as a result, have a proprietary interest, but are not mentioned in the deed of the property, they could use the declarative statement to qualify for assistance. This means that a person has a proprietary interest in the home, but the traditional legal steps to transfer ownership have not been taken. This also applies for those families who have not subdivided their land, those who bought property without a title, and those who took a building or a vacant lot where the owners have not come forward to make claims.

In the declarative statement, people needed to swear that no other person can claim ownership rights to the property or that after an effort to locate rightful owners they could not be found. The owner was encouraged to provide alternative documentation instead of a title such as tax receipts, home insurance, a utility bill, a letter of credit from the utility company, receipts from repairing the property, or any other documentation that would support that they were currently occupying and maintaining the home.

The DHRC of the NLIHC worked with FEMA to craft the language of the marketing behind the effort, despite it not being directly related to the agency. It is a move the DHRC believes could help relieve the burden felt by Puerto Rican citizens, as these sworn documents allow those who have been denied assistance the opportunity to prove their ownership.

However, as many Puerto Ricans remain in the dark about this form, its utility has been marginal. Because the sworn declaration is not a FEMA document, FEMA issued a press release, but it did not take additional measures to raise awareness of the document among those who have been denied assistance. Until now, Ayuda Legal Huracán María, Fundación Fondo de Acceso a la Justicia, among other organizations in the island that are part of DHRC, has been promoting the sworn statement on their own as well as informing homeowners at workshops, through news and social media, as well as at Disaster Recovery Centers across the island.

Since October 2018, the DHRC has been laying out the guidelines on how this education campaign could be accomplished. This included “educating Disaster Recovery Center (DCR) staff and staff handling appeals about the availability of the sworn declaration, making the sworn declaration available at the DRC, and sending another letter to those denied assistance with a copy of, or instructions on how to access, the sworn declaration.” Using these recommendations, it may be possible to ameliorate the problem of inequitable access to repair funds in Puerto Rico.

Conclusion

The current situation in Puerto Rico is unsustainable. With a vast swath of the population living without proper shelter, the territory’s citizens are at risk of increased injury or damage in the event of any future hurricanes. The extent of the issue can prove alarming to outside viewers. A look at the nation reveals a populace still reeling from the effects of Hurricane Maria nearly two years later. Ineffectual attempts by FEMA to alleviate the situation have left people living in unsafe and dire conditions.

FEMA denials mostly stem from homeowners’ inability to produce deeds, titles, or other forms of documents proving that they have ownership of their homes. These requirements, however, prove too hard for many Puerto Ricans to overcome because, though they are not transactions that are costly, they are not part of the culture.

Because of this, many—but most notably the DRHC of the NLIHC—have called into question the utility of FEMA’s restrictive policies that prevent hundreds of thousands from getting the aid that they need. In some cases, families desperate for a way to repair their homes have made multiple appeals unsuccessfully to the federal organization for rebuilding assistance.

Advocacy groups have begun to speak out in the hopes that FEMA will change restrictive policies to better consider the context of the island. By recognizing the history of the territory, the building

and cultural practices there, they argue, FEMA can better accommodate the needs of a highly at-risk population.

Even though advocates have attempted to address the problem by designing a sworn statement in collaboration with FEMA to help homeowners get the required documentation, more action is needed from FEMA's side. This slow-going process for making sure that homeowners receive the FEMA assistance they need has left many wondering when these households will have a safe place to call home.

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