

June 16th, 2021

Chairman Raúl M. Grijalva  
Rob Bishop, Ranking Member  
House Committee on Natural Resources  
Congress of the United States  
Washington, DC 20515

Good afternoon, Chairman Grijalva and Members of the House Committee on Natural Resources,

My name is Annette Martínez-Orabona, and I am an International Human Rights lawyer and Professor at the Inter-American University of Puerto Rico, School of Law. I hereby submit my written statement on the international public law aspects of decolonization and the United States' responsibility to respect and guarantee Puerto Rico's right of self-determination, as a fundamental aspect of human rights law.

## **I. Introduction**

For decades, there have been numerous discussions and debates on the political future of Puerto Rico, some of which have led to local referendums, legislative efforts, a presidential task force, many congressional hearings, among others, and none of them have provided any meaningful result.

It is my view that these efforts have been flawed from the start. All of them repeatedly ignored a basic and fundamental aspect of political determination in international law. That is, that the exercise of self-determination is first and foremost an exercise of sovereignty, and should be guided by the international normative framework on decolonization.

Additionally, in the case of Puerto Rico, as well as has happened with many former colonies, the exercise of colonial rule has been accompanied with the erosion of the rule of law, allowing for the unilateral exploitation of natural resources, the imposition of inadequate economic standards, commercial impediments, land appropriation, and environmental degradation, which often results in internal displacement, contamination, discriminatory practices, inequality, poverty and overall conditions of vulnerability for present and future generations.

The reason why I am including these two areas in my exposition is because they are inextricably interrelated. The fact that the United States has limited Puerto Rico's exercise of its own economic and sovereign powers has led to a distinct result with regard to the practice of self-determination, but it has also had an effect on the human rights and the dignity of all Puerto Ricans. Colonial rule, only operates for the benefit of the colonial power, and that is why the practice of colonialism has been strongly rejected by international law.

## II. The Right to Self-Determination, Decolonization and Acceptable Options for a Non-Territory Status

The right to self-determination has many manifestations, but its most robust legal content is found in the decolonization context. Under international law, self-determination is a legal entitlement recognized to all colonized peoples. This right is considered a general principle of international law, as well as a customary norm that has been expressly incorporated into multiple human rights treaties. Furthermore, the International Court of Justice has reiterated its *erga omnes* character<sup>1</sup>. Today it is widely considered a norm of *ius cogens*.<sup>2</sup>

Art. 1 of the International Covenant on Civil and Political Rights<sup>3</sup>, which is binding on the United States, expressly recognizes this right and imposes specific duties for its realization. Specifically, Article 1(3) expresses that all States that assumed “*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.*”<sup>4</sup>

This obligation is two-fold: first, it imposes the responsibility to guarantee the realization of the right of self-determination, and second, it incorporates as a legal obligation the provisions of the United Nations Charter regarding Non-Self-Governing Territories.<sup>5</sup> Under article 73 of the UN Charter, administrative States have a non-delegable duty to: administer the dependent territory in the best interest of its inhabitants, ensuring the practical achievement of their political, economic and social advancement, adopting measures to promote their development, and assisting them in the development of self-government, the full realization of their political aspirations and the achievement of their free political institutions.

In summary, colonial powers have a responsibility to support these territories in varying ways with the purpose of achieving self-government and independence. Professor Steven Lausell refers to this obligation as one with a “clear fiduciary

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<sup>1</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 139, para. 180; *Case Concerning East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 102, para. 29.

<sup>2</sup> M. Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary (Engel, Kehl, 2005) p. 9; A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press, Cambridge, 1995), p. 319-320; H. Gros Espiell, *The Right to Selfdetermination: Implementation of United Nations Resolutions*, E/CN.4/Sub.2/405/Rev.1 (United Nations, New York, 1980) par. 70.

<sup>3</sup> “All peoples have a right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

<sup>4</sup> *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171 (1966).

<sup>5</sup> There are two Chapters of the UN Charter that regulate the responsibility of administrative States toward dependent territories (Chapters XI and XII). For a detailed analysis, see: Steven P. Lausell Recurt, *The Song Remains the Same, The United States' Fiduciary Duty to Puerto Rico as a Basis for Legal Responsibility*. Master Thesis. Spring 2016.

character”, reminiscent of general institutions of trusteeship whereby one party has a duty to forego its own personal interests and act solely in the interests of another.”<sup>6</sup> By definition, the obligations identified under the UN Charter, must be temporary. The late honorable, international expert Antonio Cassese, defined it as “a temporary legal regime that must of necessity lead to the eventual extinction of legal title.”<sup>7</sup> In other words, under International Law, colonial rule has to have an expiration date, and the ultimate obligation of administrative States is to take all necessary steps to guarantee the required conditions for a decolonization process. This process can only be achieved if the rights to economic, social and cultural freedom are protected, as intrinsic to the achievement of political freedom.<sup>8</sup>

It is important to emphasize that under international law, all people living under colonial rule must achieve a “full measure of self-government” in order to extinguish their status as non-self governing territories.<sup>9</sup> This also means that a valid decolonization process requires an environment of mutual trust, where both parties interact as equals, each exercising their full autonomy and sovereign powers. We should bear in mind, that any decolonization process is a matter of international relations. In that sense, the responsibility falls on the United States to rectify the record of what happened in 1952, providing accurate and up to date information on the real current status of Puerto Rico to the United Nations, which will set into motion a valid process of status determination under international law.

Now, having discussed the general obligations of the colonial State. Let me turn now to the discussion of the options identified under international law as acceptable decolonization outcomes. The normative content of the right to self-determination and its outcomes is defined mainly in three UN General Assembly Resolutions, these are, Resolution 1514 (XV) of 14 December 1960,<sup>10</sup> Resolution 1541 (XV) of 15 December 1960<sup>11</sup>, and Resolution 2625 (XXV) of 24 October 1970<sup>12</sup>. Resolution 1541 identifies three alternatives for achieving a full measure of self-government, which are: independence, free association, and integration with another State.<sup>13</sup> In regard to the option of free association, Resolution 1541 offers some clarity,

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<sup>6</sup> Steven P. Lausell Recurt, *The Song Remains the Same, The United States' Fiduciary Duty to Puerto Rico as a Basis for Legal Responsibility*. Master Thesis. Spring 2016.

<sup>7</sup> A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press, Cambridge, 1995) pp. 186-187.

<sup>8</sup> Id. at footnote 52, citing: H. Gros Espiell, *The Right to Self Determination: Implementation of United Nations Resolutions*, E/CN.4/Sub.2/405/Rev.1 (United Nations, New York, 1980), par. 113.

<sup>9</sup> Steven P. Lausell Recurt, *supra note 5*, p.17.

<sup>10</sup> General Assembly Resolution 1514 (XV), *Declaration on the granting of independence to colonial countries and peoples* (14 December 1960)

<sup>11</sup> General Assembly Resolution 1541 (XV), *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter* (15 December 1960).

<sup>12</sup> General Assembly Resolution 2625 (XXV), *Declaration on principles of International Law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations* (24 October 1970).

<sup>13</sup> Principle VI, UNGA Resolution 1541 (XV).

indicating that it should be the result of the free, voluntary and informed decision of the people, that it entails the recognition of the associated territory's right to internal self-government without outside interference, and that a free associated state should retain the right to re-negotiate or modify the terms of the association at any time.<sup>14</sup>

Apart from the three established options for decolonization, UN Resolution 2625 also makes reference to "any other political status freely determined by a people." The Resolution however, offers no clarity as to what that could mean in practice. What is undoubtedly clear, however, is that the meaningful exercise of the right to self-determination does not allow for a political relationship of a colonial nature to remain intact. Therefore, UN Resolution 2625 cannot be used to justify 'colonialism by consent'. In sum, all valid options for decolonization have three main pre-conditions: (a) recognition of the free and independent sovereignty of both parties, (b) elimination of colonial rule; and (c) the free and informed participation of the people.

### **III. Self-Determination and the Right to Reparations under International Human Rights Law**

In 1953, the United States falsely claimed in front of the United Nations that it had entered into a "mutually agreed association" with Puerto Rico, which effectively ended its colonial status. Today, it is unambiguously clear that contrary to that assertion, Puerto Rico has never been allowed to meaningfully exercise its right to self-determination.

Furthermore, it is evident that the United States government has historically acted in favor of its own interests in Puerto Rico and not in favor of Puerto Rico's development as mandated by Article 73 of the U.N. Charter. Decolonization requires that conditions of economic freedom and stability are met so that political self-determination does not become a futile exercise. If a colonial power conducts itself in a way that undermines the possibility of greater development and economic independence, then those actions are compounded violations of the human right to self-determination.

As explained earlier, the right to self-determination is a fundamental principle of human rights law, one that, as any other human right generates obligations, including the duty to redress and repair the effects of its violations. In this sense, the process of decolonization in Puerto Rico must be accompanied by the United States' formal recognition of international responsibility, and the identification of necessary steps to redress and repair the compounded effects of multiple human rights violations perpetrated during its colonial rule in Puerto Rico. The United States has breached its international human rights obligations to the people of

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<sup>14</sup> Principle VII, UNGA Resolution 1541 (XV).

Puerto Rico through direct and indirect action, for 123 years of colonial rule in the territory.

To give an example, the outstanding debt that Puerto Ricans are being forced to pay is in itself a violation of the human right to their survival as peoples, and runs contrary to the fiduciary obligations that the US has over the territory.<sup>15</sup> As long as Puerto Rico remains a colonial territory and its economy, and even its Constitution, is by design made to work for the benefit of the administrative power, the accumulated debt is the sole responsibility of the colonial authority in control. Sovereignty and responsibility go hand in hand. In this sense, the imposition of the Oversight Control Board is a step in the wrong direction, and runs contrary to the international obligations of the State, which requires more independent, democratic means of governance, not less.

The reality is that Puerto Rico's colonial status has led to its economic, social and environmental regression. This relationship between the colonial status and the territory's poor living conditions, was most recently recognized by the Special Rapporteur on Extreme Poverty and Human Rights, Mr. Phillip Alston. During his official visit to the United States in December 2017, which included visits to Puerto Rico, he concluded that poverty and the absence of political rights are inextricably linked in Puerto Rico.<sup>16</sup>

It should also be mentioned that poverty, inequality and environmental degradation have also been the result of inadequate policies applied in Puerto Rico by federal rule, which were exacerbated by the impact of hurricanes Irma and María, and the inadequate and discriminatory response by agencies in charge. All of these conditions, as well as a the imposition of PROMESA and the Oversight Control Board, are examples of the United States' violations of its basic responsibilities toward the people of Puerto Rico and shows a lack of willingness to advance a project of true self-determination.

#### **IV. Conclusion.**

In conclusion, the issue of self-determination is ultimately a question of human dignity, a question of freedom in its most basic form, and a fundamental element of the notion of human rights. This is why self-determination is included at the very beginning of the two main international human rights treaties, and is considered a fundamental aspect of international relations. Today, the right to self-determination is considered not just an issue of political determination, but a condition that affects all aspects of human dignity and the possibility for achieving its full development.

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<sup>15</sup> On the relationship between debt and human rights in Puerto Rico, see: UN Independent Expert on Foreign Debt and Human Rights, Press release : *"Puerto Rico debt crisis: "Human rights cannot be sidelined"-UN Expert Warns"*, Geneva, 9 January 2017.

<sup>16</sup> Report of the Special Rapporteur on Extreme Poverty and Human Rights on his mission to the United States of America. A/HRC/38/33/Add.1, 4 May 2018, pars. 22-24.

All previous “decolonization” efforts have failed to recognize: (1) that self-determination is a fundamental human right and an issue of international relations; (2) that the United States has forsaken and limited the exercise of this right for 122 years; and, (3) that under human rights law, these limitations have resulted in multiple violations of substantive human rights norms.

After Puerto Rico was removed from the United Nations’ list of non-self governing territories in 1953, the United States has maintained that the islands of Puerto Rico have no sovereign powers of their own and that its internal autonomy could be revoked by the U.S. Congress at any moment. This position -albeit wrong, racist and discriminatory- was endorsed and regarded as correct, by the US Supreme Court in *Commonwealth of Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863 (2016). See also: *Financial Oversight and Management Board v. Aurelius Investment*, 590 U.S. (2020). According to the Court, the 1952 exercise of constitutional drafting and approval was merely an authority “conferred” by Congress, which makes “Congress the original source of power for” Puerto Rico (at pp. 1875-1876). This historical and juridical conclusion will need to be re-addressed and corrected in order for any process of true self-determination to take place. No legitimate exercise of self-determination can take place, without an express recognition of the US government that the people of Puerto Rico are entitled to exercise their sovereign power and to decide on their own terms, and without interference, their political, economical, social and cultural future.

As a final remark, I would also like to mention that, the legitimacy of any decolonization process depends heavily on its honesty and transparency. All discussions on this subject, including this hearing and any other in the future, as well as all legislative actions, executive orders, policies, drafts and laws concerning Puerto Rico’s future will never be really transparent and open for meaningful public debate, if they continue to be held in English, without simultaneous translation to Spanish. This very simple change, is one of utmost importance, when the discussion deals with the future of people that cannot effectively participate in any of the debates since it is designed, discussed, amended and debated in a language they do not understand. All these procedures are incomplete and violate the fundamental right of meaningful participation when they continue to be held and written in English, leaving those who are the rightful protagonists of this discussion out of the conversation. This is in itself another example of a colonial decision that affects the legitimacy of these efforts.

Thank you,

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